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Angel Banda
6th Grade

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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:
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- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
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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 GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for December 12, 2013

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire September 1, 2015, Deborah L. "Deb" Dalebout-Feo of Austin (replacing Richard Schoephoerster of El Paso whose term expired).

Appointed to the State Cemetery Committee for a term to expire February 1, 2019, Carolyn Hodges of Houston (replacing Deborah Van Dormolen of Salado who is deceased).

Pursuant to HB 3212, 83rd Legislature, Regular Session, appointed to the Red River Boundary Commission, for a term to expire December 31, 2015, William "Bill" Douglass of Sherman.

Pursuant to HB 3212, 83rd Legislature, Regular Session, appointed to the Red River Boundary Commission, for a term to expire December 31, 2015, Thomas "Ryan" Johnson of Sherman.

Pursuant to HB 3212, 83rd Legislature, Regular Session, appointed to the Red River Boundary Commission, for a term to expire December 31, 2015, William "Bill" Madden of Dallas.

Pursuant to HB 3212, 83rd Legislature, Regular Session, appointed to the Red River Boundary Commission, for a term to expire December 31, 2015, Maher Maso of Frisco.

Pursuant to HB 3212, 83rd Legislature, Regular Session, appointed to the Red River Boundary Commission, for a term to expire December 31, 2015, Larry Phillips of Sherman. Representative Phillips will serve as presiding officer of the board.

Appointed to the State Pension Review Board for a term to expire January 31, 2019, Keith W. Brainard of Georgetown (replacing Richard Earl McElreath of Amarillo who resigned).

Rick Perry, Governor

TRD-201306001

Proclamation 41-3364

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, prolonged dry conditions continue to increase the threat of wildfire across many portions of the state; and

WHEREAS, these drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes the counties of Andrews, Archer, Bailey, Bandera, Baylor, Blanco, Briscoe, Brooks, Brown, Burnet, Cameron, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Colorado, Comal, Concho, Cottle, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Dickens, Dimmit, Ector, Edwards, Ellis, Fisher, Floyd, Foard, Frio, Gaines, Galveston, Garza, Gillespie, Hale, Hansford, Hardeman, Hartley, Haskell, Hidalgo, Hockley, Hood, Hudspeth, Hutchinson, Irion, Jack, Jim Hogg, Jim Wells, Johnson, Jones, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Knox, La Salle, Lamar, Lamb, Lampasas, Llano, Lubbock, Lynn, Martin, Matagorda, McCulloch, McLennan, Medina, Midland, Mills, Mitchell, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Randall, Real, Runnels, San Patricio, San Saba, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Swisher, Tarrant, Terrell, Terry, Throckmorton, Tom Green, Travis, Uvalde, Val Verde, Walker, Webb, Wharton, Wichita, Wilbarger, Willacy, Williamson, Winkler, Yoakum, Young and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of November, 2013.

Rick Perry, Governor

TRD-201306002

Proclamation 41-3365

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, do hereby certify that a significant winter storm poses a threat of imminent disaster in the following counties: Andrews, Archer, Armstrong, Bailey, Baylor, Bell, Blanco, Borden, Bosque, Bowie, Briscoe, Brown, Burnet, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Gillespie, Glasscock,

Grayson, Gray, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Howard, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kaufman, Kent, Kerr, Kimble, King, Knox, Lamar, Lamb, Lampasas, Limestone, Lipscomb, Llano, Lubbock, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Rains, Randall, Reagan, Red River, Roberts, Rockwall, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Travis, Upton, Van Zandt, Wheeler, Wichita, Wilbarger, Williamson, Winkler, Wise, Wood, Yoakum, and Young.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the counties listed above based on the existence of such threat, and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 5th day of December, 2013.

Rick Perry, Governor

TRD-201306003

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-1173-GA

Requestor:

Mr. J. Winston Krause, Chair

Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Whether the Texas Lottery Commission may deny or revoke an entity's bingo-related license based on the criminal history of an individual associated with that entity (RQ-1173-GA)

Briefs requested by January 3, 2014

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

TRD-201305999
Katherine Cary
General Counsel
Office of the Attorney General
Filed: December 17, 2013

Opinions

Opinion No. GA-1031

The Honorable John J. Carona

Chair, Committee on Business and Commerce

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether the Austin City Council may transfer governance of Austin Energy to a board of directors (RQ-1132-GA)

S U M M A R Y

A city to which chapter 552 of the Local Government Code applies has express authority under section 552.122 to adopt an ordinance providing for a board of trustees to manage and control its municipally owned electric utility and to establish the board member qualifications, which can include out-of-city representation.

Whether any particular city charter provision limits such a board's independent exercise of its delegated powers and responsibilities is not a question that can be resolved in an attorney general opinion.

Under article XI, section 5 of the Texas Constitution, only qualified voters of the City of Austin may vote in an election to amend the Austin city charter.

Opinion No. GA-1032

The Honorable Omar O. Collin

Kleberg County Attorney

Post Office Box 1411

Kingsville, Texas 78364-1411

Re: Whether the Kleberg County commissioners court may create and fund an additional bailiff position for the 105th District Court (RQ-1133-GA)

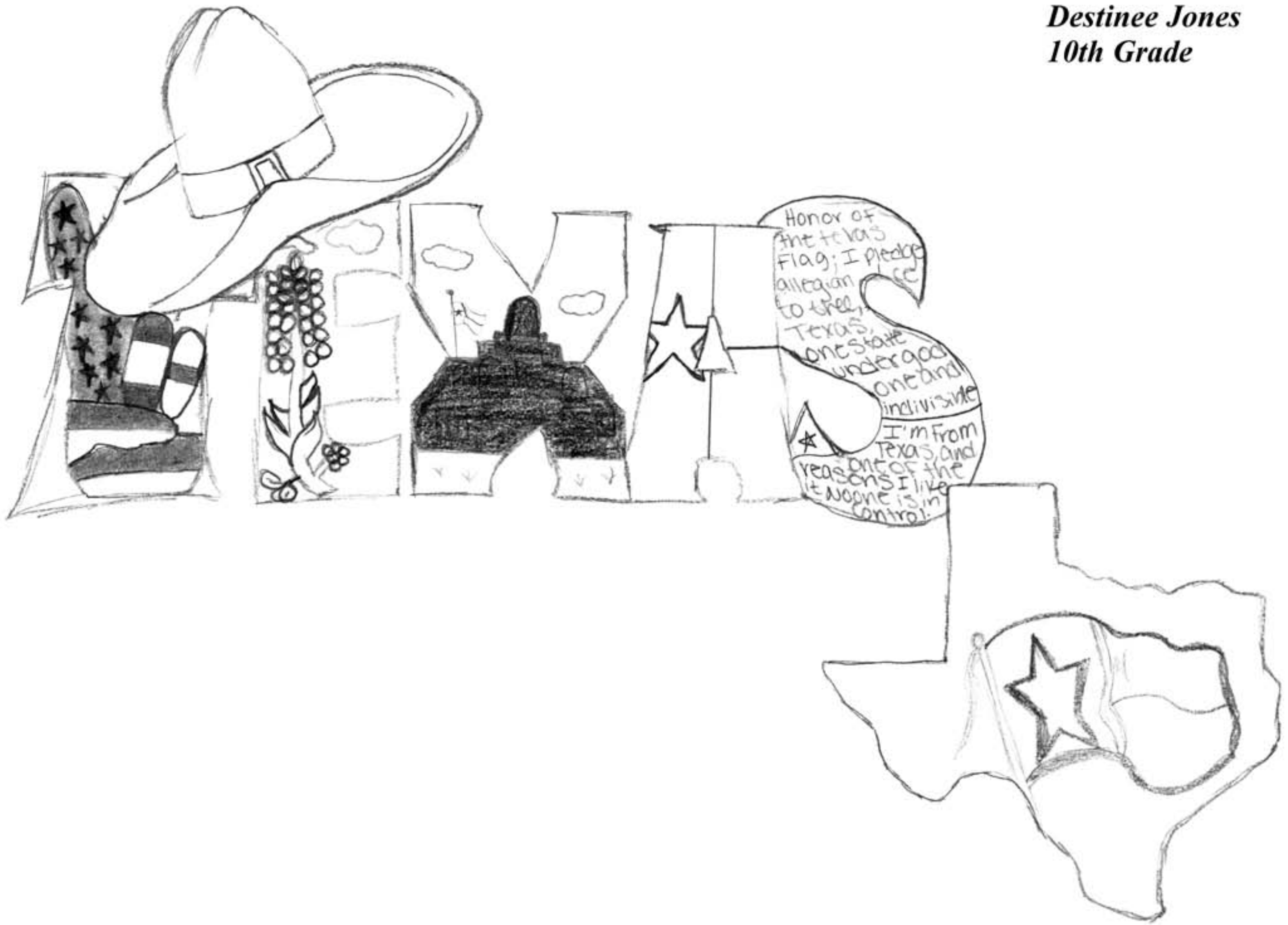
S U M M A R Y

The Legislature has not authorized the creation of an additional bailiff position for the 105th District Court. However, if the Court determines that it needs additional staff to aid the Court in the exercise of its judicial functions, the Court may rely on Government Code section 74.103 and its inherent power to appoint necessary personnel other than a bailiff.

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

TRD-201306028
Katherine Cary
General Counsel
Office of the Attorney General
Filed: December 18, 2013

Destinee Jones
10th Grade



EMERGENCY RULES

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER E. DATE PALM LETHAL DECLINE QUARANTINE

4 TAC §19.51

The Texas Department of Agriculture (the department) adopts on an emergency basis amendments to §19.51 which establish two new quarantined areas for a dangerous quarantined disease, date palm lethal decline (DPLD). Both of the new quarantined areas, located in Seabrook, Harris County, Texas, contains a newly detected infestation of DPLD. The department believes that establishment of these emergency quarantine areas on a temporary basis is both necessary and appropriate in order to effectively contain, combat, and eradicate these infestations of DPLD; thereby protecting the palm nursery industry, landscapers, homeowners and others who have Canary Island date palms, *Phoenix canariensis;* silver date palms, *Phoenix sylvestris;* queen palms, *Syagrus romanzoffiana;* cabbage palms or sabal palm, *Sabal palmetto;* and date palms, *Phoenix dactylifera* in Texas and other states.

These amendments are temporarily adopted on an emergency basis because samples taken from two date palms at separate locations in Seabrook, Harris County, Texas, have been diagnosed by the Texas A&M AgriLife Extension Plant Disease Diagnostic Laboratory, College Station, Texas, using polymerase chain reaction (PCR) followed by restriction digest analysis (see K. Ong and S. McBride. Palm diseases caused by phytoplasmas in Texas. National Plant Diagnostic Network online publication http://www.npdn.org/webfm_send/1065), to be infected with phytoplasma 16SrIV-D, the causal agent of DPLD.

The emergency amendments to §19.51 establish two new quarantined areas, each with a 2-mile radius and a concentric core area with a 1-mile radius centered around an infected palm tree in Seabrook, Harris County, Texas. The emergency amendments make quarantined articles in the quarantined areas subject to requirements necessary to prevent the artificial spread of the quarantined pest and provide for its management and eradication, thus protecting the state's important palm tree nursery industry, landscape industry and residential areas.

The amendments to §19.51 are adopted on an emergency basis under the Texas Agriculture Code §71.001, which requires the department to establish quarantine against any dangerous insect pest or plant disease that exists in any area outside the state but that is new to and not widely distributed in this state; §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; §71.004, which authorizes the department to establish emergency quarantines; §71.005, which requires the department to prevent the movement of quarantined articles from a quarantined area into an unquarantined area, except under adequate safeguards; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles; §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code; and the Texas Government Code §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

The code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.51. Quarantined Areas.

The quarantined areas are as follows:

(1) (No change.)

(2) The area within two miles of palm trees infected with the date palm lethal decline disease located at the following site in Kleberg County of Texas:[~~.~~]

[~~(A)~~] Latitude 27.52701 N and longitude 97.88132 W.

(3) The area within two miles of the following site in Harris County of Texas.

(A) Latitude 29.5653677 N and longitude 95.01396068 W; and

(B) Latitude 29.55893576 N and longitude 95.0187833 W.

(C) [~~(B)~~] Further [~~Detail~~] information on the areas described in subparagraphs (A) and (B) [~~subparagraph (A)~~] of this paragraph may be obtained from Environmental and Biosecurity Programs, Agriculture and Consumer Protection Division [~~Regulatory Programs Division~~], Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711; and

(4) [~~(3)~~] The State of Florida.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305815
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: December 11, 2013
Expiration date: April 9, 2014
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.404

The Texas Lottery Commission is renewing the effectiveness of the emergency adoption of the amendment to §402.404, for a 20-day period. The text of the amended section was originally published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5599).

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305816
Bob Biard
General Counsel
Texas Lottery Commission
Original effective date: August 14, 2013
Expiration date: December 31, 2013
For further information, please call: (512) 344-5012

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 4. SPECIAL PROVISIONS TO PREVENT THE SPREAD OF EXOTIC AQUATIC SPECIES

31 TAC §57.1001

Pursuant to Parks and Wildlife Code, §12.027, the Texas Parks and Wildlife Department adopts, on an emergency basis, an amendment to §57.1001(3), concerning Draining of Water from Vessels Leaving or Approaching Public Fresh Water. The emergency action adds Bell and Coryell counties to the list of counties that are subject to special regulations intended to control the spread of zebra mussels (Dreissena polymorpha). In September 2013, the department confirmed the presence of zebra mussels in Lake Belton (Bell County) and believes that Stillhouse Hollow Lake (in Bell and Coryell counties), which is only five miles away, is at imminent risk of becoming infested.

This emergency amendment replaces a prior emergency amendment to §57.972 (38 TexReg 7015), filed on September 25, 2013, which is withdrawn. That action, also intended to control the spread of zebra mussels, was predicated on the department's authority under Parks and Wildlife Code, §66.007, to regulate the possession of harmful or potentially harmful fish or shellfish except as authorized by permit or rule. Since zebra mussels are a species that cannot be possessed without a permit, it is technically unlawful to possess even the microscopic larval stage of the organism (called a veliger), which can be present virtually everywhere in an infested water body and thus in live wells, bilges, and other receptacles as a result of immersion in an infected water body. The department at that time promulgated a stopgap regulation that provided a defense to prosecution for unlawful possession of a prohibited species provided all live wells, bilges, and other receptacles or systems capable of retaining or holding water were drained prior to the use of a public roadway.

This emergency amendment to §57.1001(3) is predicated on additional authority delegated to the department by the 83rd Texas Legislature (Regular Session) by the enactment of House Bill 1241, which amended Parks and Wildlife Code by adding new §66.0073 to authorize the Texas Parks and Wildlife Commission (the commission) to adopt rules requiring a person leaving or approaching public water to drain from a vessel or portable container on board the vessel any water that has been collected from or has come in contact with public water. The department adopted new §57.1001 (published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8915), effective December 10, 2013) under the authority of House Bill 1241. The new rule requires water to be drained from vessels approaching or leaving water bodies in Collin, Cooke, Dallas, Denton, Fannin, Grayson, Hood, Jack, Kaufman, Montague, Palo Pinto, Parker, Rockwall, Stephens, Tarrant, Wise, and Young counties.

The zebra mussel is a small, non-native mussel originally found in Eurasia. It has spread throughout Europe, where it is considered to be a major environmental and industrial menace. The animal appeared in North America in the late 1980s and within ten years had colonized in all five Great Lakes and the Mississippi, Tennessee, Hudson, and Ohio river basins. Since then, they have spread to additional lakes and river systems.

Zebra mussels live and feed in many different aquatic habitats, breed prolifically, and cannot be controlled by natural predators. Adult zebra mussels colonize all types of living and non-living surfaces including boats, water-intake pipes, buoys, docks, piers, plants, and slow moving animals such as native clams, crayfish, and turtles. The U.S. Fish and Wildlife Service has estimated the potential economic impact of zebra mussels to be in the billions of dollars.

Zebra mussels affect natural ecosystems both directly and indirectly. The greatest direct impact relates to the mussel's feeding behavior. Zebra mussels are filter feeders and process up to one liter of water per day/mussel. During this process, every particle in the water column is removed and either eaten by the mussels

or coated in mucus and ejected. Unfortunately, the material removed from the water consists of other live animals and algae that supply food for larval fish and other invertebrates. In response to this changing food supply, indigenous populations of some animals decline and food webs are disturbed or eliminated. Once zebra mussels become established in a water body, they are impossible to eradicate with the technology available today.

What makes zebra mussels particularly difficult to control is that young zebra mussels are so small that they spread easily by water currents and can drift for miles before settling. After settling, the mussels attach to hard objects and remain stationary as they grow. They often attach to objects involved in human activities, such as boats and boat trailers, and are inadvertently moved from one water body to another by people. Any water collected from waterbodies where zebra mussels are present could contain veligers; thus, water transported from waterbodies with known zebra mussel populations is a vector for the spread of zebra mussels.

For these reasons, the Executive Director of the Texas Parks and Wildlife Department finds that zebra mussels present an immediate danger to species of wildlife regulated by the department (specifically, all indigenous aquatic species whose food supply and/or habitat quality could be altered by zebra mussels, which includes game and nongame fish, and nongame aquatic wildlife such as turtles, and mussels) in Bell and Coryell counties. The need to prevent the spread of zebra mussels to additional water bodies creates an imperative necessity to engage in emergency rulemaking. The Executive Director also finds that due to the potential for the rapid spread of zebra mussels, it is necessary to adopt the amendment with fewer than 30 days notice. As a result, the emergency amendment will take effect immediately.

The department has published a proposed amendment to §57.1001 in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9207), which, if adopted, would make the substance of this emergency rule permanent in the affected counties.

The amendment is adopted on an emergency basis under Parks and Wildlife Code, §12.027, which provides that if the commission or the executive director finds that there is an immediate danger to a species authorized to be regulated by the department, the commission or the executive director may adopt emergency rules as provided by Government Code, §2001.034. This amended rule will continue for no more than 120 days from the date this notice is filed with the *Texas Register.*

§57.1001. Draining of Water from Vessels Leaving or Approaching Public Fresh Water.

For the purposes of this section, "vessel" has the meaning assigned by Parks and Wildlife Code, §31.003, and "boat ramp" means a boat ramp, launch area, or any other access point that can be used to access public water, and includes parking areas, parking overflow areas, and any other area in the immediate vicinity of the ramp, launch, or access point where a vehicle, trailer, or vessel may be parked while waiting to launch or retrieve a vessel.

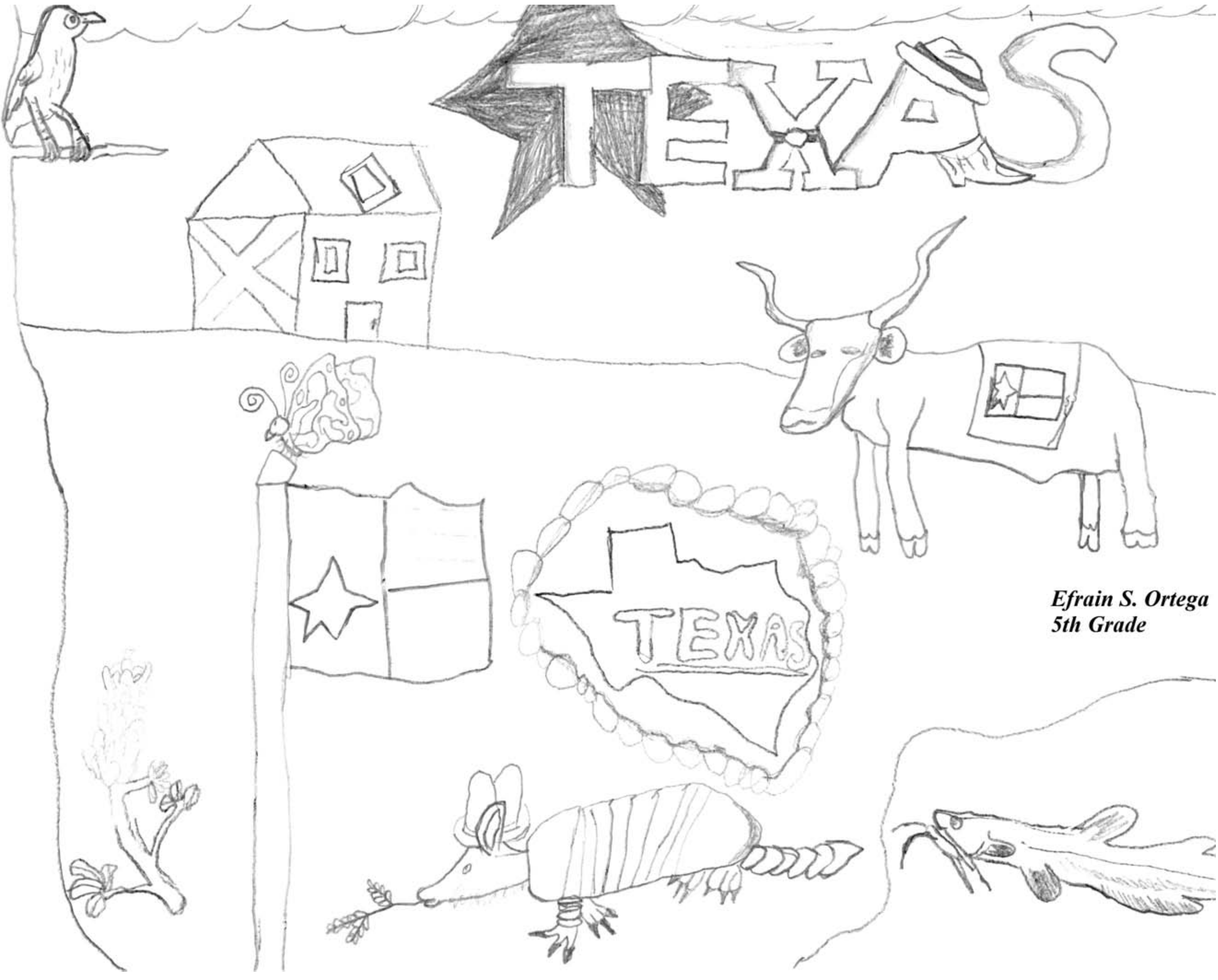
(1) - (2) (No change.)

(3) This section applies to all public water in Bell, Collin, Cooke, Coryell, Dallas, Denton, Fannin, Grayson, Hood, Jack, Kaufman, Montague, Palo Pinto, Parker, Rockwall, Stephens, Tarrant, Wise, and Young counties.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2013.

TRD-201305725
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: December 10, 2013
Expiration date: April 8, 2014
For further information, please call: (512) 389-4775



Efrain S. Ortega
5th Grade

PROPOSED RULES

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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.1

The Texas Department of Housing and Community Affairs ("Department") proposes new 10 TAC Chapter 1, §1.1, regarding Reasonable Accommodation Requests. The purpose of the rule is to provide the process for requesting a Reasonable Accommodation. The proposed rule provides applicable definitions, a process whereby a written request may be made, the required contents of the request, and for submission of the request to the Executive Director, or his designee.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed rule will be in effect, enforcing or administering the proposed rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the rule will be in effect, the public benefit anticipated as a result of the rule will be to enhance Department access and provide clarity on the Reasonable Accommodation Requests process. There will not be any economic cost to any individuals required to comply with the rule as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, David Johnson, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-4798. Public comment period will be held from December 27, 2013, to January 29, 2014. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. ON JANUARY 29, 2014.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code Annotated, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code Annotated, §2306.092, which authorizes the Department to promulgate rules regarding its programs.

The proposed new rule affects no other code, article, or statute.

§1.1. Reasonable Accommodation Requests.

(a) Purpose. The purpose of this section is to establish the procedures by which a Requestor may ask that a Reasonable Accommodation is made by the Department.

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

(1) Board--Texas Department of Housing and Community Affairs Governing Board.

(2) Director--Department staff member supervising the division containing the program for which a Reasonable Accommodation is being requested.

(3) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act or as defined by other applicable federal or state law.

(4) Fair Housing Act--Fair Housing Act of 1968, also known as Title VIII of the Civil Rights Act of 1968.

(5) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, service, building, dwelling unit, that will allow a qualified person with a Disability to:

(A) Participate fully in a program;

(B) Take advantage of a service;

(C) Live in a dwelling; or

(D) Use and enjoy a dwelling.

(6) Requestor--Includes applicants, members of the public, clients of Department programs, and program participants.

(7) Section 504--Section 504 of the Rehabilitation Act of 1973, as amended.

(c) Procedures.

(1) The Requestor of the Reasonable Accommodation shall submit a written request to the Director.

(2) The request will contain, at minimum:

(A) Department program;

(B) Household information:

(i) name; and

(ii) address;

(C) Description of the Reasonable Accommodation being requested; and

(D) Reason the Reasonable Accommodation is necessary.

(3) The Director and the supervising Deputy Executive Director/Chief, if any, may ask for additional information from the Requestor to determine:

(A) If the proposed Reasonable Accommodation is covered under §504 and/or the Fair Housing Act or any other federal or state law; and

(B) Whether they will recommend approval, recommendation of an alternative Reasonable Accommodation, or denial to the Executive Director.

(4) The request is then sent to the Executive Director or their designee, resulting in one of the following steps:

(A) The Executive Director determines Board action is not necessary and approves the request;

(B) The Executive Director proposes an alternative Reasonable Accommodation to the Requestor;

(C) The Executive Director determines Board action is necessary and presents the request and any proposed alternative Reasonable Accommodation at an ensuing Board meeting. The Executive Director can choose to include a recommendation for or against the request;

(D) The Executive Director refers the request to the Department's Dispute Resolution Coordinator for an Alternative Dispute Resolution procedure as outlined in 10 TAC §1.17; or

(E) The Executive Director denies the request. The Requestor can ask that their request be placed on the agenda for the next available Board meeting.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305944
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 475-3959

10 TAC §1.2

The Texas Department of Housing and Community Affairs ("Department") proposes amendments to 10 TAC Chapter 1, §1.2, regarding Department Complaint System. The purpose of the amendment is to clarify responsibilities and definitions as well as updating the rule to reflect needed changes in Department practices and to comply with Texas Government Code, §2306.066(a) - (c), which requires the Department to have a policy to handle complaints. A separate notice in the *Texas Register* will simultaneously provide notification of a four-year rule review in accordance with Texas Government Code, §2001.039.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of the amendment of the rule will be enhanced Department administration of the complaint process. There will not be any economic cost to any individuals required to comply with the rule as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, David Johnson, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-4798. Public comment period will be held from December 27, 2013, to January 29, 2014. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. ON JANUARY 29, 2014.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Texas Government Code Annotated, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code Annotated, §2306.092, which authorizes the Department to promulgate rules regarding its programs, and Texas Government Code, §2306.066(a) - (c), which requires the Department to have a policy to handle complaints.

§1.2. Department Complaint System.

(a) Purpose. The purpose of this section is to establish the procedures by which complaints that the department has the authority to resolve are answered.

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

(1) Complaint--A written complaint that a person believes the department has the authority to resolve, other than a complaint about the quality of services funded by a block grant administered by the department or consumer complaints relating to manufactured housing.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Person--Any individual, other than an employee of the department, and any partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(4) Complaint Coordinator--Person designated by the Executive Director or his designee to monitor the database of complaints received by the agency and coordinate activities related to complaints.

(5) Complaint Liaison--Person designated by each division director to handle each division's complaint-related issues.

(c) Procedures. A person who has a written complaint may submit such complaint to [~~the department's director of the housing resource center or to~~] any employee of the department for submission to Complaint Coordinator or Complaint Liaison. [~~the director of the housing resource center or the designee of the director of the housing resource center.~~]

(1) The Complaint Coordinator or Complaint Liaison [~~The director of the housing resource center or a designee~~] shall assign a complaint [~~control~~] number to the complaint, reviews the complaint,

and investigates, or causes an investigation to be completed[~~, and submits the department's findings to the executive director of the department~~].

(2) The Complaint Coordinator will submit periodic summary reports to the Executive Director or designee.

(3) [~~(2)~~] The Department [~~department~~] shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the Department's [~~department~~] policies and procedures relating to complaint investigation and resolution.

(4) [~~(3)~~] The Department [~~The executive director or a designee~~] shall either notify the complainant of the resolution of the complaint within 15 business days after the date the complaint number was assigned [~~the director of the housing resource center received the complaint~~], or notify the complainant, within such period, of the date the complaint can be resolved.

(5) [~~(4)~~] The Department [~~executive director or a designee~~] shall notify the complainant of the status of the complaint at least quarterly and until the final disposition of the complaint [~~unless the notice would jeopardize an undercover investigation~~].

(6) [~~(5)~~] An information file about each complaint shall be maintained. The file must include:

(A) the complaint number;

(B) [~~(A)~~] the name of the person who filed the complaint;

(C) [~~(B)~~] the date the complaint was [~~is~~] received by the Department [~~department~~];

(D) [~~(C)~~] the subject matter of the complaint;

(E) [~~(D)~~] the name of each person contacted in relation to the complaint;

(F) [~~(E)~~] a summary of the results of the review or investigation of the complaint; and

(G) [~~(F)~~] an explanation of the reason the file was closed, if the Department [~~department~~] closed the file without taking action other than to investigate the complaint.

(7) This procedure will not be followed where another procedure is required by law or if following this procedure would jeopardize an undercover investigation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305943
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 475-3959

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING
SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES
DIVISION 1. ENTRIES

16 TAC §313.103

The Texas Racing Commission proposes an amendment to 16 TAC §313.103, relating to Eligibility Requirements. The proposed amendment would add paint horses and appaloosas to subsection (g) and make clear that these horses, like quarter horses, must have a qualifying published workout around a turn in order to be entered in a race around a turn for the first time.

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

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect the anticipated public benefit will be to provide additional handicapping information to the wagering public.

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

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

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

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

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

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

§313.103. Eligibility Requirements.

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

(g) To be entered in a race around a turn for the first time, a quarter horse, paint horse, or appaloosa must:

(1) have a published workout around a turn at a minimum distance of 660 yards in the 60-day period preceding the race; and

(2) be approved by the clocker, the outrider and, if the horse is worked from the gate, the starter.

(h) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 16, 2013.

TRD-201305968
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 833-6699

TITLE 19. EDUCATION

PART 2 TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §62.1071(a) is not included in the print version of the Texas Register. The figure is available in the on-line version of the December 27, 2013, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §62.1071, concerning the equalized wealth level. The section establishes provisions relating to wealth equalization requirements. The proposed amendment would adopt as a part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2013-2014 School Year.* The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet.

Legal counsel with the TEA has advised that the procedures contained in each yearly manual for districts subject to wealth equalization be adopted as part of the TAC. The intent is to annually update 19 TAC §62.1071 to refer to the most recently published manual. Manuals adopted for previous school years will remain in effect with respect to those school years.

The proposed amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization, would adopt in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2013-2014 School Year* as Figure: 19 TAC §62.1071(a).

Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

Significant changes to the *Manual for Districts Subject to Wealth Equalization 2013-2014 School Year* from the *Manual for Districts Subject to Wealth Equalization 2012-2013 School Year* include the following.

Appendix C: Sample Contracts

In accordance with changes to the TEC, §41.0041, made by Senate Bill 1658, 83rd Texas Legislature, Regular Session, 2013, the Option 3 agreement for a district opting to net its recapture against certain state aid would be revised to refer to any aid received under the TEC, Chapter 42, instead of only Additional State Aid for Tax Reduction.

Appendix D: Sample Ballot Proposition Language

Information on preclearance of an election under Section 5 of the Voting Rights Act would be updated to reflect the recent US Supreme Court decision in *Shelby County v. Holder.*

The proposed rule action would place the specific procedures contained in the *Manual for Districts Subject to Wealth Equalization 2013-2014 School Year* in the TAC. The TEA administers the wealth equalization provisions of the TEC, Chapter 41, according to the procedures specified in each yearly manual for districts subject to wealth equalization. Data reporting requirements are addressed primarily through the online FSP System.

The proposed rule action would have no locally maintained paperwork requirements.

Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Dr. Dawn-Fisher has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of an annual publication specifying requirements for school districts subject to wealth equalization. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins December 27, 2013, and ends January 27, 2014. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 27, 2013.

The amendment is proposed under the Texas Education Code (TEC), §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41.

The amendment implements the TEC, §41.006.

§62.1071. Manual for Districts Subject to Wealth Equalization.

(a) The processes and procedures that the Texas Education Agency (TEA) uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet are described in the official TEA publi-

cation *Manual for Districts Subject to Wealth Equalization* 2013-2014 [~~*2012-2013*~~] *School Year,* provided in this subsection.
Figure: 19 TAC §62.1071(a)
[~~Figure: 19 TAC §62.1071(a)~~]

(b) The specific processes, procedures, and requirements used in the manual for districts subject to wealth equalization are established annually by the commissioner of education and communicated to all school districts.

(c) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts subject to wealth equalization with respect to those years.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305814
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 475-1497

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §§66.28, 66.33, 66.36, 66.45, 66.48, 66.51, 66.63, 66.66, 66.79, 66.81

The State Board of Education (SBOE) proposes amendments to §§66.28, 66.33, 66.36, 66.45, 66.48, 66.51, 66.63, 66.66, and 66.79 and new §66.81, concerning instructional materials. The sections establish provisions relating to the state adoption of instructional materials. The proposed amendments and new section would update and clarify specific processes for the review and adoption of instructional materials.

The proposed revisions to 19 TAC Chapter 66, Subchapter B, would update and clarify the process for the review and adoption of instructional materials, including state review panels, publisher correlation forms, reports from the commissioner of education regarding materials submitted for adoption, and the addition of new content to materials during the review process.

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

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

Ms. Martinez has determined that for each year of the first five years the proposed amendments and new section are in effect the public benefit anticipated as a result of enforcing the amendments and new section would be clarification of the review and adoption process for instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new section.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposed amendments and new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendments and new section are proposed under the Texas Education Code, §7.102(c)(23), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31; and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

The amendments and new section implement the Texas Education Code, §7.102(c)(23) and §31.003.

§66.28. Adoption by Reference.

(a) The sections titled "Content Requirements" in the *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2004. A copy of the *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* can be accessed from the Texas Education Agency official website.

(b) The sections titled "Content Requirements" in the *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2005. A copy of the *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.

(c) The sections titled "Content Requirements" in the *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for con-

sideration under Proclamation 2010. A copy of the *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.

(d) The sections titled "Content Requirements" in the *Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2011. A copy of the *Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.

(e) The sections titled "Texas Essential Knowledge and Skills" in the *Request for Supplemental High School Science Materials* and the *Request for Supplemental Science Materials, Grades 5, 6, 7, and 8,* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration for supplemental science materials. Copies of the *Request for Supplemental High School Science Materials* and the *Request for Supplemental Science Materials, Grades 5, 6, 7, and 8,* are available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The requests for supplemental science materials may be accessed from the Texas Education Agency official website.

(f) The sections titled "Texas Essential Knowledge and Skills" and "English Language Proficiency Standards" in the *Proclamation 2014 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2014. A copy of the *Proclamation 2014 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2014 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.

§66.33. State Review Panels: Appointment.

(a) The commissioner of education shall determine the number of review panels needed to review instructional materials under consideration for adoption, determine the number of persons to serve on each panel, and determine the process [~~criteria~~] for selecting panel members. Each appointment to a state review panel shall be made by the commissioner of education with priority given to qualified individuals who are nominated by State Board of Education (SBOE) members. Any SBOE member may veto the placement of a review panel member from his or her district upon the written objection of said SBOE member. [~~the advice and consent of the State Board of Education (SBOE) member whose district is to be represented.~~] The commissioner of education shall make appointments to state review panels that achieve diversity to the extent possible; ensure that each team has members with sufficient content expertise and experience; and ensure participation by academic experts in each subject area for which instructional materials are being considered, giving priority to content-relevant educators and professors. The appointments shall include educators, parents, business and industry representatives, and employers. The role of each appointee shall be designated and disclosed to all appointees on each panel.

(b) The commissioner of education shall solicit nominations for possible appointees to state review panels from the SBOE, school districts, open-enrollment charter schools, and educational organizations in the state. Nominations may be accepted from any Texas resident. Nominations shall not be made by or accepted from any publishers; hardware or software providers; authors; depositories; agents for publishers, hardware or software providers, authors, or depositories; or any person who holds any official position with a publisher, hardware or software providers, author, depository, or agent.

(c) The SBOE shall be notified of appointments made by the commissioner of education to state review panels.

(d) Members of a state review panel may be removed at the discretion of the commissioner of education.

§66.36. State Review Panels: Duties and Conduct.

(a) The duties of each member of a state review panel are to:

(1) evaluate all instructional materials submitted for adoption in each subject assigned to the panel to determine if essential knowledge and skills are covered in the student version of the instructional materials as well as in the teacher version of the instructional materials. Nothing in this rule shall be construed to contravene the Texas Education Code (TEC), §28.004(e)(5), which makes coverage of contraception and condom use optional in both the student and teacher editions of health instructional materials. Panel members will use State Board of Education-approved procedures for evaluating coverage of the essential knowledge and skills. Coverage must be identified at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents. The approved procedures include the following.

(A) State review panel members must participate in training to ensure clear and consistent guidelines for determining full Texas essential knowledge and skills (TEKS) coverage within the instructional materials.

(B) State review panel members must participate in a team during the review and reach a consensus, or a simple majority if the panel members are unable to reach consensus, to determine whether [~~if~~] the TEKS have been covered sufficiently in the instructional materials.

(C) A member of the panel shall be designated as recording secretary who shall keep minutes of all panel deliberations in a format determined by the commissioner of education. Consensus and minority concerns shall be reflected in the minutes with the objectors identified by team role only.

(D) [~~(C)~~] Instructional materials shall be evaluated for TEKS coverage at each grade level.

(E) [~~(D)~~] A student expectation may be [~~TEKS standard is~~] considered sufficiently covered only if the instructional materials provide one of the following:

(i) an opportunity for the teacher to teach each component of the knowledge or skill in the teacher material;

(ii) an opportunity for the student to learn each component of the knowledge or skill in the student material or the teacher material; or

(iii) an opportunity for the student to demonstrate each component of the knowledge or practice each component of the skill in the student material or the teacher material.

[~~(E) If a TEKS standard has multiple student expectations, the requirements of subparagraph (D) of this paragraph will be applied to each student expectation to ensure sufficient coverage.~~]

(F) Student expectations [~~TEKS standards~~] are not considered covered if only included in side bars, captions, or questions at the end of a section or chapter.

(G) Each student expectation must be clearly evident in the instructional materials to ensure sufficient coverage.

(H) Student expectations that contain the word "including" reference content that must be covered in instructional materials, while those containing the phrase "such as" are intended as possible illustrative examples and are not required to be covered in instructional materials.

(2) make recommendations to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected;

(3) submit to the commissioner of education a list of any factual errors in instructional materials discovered during the review conducted by the state review panel; and

(4) as appropriate to a subject area and/or grade level, ascertain that instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

(b) State review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.

(c) Before presenting recommendations to the commissioner of education, state review panel members shall be given an opportunity to request a meeting with a publisher to obtain responses to questions regarding instructional materials being evaluated by the state review panel. Questions shall be provided to publishers in advance of the meeting.

(d) State review panel members shall be afforded the opportunity to collaborate with other panel members during the official virtual and face-to-face reviews [~~meetings~~] to discuss coverage of TEKS, errors, manufacturing specifications, or any other aspect of instructional materials being evaluated. A member of a state review panel shall have no contact with other members of the panel regarding the instructional materials being reviewed, except during official virtual and face-to-face reviews [~~meetings~~]. State review panel members shall not discuss instructional materials being evaluated with any party having a direct or indirect interest in adoption of instructional materials.

(e) State review panel members participating in the face-to-face review shall affix their signatures to all recommendations to the commissioner of education. State review panel members participating in the virtual review shall submit their recommendations electronically through email, which will serve as their electronic signatures.

(f) Members of each state review panel may be required to be present at the State Board of Education meeting at which instructional materials are adopted.

§66.45. State Review Panels: No-Contact Periods.

(a) State review panel members shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to a state review panel and end after recommendations have been made to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected. During this period, state review panel members shall not have direct or indirect communication with [~~be contacted either directly or indirectly by~~] any person having an interest in the adoption process regarding content of instructional materials under evaluation by the panel. This restriction is not intended to prohibit members of the state review panels from seeking advice regarding materials under consideration from the State Board of Education.

(b) State review panel members shall report immediately to the commissioner of education any communication or attempted communication by any person regarding instructional materials being evaluated by the panel.

(c) State review panel members may request information or clarification regarding [~~shall not discuss~~] content of instructional materials under consideration from Texas Education Agency (TEA) [~~with any subject area~~] staff members with knowledge of the Texas essential knowledge and skills [~~member of the Texas Education Agency (TEA), except~~] during the virtual or face-to-face reviews. Answers to relevant [~~official orientation meeting. Additional requests for information or clarification shall be directed to the commissioner of education or his designee. Copies of all~~] questions asked by [~~from~~] individual members shall be shared [~~distributed~~] with [~~responses to~~] all members of the appropriate state review panel. [~~This restriction is not intended to prohibit members of the state review panels from contacting designated staff of the TEA regarding adoption procedures.~~]

§66.48. Statement of Intent to Bid Instructional Materials.

(a) Each publisher who intends to offer instructional materials for adoption shall submit a statement of intent to bid and preliminary price information on or before the date specified in the schedule of adoption procedures. The statement of intent with preliminary price information shall be accompanied by publisher's data submitted in a form approved by the commissioner of education.

(b) A publisher shall indicate the percentage of Texas essential knowledge and skills that it believes are sufficiently covered in the instructional materials.

(c) A publisher shall specify hardware or special equipment needed to review any item included in an instructional materials submission.

(d) Additions to a publisher's submission shall not be accepted after the deadline for filing statements of intent, except as allowed in the schedule of adoption procedures included in the proclamation. [~~A publisher who wishes to withdraw an instructional materials submission after having filed a statement of intent to bid shall notify the commissioner of education in writing on or before the date specified in the schedule of adoption procedures.~~]

(e) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid and price information on or before the date specified in the schedule of adoption procedures under midcycle review. The statement of intent to bid must:

(1) specify the manner in which instructional materials will be provided to school districts, including:

(A) the regional education service center area(s) to be served; or

(B) the certain maximum number of copies of instructional materials to be provided under the contract; and

(2) include payment of the fee for review of instructional materials submitted for midcycle review.

§66.51. Instructional Materials Ordered Through the State.

Instructional materials offered for adoption by the State Board of Education.

(1) Publishers may not submit instructional materials for adoption that have been authored by an employee of the Texas Education Agency (TEA).

(2) The official bid price of an instructional material submission may exceed the price included with the statement of intent to bid filed under §66.48 of this title (relating to Statement of Intent to Bid Instructional Materials).

(3) Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with statement of intent to bid and in the official bid.

(4) The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period. (Individual component prices are listed to show school districts the replacement costs of components and not to reflect publisher's bid prices for these components.)

(5) Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of the instructional materials contributed to the development of the instructional materials. The affidavit shall also state in general terms each author's involvement in the development of the instructional materials.

(6) Student materials offered for adoption may include consumable components in subjects and grade levels in which consumable materials are not specifically called for in the proclamation. In such cases, publishers must meet the following conditions.

(A) The per student price of the materials must include the cost of replacement copies of consumable student components for the full term of the adoption and contract, including any extensions of the contract terms, but for no more than 12 years. The offer must be set forth in the publisher's official bid.

(B) The publisher's official bid shall contain a clear explanation of the terms of the sale, including the publisher's agreement to supply consumable student materials for the duration of the contract and extensions as noted in subparagraph (A) of this paragraph.

(C) The publisher and the school district shall determine the manner in which consumable student materials are supplied beyond the initial order year.

(7) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for adoption with essential knowledge and skills required by the proclamation. These correlations shall identify evidence of each student expectation addressed [~~include essential knowledge and skills covered~~] at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents as well as student expectations addressed in the teacher version of the instructional materials. Correlations shall be submitted in a format approved by the commissioner of education.

§66.63. Report of the Commissioner of Education.

(a) The commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:

(1) evaluations of instructional materials prepared by state review panel members, including recommendations that instructional materials be placed on the adopted list or rejected. To be adopted, instructional materials must cover at least 50% of the essential knowledge and skills as required by the proclamation at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents;

(2) compliance with established manufacturing standards and specifications;

(3) recommended corrections of factual errors identified by state review panels;

(4) prices of instructional materials submitted for adoption; and

(5) whether instructional materials are offered by a publisher who refuses to rebid instructional materials according to §66.24 of this title (relating to Review and Renewal of Contracts).

(b) Based on the review specified in subsection (a) of this section, the commissioner of education shall prepare a preliminary report on [~~recommendations that~~] instructional materials under consideration for adoption [~~be placed on the adopted list or rejected~~]. The preliminary report will be provided to publishers participating in the review process. According to the schedule of adoption procedures, a publisher whose product meets one of the criteria in subsection (d) of this section shall be given an opportunity for a show-cause hearing if the publisher elects to protest the commissioner's preliminary recommendation.

(c) The show-cause hearing is a formal opportunity for a publisher to present evidence that the preliminary report does not accurately reflect the extent to which the content provided to the state review panels addresses the required Texas essential knowledge and skills (TEKS) and/or designated English language proficiency standards (ELPS). The show-cause hearing is not a forum to address complaints alleging procedural irregularities or violations of statutes or rules.

(d) To be eligible for a show-cause hearing, a product must meet the requirements of §66.79(b) of this title (relating to Adding Content During the Review and Adoption Process) regarding eligibility to provide new content and, upon completion of the final review, be identified as meeting:

(1) at least 95% of the TEKS coverage percentage indicated by the publisher on the complete program description form for that product; or

(2) less than 50% of the TEKS for the subject and grade for which the product is intended and/or less than 100% of the ELPS designated for the subject and grade for which the product is intended.

(e) [~~(c)~~] The commissioner of education shall submit to the State Board of Education (SBOE) final recommendations that instructional materials under consideration be placed on the adopted list or rejected.

(f) [~~(d)~~] The commissioner of education shall submit for SBOE approval a report on corrections of factual errors that should be required in instructional materials submitted for consideration.

The report on recommended corrections shall be sent to the SBOE, affected publishers, regional education service centers (ESCs), and other persons, such as braillists, needing immediate access to the information. The commissioner shall obtain written confirmation from publishers that they would be willing to make all identified corrections should they be required by the SBOE.

§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.

(a) Publishers shall file three copies of the official bid form with the commissioner of education according to the schedule of adoption procedures.

[(b) A committee of the State Board of Education (SBOE) shall be designated by the SBOE chair to review the commissioner's report concerning instructional materials recommended for state adoption. The committee shall report the results of its review to the SBOE.]

(b) [(c)] The State Board of Education (SBOE) [SBOE] shall adopt a list of adopted instructional materials in accordance with the Texas Education Code (TEC), §31.023. Instructional materials may be adopted only if they:

(1) meet at least 50% of the Texas essential knowledge and skills (TEKS) for the subject and grade level in the student version of the instructional materials as well as in the teacher version of the instructional materials. In determining the percentage of elements of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the TEKS of the subject;

(2) meet the established physical specifications adopted by the SBOE;

(3) are free from factual errors, including significant grammatical or punctuation errors, or the publisher has agreed to correct any identified factual errors prior to execution of a contract pursuant to §66.72 of this title (relating to Preparing and Completing Contracts); and

(4) receive majority vote of the SBOE. However, no instructional material may be adopted that contains content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

(c) [(d)] Instructional materials submitted for placement on the adopted list may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.

(d) [(e)] The SBOE shall either adopt or reject each submitted instructional material in accordance with the TEC, §31.024.

(e) [(f)] A publisher may withdraw from the adoption process at any time prior to final adoption for any reason by providing notification in writing to the commissioner of education. Notification of withdrawal is final and irrevocable.

§66.79. Adding Content During the Review and Adoption Process.

(a) A publisher may add content to [an] instructional materials [material] during the review and adoption process only to allow the materials [material] to: [meet the percentage of Texas essential knowledge and skills the publisher had specified the material covered.]

(1) meet the Texas essential knowledge and skills (TEKS) coverage percentage the publisher had specified on the complete program description form submitted for that instructional product; and

(2) meet 100% of the English language proficiency standards (ELPS) designated for the subject and grade for which the instructional product is intended.

(b) To be eligible to have content added as described in subsection (a) of this section, an instructional product must, upon its initial review, be identified as meeting:

(1) at least 75% of the TEKS coverage percentage indicated by the publisher on the complete program description form submitted for that instructional product; and

(2) at least 75% of the ELPS designated for the subject and grade for which the instructional product is intended.

(c) A publisher shall have one opportunity to provide a written request for the Texas Education Agency (TEA) to further review an instructional product that is not eligible to have new content added according to subsection (b) of this section.

(d) New content submitted for review shall be submitted in a format approved by the commissioner of education and shall be made available for public review at the TEA and at each education service center (ESC) prior to the adoption of instructional materials. New content submitted under this subsection must be submitted by the deadline determined by the TEA.

§66.81. Ancillary Materials.

(a) Ancillary materials are defined as materials that are not listed on the official bid form, but which a publisher plans to provide to school districts and open-enrollment charter schools free with their order of instructional materials from the list of adopted materials. A publisher of adopted instructional materials shall provide any ancillary item free of charge to the same extent that the publisher provides the item free of charge to any state, public school, or school district in the United States.

(b) The State Board of Education may impose a reasonable administrative penalty not to exceed $5,000 against a publisher or manufacturer who knowingly violates subsection (a) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 13, 2013.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Teacher Education Agency
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 475-1497

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

28 TAC §3.3312

The Texas Department of Insurance proposes amendments to 28 TAC §3.3312, concerning the guaranteed issuance of

Medicare supplement coverage to certain enrollees of the Texas Health Insurance Pool. Amendments to §3.3312 are necessary to provide a guaranteed issue opportunity for alternative coverage for Medicare enrollees whose secondary Pool coverage is terminating as a result of the coming dissolution of the Pool, and to conform with agency style and usage guidelines.

The amendments to §3.3312 provide a guaranteed issue opportunity for Pool enrollees concurrently enrolled in Medicare, because those Pool enrollees are unable to obtain new supplemental coverage when their Pool coverage ceases. These enrollees are predominantly under the age of 65 and have qualified for pre-65 Medicare coverage due to disabilities or end stage renal disease. They purchased Pool coverage to pay claims secondary to Medicare because of the high claims costs that are not paid by Medicare, and because the Pool generally provides more benefits than Medicare supplement products. When they purchased Pool coverage, they could not have known that the Pool would be terminated, and they have now lost their initial guaranteed issue opportunity to purchase Medicare supplement insurance, a narrow window of time during which they initially enrolled in Medicare Part B.

The department originally adopted §3.3312 to provide for additional Medicare supplement guaranteed issue opportunities for those on Medicare, such as for those whose group health insurance coverage is terminated (§3.3312(b)(1)), but the department did not anticipate that Pool enrollees would need such a special enrollment opportunity. To give those with Pool coverage the same opportunity to enroll in Medicare supplement coverage as those with employer-sponsored coverage, the department proposes to add amendments to §3.3312 to require that Medicare supplement carriers treat those whose Pool coverage is being terminated as eligible to purchase a Medicare Supplement policy for 63 days from the termination of their Pool coverage.

The department proposes to add subsection (b)(9) to §3.3312 to identify those losing their Pool coverage as eligible persons.

The department proposes to amend section §3.3312(c)(1) to identify the Medicare supplement policies that former Pool enrollees may purchase on a guaranteed issue basis.

The department proposes to add subsection (d)(7) to §3.3312 to specify the guaranteed issue time period, 63 days from the date of the termination of Pool coverage.

The department proposes non-substantive amendments to other parts of §3.3312 to conform with agency style and usage guidelines.

FISCAL NOTE. Jan Graeber, director and chief actuary, Rate and Form Review Office, in the Life, Accident, and Health Section, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Graeber has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of the proposal is a new availability of alternative supplemental coverage options for Pool enrollees currently in Medicare.

The cost to persons required to comply with the proposal is related to the requirement of the rule that termination of Pool coverage qualifies as a guaranteed issue opportunity for Medicare supplement coverage.

There are approximately 550 Pool enrollees currently on Medicare. On average, the Pool pays approximately $10,000 per year for claims on each enrollee for which it pays secondary to Medicare. The department anticipates that Medicare supplement coverage generally would pay a lower amount. Ms. Graeber anticipates that the cost of the proposed amendments to §3.3312 will be no more than approximately $5,500,000 per year, spread across the Medicare supplement carriers that the Pool enrollees choose, less the premium paid for the new Medicare supplement policies issued.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. Government Code §2006.001(1) defines a "micro business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in Government Code §2006.002(b) - (d) for small businesses.

As required by Government Code §2006.002(c), the department has determined that amendments to §3.3312 may have an adverse economic impact on small and micro businesses that are issuers of Medicare supplement policies in Texas under Insurance Code Chapter 1652. The department has determined that approximately 47 carriers are currently offering coverage in the under age 65 Medicare supplement market. The department believes that one or more of these carriers is a small or micro business under Government Code §2006.002(c). The adverse economic impact of the proposal on these carriers results from the costs associated with the requirement to issue Medicare supplement insurance policies to applicable Pool enrollees, as discussed in the Public Benefit and Cost Note, above. The costs will vary for small and large businesses based on the number of Pool enrollees each carrier enrolls.

The department has considered exempting small and micro business carriers from the requirements of this rule proposal but has concerns about the feasibility of such an exemption and the potential for consumer confusion. Carriers currently do not regularly specifically report their small or micro business status to the department. Thus, at any given time, the department would not be able to tell consumers which carriers would be exempt from the rule. A consumer would likely only know if a carrier was exempt from the guaranteed issuance requirement of the proposed rule if the consumer applied and was refused on that basis. This could result in confusion on the part of consumers with serious medical conditions and complaints against the carriers denying coverage. Further, the purpose of the applicable Medicare supplement statutes is to make that coverage available in Texas,

and exempting some carriers from the rule will narrow the coverage options available to these consumers.

Even without an exemption, the department anticipates that small or micro business carriers will not be forced to accept an unreasonable number of former Pool enrollees, as buying decisions are often made on the basis of factors such as premium cost, unrelated to the size of the carrier. Additionally, all carriers will be able to file future rate increase requests in light of any increased risk they incur due to the proposed rule.

For these reasons, the department has not included an exemption for small and micro business carriers in the current proposal. However, the department is interested in receiving comments on this issue. Those commenting in favor of an exemption should consider discussing in as much detail as possible the benefit of such an exemption to small and micro business carriers, the potential harm to small and micro business carriers of not receiving an exemption, the anticipated impact of such an exemption on the other carriers in the market and on the availability of coverage, any potential lesser exemptions other than a blanket exemption, and potential methods for the department and the public to identify those carriers claiming the exemption.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and so does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5 p.m. on January 27, 2014, to Sara Waitt, general counsel, by email at chiefclerk@tdi.texas.gov, or by mail at Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comments to Jan Graeber, director and chief actuary, Rate and Form Review Office, by email at lhlcomments@tdi.texas.gov or by mail at Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed amendments in a public hearing under Docket No. 2761 scheduled for 9 a.m. on January 23, 2014, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The department proposes the amendments under Insurance Code §§36.001, 1506.005, 1652.005, and 1652.051.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Section 1506.005 provides that the commissioner may adopt rules necessary and proper to implement Chapter 1506 (relating to the Health Insurance Pool).

Section 1652.005 provides that the commissioner must adopt reasonable rules necessary and proper to carry out Chapter 1652 (relating to Medicare Supplement Benefit Plans).

Section 1652.051 provides that the commissioner must adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapter 1506 and 1652.

§3.3312. Guaranteed Issue for Eligible Persons.

(a) Guaranteed issue.

(1) Eligible persons are those individuals described in subsection (b) of this section who seek to enroll under the Medicare supplement policy during the period specified in subsection (d) of this section, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer must [~~shall~~] not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (c) of this section that is offered and is available for issuance to newly enrolled individuals by the issuer, and must [~~shall~~] not discriminate in the pricing of [~~such~~] a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and must [~~shall~~] not impose an exclusion of benefits based on a preexisting condition under [~~such~~] a Medicare supplement policy.

(b) Eligible Persons. An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, or the plan ceases to provide [~~all such~~] supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under § [~~section~~] 1894 of the Social Security Act, and there are circumstances similar to the following that would permit discontinuance of the individual's enrollment with the [~~such~~] provider if the [~~such~~] individual were enrolled in a Medicare Advantage plan:

(A) the [~~The~~] certification of the organization or plan has been terminated; or

(B) the [~~The~~] organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) the [~~The~~] individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in § [~~section~~] 1851(g)(3)(B) of the Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under § [~~section~~] 1856), or the plan is terminated for all individuals within a residence area;

(D) the [~~The~~] individual demonstrates, in accord [~~accordance~~] with guidelines established by the Secretary, that:

(i) the [~~The~~] organization offering the plan substantially violated a material provision of the organization's contract under

42 U.S.C. [Title 42,] Chapter 7, Subchapter XVIII, Part D in relation to the individual, including the failure to provide an individual on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the [such] covered care in accord [accordance] with applicable quality standards; or

(ii) the [The] organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) the [The] individual meets [such] other exceptional conditions as the Secretary may provide.

(3) The individual is enrolled with an entity listed in subparagraphs (A) - (D) of this paragraph and enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (2) of this subsection:

(A) an [An] eligible organization under a contract under § [section] 1876 of the Social Security Act (Medicare cost);

(B) a [A] similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(C) an [An] organization under an agreement under §[section] 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(D) an [An] organization under a Medicare Select policy; and

(4) the [The] individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A) of [Of] the insolvency of the issuer or bankruptcy of the nonissuer organization; or of other involuntary termination of coverage or enrollment under the policy;

(B) the [The] issuer of the policy substantially violated a material provision of the policy; or

(C) the [The] issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5) the [The] individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under § [section] 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under § [section] 1894 of the Social Security Act, or a Medicare Select policy; and the subsequent enrollment is terminated by the individual during any period within the first 12 months of the [such] subsequent enrollment (during which time the individual is permitted to terminate the [such] subsequent enrollment under § [section] 1851(e) of the Social Security Act); or

(6) the [The] individual, upon first becoming enrolled in Medicare part B for benefits at age 65 or older, enrolls in a Medicare Advantage plan under part C of Medicare, or with a PACE provider under § [section] 1894 of the Social Security Act, and disenrolls from the plan or program no later than 12 months after the effective date of enrollment.

(7) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in subsection (c)(4) of this section.

(8) The individual loses eligibility for health benefits under Title XIX of the Social Security Act (Medicaid).

(9) The individual meets the following requirements:

(A) the individual was enrolled in both the federal Medicare program and the Texas Health Insurance Pool on December 31, 2013; and

(B) the individual's Pool coverage terminated on or after December 31, 2013.

(c) Products to Which Eligible Persons are Entitled. The Medicare supplement policy to which eligible persons are entitled under:

(1) Subsection (b)(1), (2), (3), (4), [and] (8), and (9) of this section is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L offered by any issuer, except that for persons under 65 years of age, it is a policy which has a benefit package classified as Plan A.

(2) Subsection (b)(5) of this section is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not [so] available, a policy described in paragraph (1) of this subsection. After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, the Medicare supplement policy described in this paragraph is the policy available from the same issuer but modified to remove outpatient prescription drug coverage, or at the election of the policyholder, a policy described in paragraph (1) of this subsection.

(3) Subsection (b)(6) of this section must [shall] include any Medicare supplement policy offered by any issuer.

(4) Subsection (b)(7) of this section is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(d) Guaranteed Issue Time Period [Period(s)].

(1) In the case of an individual described in subsection (b)(1) of this section:

(A) for a plan that supplements the benefits under Medicare, the guaranteed issue period begins on the later of:

(i) the date the individual receives a notice of termination or cessation of all supplemental health benefits (or if a notice is not received, the date the individual receives notice that a claim has been denied because of such termination or cessation); or

(ii) the date the applicable coverage terminates or ceases; and ends 63 [sixty-three (63)] days later [thereafter]; or

(B) for a plan that is primary to the benefits under Medicare, the guaranteed issue period begins on the later of:

(i) the date the individual receives a notice of termination or cessation of all health benefits (or if a notice is not received, the date the individual receives notice that a claim has been denied because of such termination or cessation); or

(ii) the date the applicable coverage terminates or ceases; and ends 63 [sixty-three (63)] days later [thereafter].

(2) in [In] the case of an individual described in subsection (b)(2), (3), (5), or (6) of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated;

(3) in [In] the case of an individual described in subsection (b)(4)(A) of this section, the guaranteed issue period begins on the earlier of the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated;

(4) in [In] the case of an individual described in subsection (b)(2), (4)(B) and (C), (5), or (6) of this section, who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date of disenrollment;

(5) in [In] the case of an individual described in subsection (b)(7) of this section, the guaranteed issue period begins on the date the individual receives notice under § [pursuant to Section]1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the 60-day [sixty-day] period immediately preceding the initial Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D; [and]

(6) in [In] the case of an individual described in subsection (b) of this section, but not described in paragraphs (1) - (5) of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date of disenrollment; and[.]

(7) in the case of an individual described in subsection (b)(9) of this section, the guaranteed issue period begins on the date that the individual's coverage in the Texas Health Insurance Pool terminates and ends 63 days later.

(e) Extended Medicare Supplement Access for Interrupted Trial Periods.

(1) In the case of an individual described in subsection (b)(5) of this section (or deemed to be so described, under [pursuant to] this paragraph), whose enrollment with an organization or provider described in subsection (b)(5) of this section is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another [such] organization or provider, the subsequent enrollment will [shall] be deemed to be an initial enrollment as described in subsection (b)(5) of this section.

(2) In the case of an individual described in subsection (b)(6) of this section (or deemed to be so described, under [pursuant to] this paragraph), whose enrollment with a plan or in a program described in subsection (b)(6) of this section is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another [such] plan or program, the subsequent enrollment will [shall] be deemed to be an initial enrollment as described in subsection (b)(6) of this section.

(3) For purposes of subsection (b)(5) and (6) of this section, no enrollment of an individual with an organization or provider described in subsection (b)(5) of this section, or with a plan or in a program described in subsection (b)(6) of this section, may be deemed to be an initial enrollment under this paragraph after the 2-year period beginning on the date on which the individual first enrolled with the [such an] organization, provider, plan, or program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 4. TEXAS CLEAN SCHOOL BUS PROGRAM

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §§114.640, 114.642, 114.644, 114.646, and 114.648; and simultaneously propose new §§114.640, 114.642, 114.644, 114.646, and 114.648.

If adopted, the sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 1796, 81st Legislature, 2009, by Representative Warren Chisum, amended the Clean School Bus Program (referred to as the Texas Clean School Bus Program, or TCSB), Texas Health and Safety Code (THSC), Chapter 390, to extend the expiration date for the TCSB Program from August 31, 2013 to August 31, 2019, or later if the program is extended or reauthorized by the Texas Legislature. The proposed rulemaking would allow for the continuance of the existing TCSB Program through August 31, 2019, and provide for administrative cleanup.

The TCSB was originally established by the Texas Legislature in 2005, to fund efforts by school districts and other local or regional planning entities or nonprofit organizations to improve the health of children by reducing emissions of diesel exhaust from school buses. Reduction of emissions from diesel-powered school buses will also benefit the public in ozone nonattainment areas and throughout the state by reducing emissions of nitrogen oxides, which are important contributors to ozone formation. Under the proposed sections, school districts, charter schools, and regional planning organizations, councils of government or similar regional planning agencies created under the Local Government Code, Chapter 391, or private nonprofit organizations would be eligible to apply for grants for the use of emission reducing catalysts, particulate filters, qualifying fuels, and other emis-

sion reducing add-on equipment or technology that the commission finds will reduce emissions.

Section by Section Discussion

The commission proposes to repeal existing §§114.640, 114.642, 114.644, 114.646, and 114.648 as these requirements expired on August 31, 2013, and re-propose new §§114.640, 114.642, 114.644, 114.646, and 114.648 to implement the TCSB.

§114.640, Definitions

Proposed new §114.640, Definitions, provides definitions for the TCSB Program. Definitions specific to the TCSB include definitions of diesel exhaust, incremental cost, qualifying fuel, repower, and retrofit.

§114.642, Applicability

Proposed new §114.642, Applicability, establishes program eligibility for school districts and charter schools, as well as for regional planning commissions, councils of government or similar regional planning agencies created under the Local Government Code, Chapter 391, or private nonprofit organizations.

§114.644, Clean School Bus Program Requirements

Proposed new §114.644, Clean School Bus Program Requirements, establishes basic program requirements. The proposed section addresses the types of emission reduction projects that would be eligible to receive funding, as well as grant funding particulars such as prioritization and other specifics associated with grant eligibility.

§114.646. Monitoring, Recordkeeping, and Reporting Requirements

Proposed new §114.646, Monitoring, Recordkeeping, and Reporting Requirements, establishes that grant recipients must adhere to monitoring, recordkeeping, and reporting requirements of their grant, which will occur no less frequently than annually.

§114.648, Expiration

Proposed new §114.648, Expiration, establishes that the TCSB Program will expire on August 31, 2019, unless the program is extended or reauthorized by the Texas Legislature.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would extend the expiration date for the TCSB Program to August 31, 2019. HB 1796, 81st Legislature, 2009, extended the program's expiration date until August 31, 2019. In order to implement this requirement, the commission proposes to repeal and re-propose Chapter 114, Subchapter K, Division 4, to extend the expiration date to August 31, 2019, or later if the program is extended or reauthorized by the Texas Legislature. A few other minor administrative wording changes are also proposed. No fiscal implications are anticipated for the agency or any other unit of local government to implement the proposed rules. Even though some school districts or charter schools will benefit from the use of Texas Emission Reduction Plan (TERP) funding for the TCSB program, participation in the TCSB program is voluntary. School districts may apply for TERP grant funds which are then awarded to school districts to offset the costs of retrofitting school buses in order to emit lower levels of air contaminants. The 83rd Legislature, 2013, has authorized the agency to allocate up to $3.1 million in TERP grant funding for the TCSB program each year of the fiscal 2014-15 biennium.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the potential for the emission of lower levels of air contaminants from school buses and compliance with state law.

In general, the proposed rules are not expected to have fiscal implications for businesses or individuals. Some businesses that retrofit school buses to produce lower emissions may benefit in that there could be a continued demand for their services. School districts that benefit from the use of TERP funding for the TCSB program may contract with these businesses to retrofit their buses. The 83rd Legislature, 2013, has authorized the agency to allocate up to $3.1 million in TERP grant funding for the TCSB program each year of the fiscal 2014-15 biennium.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules would extend the expiration date for the TCSB Program to August 31, 2019 or later if the program is extended or reauthorized by the Texas Legislature. TERP grant funds are awarded to school districts to offset the costs of retrofitting school buses in order to emit lower levels of air contaminants. If there are any small or micro-businesses that retrofit school buses to produce lower emissions, they may benefit in that there could be a continued demand for their services.

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 do not adversely affect small or micro-businesses and are required to implement state law and therefore are consistent with the health, safety, or environmental and economic welfare 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 proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government

Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposal to Chapter 114 would replace expired sections of the TAC with new sections to provide for the continued implementation of the TCSB Program as required by the Texas Legislature. The TCSB Program is intended to reduce diesel exhaust emissions from school buses by funding eligible projects, and is a voluntary incentive program. The Texas Legislature authorized the issuance of grants under the TCSB Program to protect the environment and reduce risks to human health from environmental exposure, but the proposed rulemaking is not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, since the repeal and replacement with new sections are to provide for continued implementation of the TCSB Program, which is a voluntary program designed to assist school districts in reducing school bus emissions.

The proposed rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS) in each air quality control region of the state. Since the TCSB Program was designed to provide emission reductions from school buses and funded by the Texas Legislature, the commission previously submitted the TCSB Program rules to the EPA as a revision to the Texas SIP, which EPA approved. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the Federal Clean Air Act (FCAA) recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under

this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of these rules is to remove expired sections from the TAC and propose new sections to provide for the continued implementation of the TCSB Program as required by the Texas Legislature. As discussed elsewhere in this preamble, the repeal to remove expired sections from the TAC and propose new sections amount to a mere administrative clean-up to ensure that there is no confusion on the part of the public regarding the continuation of the TCSB Program, as intended by the Texas Legislature. Additionally, even if the proposed rulemaking was a major environmental rule, the proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because the proposed rulemaking does not meet the definition of a "major environmental rule," nor does it meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific intent of these rules is to remove expired sections from the TAC and propose new sections to provide for the continued implementation of the TCSB Program as required by the Texas Legislature. As discussed elsewhere in this preamble, the repeal to remove expired sections from the TAC and propose new sections amount to a mere administrative clean-up to ensure that there is no confusion on the part of the public regarding the continuation of the TCSB Program, as intended by the Texas Legislature. The proposed rules would substantially advance this stated purpose by repealing the original sections in Chapter 114, Division 4 and replacing those sections with new sections prescribing the requirements of the TCSB Program.

Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by state law. THSC, Chapter 390, Clean School Bus Program, requires the commission to establish and administer a clean school bus program designed to reduce the exposure of school children to diesel exhaust in and around diesel-fueled school buses. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These proposed rules create a voluntary program for school districts in the state to apply for and receive grants for the offset of incremental cost of projects that reduce diesel exhaust emissions.

In addition, because the subject proposed regulations do not provide more stringent requirements they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules will not constitute a taking under the Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 114 does not contain applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program will not be required to revise their operating permits, consistent with the revision process in Chapter 122, to include the revised Chapter 114 requirements for each emission unit at their sites affected by the revisions to Chapter 114.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it revises voluntary incentive grant programs and does not govern air pollution emissions.

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 January 21, 2014, at 2:00 p.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 2014-008-114-AI. The comment

period closes January 27, 2014. 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 Joe Briseño, Pollution Prevention and Education, (512) 239-6781.

30 TAC §§114.640, 114.642, 114.644, 114.646, 114.648

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

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC, and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking is also proposed under Texas Health and Safety Code (THSC), §382.002, policy and purpose of the Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air. Finally, the rulemaking is proposed under THSC, Chapter 386, which established the Texas Emissions Reduction Program and THSC, Chapter 390, which established the Texas Clean School Bus Program, and as part of the implementation of House Bill 1796, 81st Legislature, 2009.

The proposed repeals implement TCAA, §§382.002, 382.011, and 382.017 and THSC, Chapter 386 and Chapter 390, and House Bill 1796, 81st Legislature, 2009.

§114.640. Definitions.

§114.642. Applicability.

§114.644. Clean School Bus Program Requirements.

§114.646. Monitoring, Recordkeeping, and Reporting Requirements.

§114.648. Implementation Schedule.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 13, 2013.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 239-2548

30 TAC §§114.640, 114.642, 114.644, 114.646, 114.648

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC, and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking is also proposed under Texas Health and Safety Code (THSC), §382.002, policy and purpose of the Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air. Finally, the rulemaking is proposed under THSC, Chapter 386, which established the Texas Emissions Reduction Program and THSC, Chapter 390, which established the Texas Clean School Bus Program, and as part of the implementation of House Bill 1796, 81st Legislature, 2009.

The proposed new sections implement TCAA, §§382.002, 382.011, and 382.017 and THSC, Chapter 386 and Chapter 390, and House Bill 1796, 81st Legislature, 2009.

§114.640. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Diesel exhaust--One or more of the air pollutants emitted from an engine by the combustion of diesel fuel, including particulate matter, nitrogen oxides, volatile organic compounds, air toxics, and carbon monoxide.

(2) Incremental cost--The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business. Incremental costs may include added lease or fuel costs as well as additional capital costs.

(3) Qualifying fuel--Includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.

(4) Repower--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(5) Retrofit--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

§114.642. Applicability.

(a) Any school district or charter school in this state that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under the program.

(b) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Local Government Code, Chapter 391, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

§114.644. Clean School Bus Program Requirements.

(a) Eligible projects include:

(1) diesel oxidation catalysts for school buses built before 1994;

(2) diesel particulate filters for school buses built from 1994 to 1998;

(3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;

(4) the use of qualifying fuel; and

(5) other technologies that the commission finds will bring about significant emissions reductions.

(b) The commission may limit funding under a particular funding round to certain areas of the state, types of applicants, and/or types of projects. The commission may place a priority on funding for projects conducted in areas that do not attain certain national ambient air quality standards.

(c) Prior to each funding period, the commission may establish priorities and other criteria for reductions in diesel exhaust emissions to be achieved by projects funded during that period, including designation of additional pollutants to be addressed. A proposed project must achieve a reduction in emissions of diesel exhaust compared with the baseline emissions according to the percentage reduction level and other priorities established by the commission. The commission may also establish maximum levels for the funding awarded in relation to the emission reductions projected to be achieved by a project, in order to maximize the use of available funds.

(d) A school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining unless the applicant agrees to remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

(e) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State of Texas.

(f) An application for a grant under this program is only eligible if it is made on the form provided by the commission and contains the information required by the commission.

(g) A recipient of a grant under this division shall use the grant to pay incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

(h) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(i) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document or the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(j) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

§114.646. Monitoring, Recordkeeping, and Reporting Requirements.

Grant recipients must meet the monitoring, recordkeeping, and reporting requirements of their grant. Reporting requirements must occur no less frequently than annually.

§114.648. Expiration.

This division expires August 31, 2019, unless the program is extended or reauthorized by the Texas Legislature.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 13, 2013.

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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMITS

30 TAC §305.541

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes an amendment to §305.541.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking is necessary to adopt by reference the new United States Environmental Protection Agency (EPA) airport de-icing effluent limitation guidelines, which were adopted in 40 Code of Federal Regulations (CFR) Part 449 and became effective on June 15, 2012. The requirements generally apply to discharges associated with the de-icing of airfield pavement at airports that have at least 1,000 annual jet departures (non-propeller aircraft) and discharges associated with aircraft de-icing at new airports in cold climate zones that have more than 10,000 total annual departures (jets and all other types of aircraft).

Existing and new airports with at least 1,000 annual jet departures that generate discharges associated with airfield pavement de-icing are to use de-icing agents that do not contain urea or meet the following numeric effluent limitation for ammonia: Daily Maximum of 14.7 milligrams per liter (mg/L).

New airports with more than 10,000 total annual departures (jets and all other types of aircraft) that are located in areas with an annual heating degree day value of more than 3,000 are required to collect 60% of aircraft de-icing fluid after de-icing. Airports that

discharge the collected aircraft de-icing fluid directly to waters of the United States must also meet the following numeric effluent limits for chemical oxygen demand: Daily Maximum of 271 mg/L and Weekly Average of 154 mg/L. The rule does not establish requirements for aircraft de-icing discharges at existing airports.

This rulemaking will amend §305.541 to adopt 40 CFR Part 449 by reference. These effluent limitation guidelines and new source performance standards will be incorporated into the Multi-Sector General Permit (MSGP) TXR050000 upon its renewal in 2016 and any applicable individual permits for airports during their next permit action. Airports will not be required to comply with the new requirements until the requirements are incorporated into the MSGP or their individual permit.

Currently, §305.541 adopts by reference certain parts of 40 CFR that were in effect at the time Texas was awarded delegation of the National Pollutant Discharge Elimination System (NPDES) program and specific parts that were adopted after delegation. This rulemaking will add 40 CFR Part 449 to the list of parts adopted after delegation.

Section Discussion

The proposed amendment to §305.541 adds the adoption by reference of 40 CFR Part 449, as amended, which contains regulations related to controlling discharges of pollutants from airport de-icing operations.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule. Some airports owned or operated by cities or other units of local government may have additional costs for de-icing airport pavement, but in general these costs are not anticipated to be significant.

The proposed rule would adopt by reference the new EPA airport de-icing effluent limitation guidelines, which were adopted and became effective on June 15, 2012. The effluent limitations generally apply to discharges associated with the de-icing of airfield pavement at airports that have at least 1,000 annual jet (non-propeller aircraft) departures. The effluent limitations also apply to discharges associated with aircraft de-icing for new airports in certain cold climate areas that have more than 10,000 total annual departures (jets and all other types of aircraft).

No significant fiscal implications are anticipated for the agency due to the administration or enforcement of the proposed rule. The de-icing criteria would be incorporated into the storm water MSGP which authorizes affected airports.

Under the proposed rule, existing and new airports with at least 1,000 annual jet departures are to use de-icing agents that do not contain urea or alternatively, meet a numeric effluent limitation for ammonia. Based on data provided by the Federal Aviation Administration, there are 42 existing airports in Texas that exceeded 1,000 jet departures for the period of August 2012 through July 2013.

New airports with more than 10,000 total annual departures that are located in the Trans-Pecos, Panhandle, and Wichita Falls areas of Texas would be required to collect 60% of aircraft de-icing fluid after de-icing and meet a numeric effluent limitation for chemical oxygen demand. The rule does not establish requirements for aircraft de-icing discharges at existing airports. If government entities decide to own or operate a new airport located in one of these areas of the state and the airport has more than 10,000 total annual departures, the airport will be required to collect 60% of available aircraft de-icing fluid and meet an effluent limit for chemical oxygen demand. At this time, TCEQ is not aware of any new or proposed airports that would be located in the Trans-Pecos, Panhandle, or Wichita Falls areas with 10,000 total annual departures and therefore fiscal implications are not anticipated for airports due to the implementation of this part of the proposed rule.

Airfield pavement de-icing/anti-icing removes or prevents the accumulation of frost, snow, or ice on runways, taxiways, aprons, gates, and ramps. These methods are typically conducted by airport personnel or contractors using a combination of mechanical methods and chemical de-icing/anti-icing agents. The method used more often for pavement de-icing is mechanical removal, but many airports also use sand and/or chemical de-icing agents such as potassium acetate, sodium acetate, sodium formate, glycol-based products, or urea. Based on the data collected by EPA in an airport questionnaire, the most common airfield de-icing chemical currently used by United States airports is potassium acetate.

Of the 42 existing airports in Texas that exceeded 1,000 annual jet departures, all are either owned or operated by cities or other units of local government or the federal government (Air Force bases). Under the proposed rule, these airports will have to use de-icing agents that do not contain urea or meet numeric effluent limitations for ammonia when de-icing their pavement. The options for managing discharges generated by airfield pavement de-icing activities include: 1) de-icing agents that do not contain urea; 2) disposing or disposal of de-icing agents that contain urea by means other than discharge to water in the state; or 3) discharges that meet an ammonia effluent limitation.

In general, airports located in warm and/or dry weather climates with minimal winter storm events have some aircraft de-icing (usually defrost de-icing) but no airfield pavement de-icing. Government entities that own/operate an existing or new airport can avoid the effluent limitations required by this rule by using de-icing agents that do not contain urea.

The EPA issued "Technical Development Document for the Final Effluent Limitations Guidelines and New Source Performance Standards for the Airport De-icing Category," in April of 2012. Information collected by EPA indicated that use of urea as an airfield de-icing chemical is being phased out due to concerns with its environmental impacts and the availability of less harmful alternatives. Responses to EPA's airport questionnaire indicated that potassium acetate was by far the predominant airfield de-icing chemical in use, representing about 80% of all airfield de-icing chemical use; therefore, EPA assumed that airports would switch to this chemical to de-ice their pavement.

According to the EPA report (Table 10-16, Summary of EPA's Annualized Costs for Aircraft De-icing Fluid Collection and Treatment, Airfield De-icing Urea Substitution, and Other Compliance Related Costs), all of the major Texas airports including Dallas/Fort Worth, George Bush Intercontinental, Austin-Bergstrom, San Antonio International, William P. Hobby, El Paso International, and Dallas Love Field reported no costs for urea substitution. Therefore, it is assumed that these airports are already using a urea substitute or could easily switch to a different de-icing agent. For the other Texas airports, especially those in north and west Texas (including Lubbock, Amarillo, Midland-Odessa,

Abilene, and Wichita Falls) if they have to switch to a urea substitute then there may be additional costs for application equipment and storage tanks.

New application equipment to apply a liquid rather than a solid as well as liquid storage tanks to contain potassium acetate during the de-icing season may be required for those airports that switch from urea to potassium acetate. A change from solid to liquid chemicals will require an airport to purchase or retrofit equipment to properly apply liquid chemical de-icing agents. These airports would need new mechanical application equipment including new trucks, and storage tanks for liquid potassium acetate. It is not known if these airports would incur additional compliance costs, but if they did the costs would depend upon a wide variety of factors that agency staff is not able to identify at this time.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be the protection of public health and safety through the reduction of the amount of ammonia discharged from airport de-icing activities that can affect water quality while maintaining compliance with federal law.

The proposed rule is not expected to have fiscal implications for businesses or individuals. None of the 42 existing airports in Texas that exceed 1,000 annual jet departures are privately owned. Under the proposed rule, airports will have to use de-icing agents that do not contain urea or meet numeric effluent limitations for ammonia when de-icing their runways. New airports located in the Trans-Pecos, Panhandle, or Wichita Falls areas of the state with more than 10,000 total annual departures will be required to collect 60% of available aircraft de-icing fluid and meet an effluent limitation for chemical oxygen demand. At this time TCEQ is not aware of new airports that would be located in these areas. Therefore, fiscal implications are not anticipated due to the implementation of this part of the proposed rule.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. None of the 42 existing airports in Texas that exceed 1,000 annual jet departures are privately owned and there are no new airports located in the Trans-Pecos, Panhandle, or Wichita Falls areas of the state with more than 10,000 total annual departures.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to maintain consistency with federal law and, therefore, are consistent with the health, safety, or environmental and economic welfare 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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to adopt by reference EPA's new airport de-icing regulations found at 40 CFR Part 449, which require certain airports to comply with chemical oxygen demand or ammonia effluent limitations as they apply to aircraft or airfield pavement de-icing, respectively. The specific intent of the proposed rulemaking is to amend the commission's rules to incorporate recent federal regulatory changes that do protect the environment and reduce risks to human health from environmental exposure but that will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rule does not meet the definition of a "major environmental rule."

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed the requirements of 40 CFR Part 449 or any other federal law; 2) does not exceed an express requirement of state law; 3) does not 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; and 4) is not proposed solely under the general powers of the agency, but rather specifically under the Memorandum of Agreement (MOA) between EPA and the commission, which requires the commission to incorporate new federal NPDES rules into the commission's rules. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to adopt by reference EPA's new airport de-icing regulations found at 40 CFR Part 449. The proposed rule would substantially advance this stated purpose by adding a reference to 40 CFR Part 449 to the commission's rules.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The commission is the regulatory agency that administers the state NPDES program and, therefore, is responsible for incorporating federal NPDES regulation changes into its permit program under 40 CFR §123.62(e) and the MOA between EPA and the commission.

Nevertheless, the commission further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with federal effluent limitations related to airport de-icing without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

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 - 33.210 and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule 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.

The CMP goal applicable to the proposed rule includes ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and policies, and because this rule does 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 January 23, 2014 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 Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-052-305-OW. The comment period closes January 27, 2014. 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 Laurie Fleet, Wastewater Permitting Section, at (512) 239-5445.

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, TWC, §5.103, which establishes the commission's general authority to adopt rules, TWC, §5.105, which establishes the commission's authority to set policy by rule, TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources, TWC, §26.027, which authorizes the commission to issue permits, TWC, §26.040, which authorizes the commission to issue general permits, and TWC, §26.121, which authorizes the commission to prohibit unauthorized discharges.

The proposed amendment implements 40 Code of Federal Regulations Part 449.

§305.541. Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits.

Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations (CFR), Subchapter N, Parts 400 - 471, except 40 CFR Part 403, which are in effect as of the date of the Texas Pollutant Discharge Elimination System program authorization, as amended, and Parts 437 (Federal Register, Volume 65, December 22, 2000), 442 (Federal Register, Volume 65, August 14, 2000), 444 (Federal Register, Volume 65, January 27, 2000), 445 (Federal Register, Volume 65, January 19, 2000), 449 (Federal Register, Volume 77, May 16, 2012), and 450 (Federal Register, Volume 74, December 1, 2009), as amended, are adopted by reference.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305926
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 239-0779

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 proposes new §3.335, concerning property used in a qualifying data center; temporary state sales tax exemption. This section implements House Bill 1223, 83rd Legislature, 2013, which enacted Tax Code, §151.359 and amended Tax Code, §151.317. An emergency version of this rule was published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 5953).

Subsection (a) contains definitions of key terms taken from House Bill 1223. In addition, paragraph (1) defines the term "capital investment." This definition is based, in part, on federal law. Paragraph (5) defines the term "primarily," for purposes of this section, to refer to use above 50%. Paragraph (7) elaborates upon the definition of the term "qualifying job" in House Bill 1223 to clarify that the term includes employment positions staffed by third-party employees. Paragraph (10) elaborates upon the definition of the term "qualifying occupant" in House Bill 1223 to clarify that a qualifying occupant must be the sole occupant of a qualifying data center, and may provide data processing services, but may not sublease any real or tangible personal property located in a qualifying data center to a third party.

Subsection (b) describes the tax exemption for tangible personal property purchased for installation, incorporation, or use in a qualifying data center. Paragraph (2) explains that the purchase price of exempt tangible personal property that is jointly procured by a qualifying owner, qualifying operator, or qualifying occupant is to be apportioned among the purchasers for record-keeping purposes.

Subsection (c) details the exclusions from the state sales tax exemption for purchases made for use in a qualifying data center.

Subsection (d) explains when the comptroller may certify an applicant center as a qualifying data center. Paragraph (2)(B) addresses capital investment, and explains how, when, and whose purchases count towards the capital investment requirement.

Subsection (e) describes, in paragraph (1), the application process for a facility to become certified as a qualifying data center, including the submission of a business proposal and a statement waiving the statute of limitations as provided in Tax Code, §111.201. Paragraph (2) of this subsection states that information provided on an application is confidential tax information pursuant to Tax Code, §151.027.

Subsection (f) clarifies that this state sales and use tax exemption is temporary and explains the period of exemption for a qualifying data center when the job creation and capital investment requirements are met.

Subsection (g) explains when an exemption certificate may be issued in lieu of paying tax on qualified purchases. Paragraph (1) states that a qualifying owner, qualifying operator, or qualifying occupant must provide a "Qualifying Data Center Exemption Certificate," Form 01-929 to a seller to obtain a state sales tax exemption. Local sales and use tax is due on the purchases. Paragraph (2) describes the information a purchaser must include on the exemption certificate. Paragraph (3) explains that a retailer is required to maintain a copy of the exemption certificate and all other financial records related to the tax-exempt sale. Paragraph (4) clarifies that a retailer is not required to accept an exemption certificate, but shall provide an "Assignment of Right to Refund," Form 00-985, to its customer if the retailer does not accept the customer's state sales tax exemption certificate.

Subsection (h) explains that the comptroller will revoke the certification of a qualifying data center if the qualifying owner, qualifying operator, or qualifying occupant fail to meet the capital investment or jobs creation requirements during the first five years following certification. Paragraph (1) explains the revocation of registration numbers. Paragraph (2) explains the state sales and use tax liability, including penalty and interest, of each entity upon revocation. Paragraph (3) clarifies that the failure to execute a timely waiver of the statute of limitations, if necessary, will also result in the termination of the data center's certification and revocation of all registration numbers.

Subsection (i) explains that, in accordance with Tax Code, §111.0041, all qualified occupants, qualified owners, and qualified operators of a qualified 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.

Subsection (j) clarifies that a purchaser of a qualifying owner, qualifying operator, or qualifying occupant's business or stock of goods in a qualifying data center must comply with Tax Code, §111.020.

Subsection (k) clarifies that local sales and use tax is due on purchases made by qualifying owners, qualifying operators, or qualifying occupants, even when such purchases qualify for exemption from state sales tax.

Finally, subsection (l) states that an entity that qualifies for the 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).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing detailed information for entities applying for sales and use tax exemptions for certain data centers. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section 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 such property. 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 to the purchaser 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 qualifying owner, qualifying operator, or qualifying occupant 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 house 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 for which an Internal Revenue Service Form W-2 must be issued, that will exist for at least five years after the date the job is created.

(5) Primarily--More than 50% of the time.

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

(7) 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 in which 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 employer if the employment position meets the requirements of subparagraph (A) of this paragraph and if there is a written contract between the 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 third-party employer and the qualifying owner, qualifying operator, or qualifying occupant; and

(ii) provides that the third-party employment position 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.

(8) 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.

(9) 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.

(10) 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 or the qualifying operator of the qualifying data center; and

(B) is the sole occupant of the qualifying data center. A qualifying occupant may provide data storage and processing services, but may not sublease to a third party any real or tangible personal property located within the area of a building designated by the qualifying occupant, qualifying owner, or qualifying operator as part of the qualifying data center. For example, a qualifying occupant may not sell or lease excess servers or server space, including the provision of dedicated servers, at the qualifying data center to third parties. If a single occupant leases 150,000 square feet of space in a building for use as a qualifying data center, that occupant may not use 100,000 square feet for its own qualifying use and sublease the remaining 50,000 square feet to a third party, even if the third party will also use the space as a data center. An occupant may, however, lease 150,000 square feet of space in a building and, during the certification process, formally designate 100,000 square feet or more of the space as the area to be used as

its qualifying data center. The occupant could then sublease the space not designated for use as the data center to a third party without causing the data center to lose its certification as a qualifying data center. Tangible personal property purchased for use in the space outside the area designated for use as a data center would not qualify for exemption under this section.

(b) Exemption.

(1) 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 Tax Code, Chapter 151 if the tangible personal property is necessary and essential to the operation of the qualifying data center and is:

(A) electricity. A predominant use study is 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 (relating to 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 predominant use 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;

(B) an electrical system;

(C) a cooling system;

(D) an emergency generator;

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

(F) a data storage device;

(G) network connectivity equipment;

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

(I) a peripheral component or system;

(J) software;

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

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

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

(2) The purchase price of qualifying tangible personal property, including building materials, electricity, and other items, jointly procured by a qualifying owner, qualifying operator, or qualifying occupant for installation at, incorporation into, or use in one or more qualifying data centers is to be apportioned among the purchasers for purposes of subsection (h)(2) of this section, concerning liability in the event of revocation.

(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 (relating to Tax Refunds for Enterprise Projects);

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

(6) notwithstanding Tax Code, §151.3111 (relating to 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 the following requirements are met:

(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 September 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 that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center. For purposes of this subparagraph:

(i) an expenditure can only be counted toward the capital investment requirement if invoiced to the qualifying owner, qualifying operator, or qualifying occupant on or after the date the comptroller certifies the data center; and

(ii) purchases by a related corporate entity on behalf of a qualifying owner, qualifying operator, or qualifying occupant cannot be included in the capital investment calculation.

(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 (relating to 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;

(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 requirements 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 limitation 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 under this subsection is confidential under Tax Code, §151.027 (relating to the Confidentiality of Tax Information).

(3) After certifying the qualifying data center, the comptroller will issue a separate registration number to the qualifying owner, the qualifying operator, and the qualifying occupant, as applicable, based on the registration number of the qualifying data center.

(f) Temporary state sales and use tax exemption dates. The state sales and use tax exemption under this section 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 five 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 five years after certification.

(3) The comptroller will audit each qualifying data center at its five year anniversary to verify the amount of capital investment made in the qualifying data center and to verify that the jobs creation requirement has been met.

(4) Once all jobs are created, as required 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, 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 (k) 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 registration number of the qualifying owner, qualifying operator, or qualifying occupant, as applicable;

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

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

(E) the signature of the purchaser; and

(F) the date of the purchase.

(3) The properly completed qualifying data center exemption certificate is the retailer's documentation that it made a tax-exempt sale 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. Retailers shall provide an Assignment of Right to Refund, Form 00-985, if a state sales tax exemption is not provided to 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 qualifying data center's sales tax exemption. For more information, refer to subsection (d) of this 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 insure against a loss of revenue to the state in the event that a data center's certification is revoked, by allowing the comptroller to verify, prior to the expiration of the statute of limitations on assessment, that each of the requirements in subsection (d) of this section has been met, then the failure to execute a timely statutory waiver will also result in the termination of the data center's certification and the revocation of all related registration numbers.

(i) Documentation and record retention.

(1) In accordance with Tax Code, §111.0041 (relating to Records; Burden to Produce and Substantiate Claims) and §151.025 (relating to Records Required to be Kept), 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. See §3.281 of this title (relating to Records Required; Information Required) for additional guidance.

(2) 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, or qualifying occupant should keep comprehensive records of capital investment expenditures, such as contracts, invoices, and sales receipts, and employment records regarding job creation, including associated third-party employer positions.

(3) In the event the comptroller revokes the certification of a qualifying data center, the records of all qualifying owners, qualifying operators, and qualifying occupants must be retained until all assessments have been resolved.

(j) Successor Liability. A purchaser of a qualifying owner, qualifying operator, or qualifying occupant's business or stock of goods in a qualifying data center is subject to Tax Code, §111.020.

(k) Local tax. The state sales and use tax exemption for qualifying owners, qualifying operators, or 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.

(l) 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 (relating to the Texas Economic Development Act).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 16, 2013.

TRD-201305952
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER H. PROFESSIONAL CONDUCT

37 TAC §1.111

The Texas Department of Public Safety (the department) proposes amendments to §1.111, concerning Ten General Orders. Amendments to this rule are necessary to reflect current policy in use by the department.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be an updated rule that reflects current department policy.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Susan Estringel, Texas Department of Public Safety, P.O. Box 4087 (MSC 0140), Austin, Texas 78773-0001. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.006(a)(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.006(a)(4) and §2001.039, are affected by this proposal.

§1.111. Ten General Orders.

The ten [10] general orders listed in this section are the traditional code of conduct for the Texas Department of Public Safety (the department) and are binding in addition to any other code of ethics adopted. As a member of the department it shall be my duty: [These 10 general orders are as follows.]

(1) To execute the mission of the department to protect and serve Texas. [advance the objective of the department in preserving order and protecting the lives, rights, privileges, and property of the people in the State of Texas to the best of my ability and in an entirely impartial manner.]

(2) To practice, at all times, the motto of the department [this organization]: "Courtesy, Service, Protection."

(3) To keep myself clean and presentable[,] and in good physical, mental, and moral condition [health].

(4) To know and obey [~~orders and instructions~~] at all times the U.S. and state constitutions, federal and state laws, and lawful orders and instructions.

(5) To keep all state equipment issued [~~entrusted~~] to me fully accounted for, [~~and~~] in proper working condition, and secure.

(6) To register [~~qualify~~] as a voter[~~,~~] and [~~to~~] vote my convictions as a citizen but refrain from political campaigns and endorsements except as specifically authorized by law and policy. [~~as a citizen on all public questions and political races, but to take no other part in any public politics or campaigns.~~]

(7) To conduct my duties [~~business~~] in a straightforward, honest, and respectful manner, relying upon poise, competence, and soundness of character [~~discretion rather than threats and argument to carry out my duties~~].

(8) To report misconduct and matters that negatively impact me or other department personnel to my immediate supervisor and higher, if necessary. [~~To take up matters affecting me and my position with my immediate superior and through proper channels.~~]

(9) To make suggestions to improve department operations, policies, and services. [~~To submit through proper channels constructive suggestions for the betterment of the department and its service.~~]

(10) To conduct myself, [~~at all times, both~~] on and off duty, in [~~such~~] a [~~gentlemanly~~] manner that merits the voluntary praise of those with whom I come in contact, so that my actions reflect well upon myself, the department, and the State of Texas. [~~I may merit the voluntary commendation of all law-abiding citizens and visitors with whom I come in contact, both those with whom I meet in carrying out my duties and those I shall live among as a citizen in order that credit may be reflected upon the Texas Department of Public Safety.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305770
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 424-5848

CHAPTER 9. PUBLIC SAFETY COMMUNICATIONS
SUBCHAPTER F. STATE AMATEUR RADIO OPERATOR SERVICE

37 TAC §§9.61 - 9.68

The Texas Department of Public Safety (the department) proposes new §§9.61 - 9.68, concerning State Amateur Radio Operator Service. Amateur radio operators are often needed to assist in communications in an emergency. There was no mechanism to allow state employees who are amateur radio operators to take paid leave in order to assist in disaster response operations as there is for other needed state employees. In response, Texas Government Code, §661.919 authorizes state employees who are amateur radio operators to, with certain limitations, take leave in order to participate in disaster relief operations with the approval of their supervisor and the governor. A maximum of 350 state employees may be granted a maximum of 10 days of leave with pay per year to participate in disaster response operations, within the State of Texas. This proposal is necessary to establish the guidelines for this service.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be publication of the guidelines related to State Amateur Radio Operator Service.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Kevin Lemon, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, Texas 78773-0001. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) and §661.919 are affected by this proposal.

§9.61. Definitions.

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

(1) Department--Texas Department of Public Safety.

(2) FCC--Federal Communications Commission.

(3) Program--The State's Amateur Radio Program.

(4) RACES--Radio Amateur Civil Emergency Service.

(5) ROL--Radio Operator Leave.

(6) SRO--State RACES Officer.

(7) TDEM--Texas Division of Emergency Management.

§9.62. Statewide Coordination of State Employees Who Are Amateur Radio Operators Supporting Disasters.

Amateur radio operators are often needed to assist in communications in an emergency. There was no mechanism to allow state employees who are amateur radio operators to take paid leave in order to assist in disaster response operations as there is for other needed state employees. In response, Texas Government Code, §661.919 authorizes state employees who are amateur radio operators to, with certain limitations, take leave in order to participate in disaster relief operations with the approval of their supervisor and the governor. A maximum of 350 State employees may be granted a maximum of 10 days of leave with pay per year to participate in disaster response operations, within the State of Texas.

§9.63. Application Procedures.

(a) Individuals wishing to apply for membership eligibility may register at the TDEM Website: www.txdps.state.tx.us/dem.

(b) Entries must be legibly written in pen or must be typed.

(c) A copy of the individual's current FCC license must be attached to the completed application.

§9.64. Eligibility Certification Procedures.

Pursuant to Code of Federal Regulations, Title 47, §97.407, the FCC requires that all amateur radio operators be certified by the emergency management organization the individual supports. The Assistant Director of TDEM is the certifying official for the program. Certification will be for a 3 year period. Applicants will resubmit applications at the conclusion of the 3 year period. If the maximum number of 350 employees has been reached, renewals will be on a "first come basis".

§9.65. Pay and Benefits.

A state employee who is a member of the program may be granted leave not to exceed a maximum of 10 days per fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time, if the leave is taken. The actions listed in this section are required for the employee to use the granted leave:

(1) The employee must have the authorization of their agency/supervisor.

(2) The Governor has issued a declaration of a State of Disaster or Emergency, under Texas Government Code, Chapter 418, or another occurrence that initiates the State Emergency Management Plan.

(3) State employees will use the payroll code ROL to account for time taken to support an authorized event.

§9.66. Termination from the Program.

If a member does not actively participate in the program or the member's conduct does not reflect positively upon the program, the member will be removed from the program for just cause. The SRO or the member's supervisor, as applicable will provide documentation detailing the lack of participation or negative conduct. Just cause will be, but is not limited to, any of the following actions detailed in this section:

(1) Fraudulent representation on the application.

(2) Failure to maintain current personal information.

(3) Failure to maintain the standards of the eligibility requirements.

(4) Failure to perform response duties when the time has been granted.

§9.67. Liability/Workers' Compensation Coverage.

The Texas Labor Code, §501.026, Coverage For Certain Services Provided By Volunteers, states the requirements which must be met in order for a person working as a volunteer to be eligible to claim workers' compensation benefits.

§9.68. Reports.

In order to manage the program and to better inform the amateur radio operator of activities affecting them, a scheduled reporting system is necessary. The reports listed in this section should be submitted as described:

(1) Support verification report. The support verification report will be submitted by the state employee(s) participating in the program. The initial report will be submitted to employee's agency within 2 days of returning to work. The agency will review and submit the original report to the department within 5 days of receiving the report. One copy will be retained by the employee and one copy will be retained by the employee's agency. The original report will be mailed to the department. The mailing address is: Texas Department of Public Safety, Texas Division of Emergency Management, P.O. Box 4087, Attention: Operations, Austin, Texas 78773-0001.

(2) State agency report. The state agency report should be submitted on a semiannual basis (January 15 and July 15). The state agency report should include the items listed in this paragraph:

(A) Period covered.

(B) Agency name.

(C) Name and telephone number of the individual submitting the report.

(D) Name of the agency employee(s) participating in the program.

(E) Brief description of emergencies/disasters the employee(s) responded to.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305771
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 424-5848

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.61

The Texas Department of Public Safety (the department) proposes new §15.61, concerning Third Party Skills Testing. Texas Transportation Code, §521.165 authorizes the department to permit third parties to administer the skills test for a driver

license on the department's behalf. This new rule creates a program wherein the department may enter into memoranda of understanding with certified driver education schools to perform the testing under certain circumstances.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of enforcing this rule will be more scheduling and location options for driver license applicants to take the skills test which will free resources in driver license field offices to perform other services, thereby decreasing customer wait times.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Jennifer Hubbs, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.165, which authorizes the department to delegate skills testing to other entities including driver education schools.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.165, are affected by this proposal.

§15.61. Third Party Skills Testing.

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

(1) Authorized organization--An entity that has entered into a Memorandum of Understanding with the department to administer the driving skills test for a non-commercial driver license on the department's behalf.

(2) Examiner--An individual certified by the department to conduct a skills test.

(b) An organization is eligible to enter into a Memorandum of Understanding with the department and to administer a skills test for a non-commercial driver license if it:

(1) Maintains a valid driver education school license issued by the Texas Education Agency;

(2) Has held the driver education school license issued by the Texas Education Agency for a minimum of two years;

(3) Teaches the Impact Texas curriculum to its driver education students; and

(4) Complies with the requirements of the Memorandum of Understanding with the department.

(c) An individual employed by an authorized organization is eligible to become an examiner and conduct skills tests if he or she:

(1) Maintains a valid driver education instructor license issued by the Texas Education Agency;

(2) Has held the driver education instructor license issued by the Texas Education Agency for at least two years;

(3) Maintains a valid, unexpired Texas driver license;

(4) Has never been convicted of:

(A) Any felony;

(B) Criminally negligent homicide;

(C) Driving while intoxicated; or

(D) Driving under the influence.

(5) Does not have six or more points assigned to his or her Texas driver license;

(6) Has successfully completed the department prescribed training set out in the Memorandum of Understanding; and

(7) Conforms to the standards of the Memorandum of Understanding between the department and his or her employer.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305772
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 26, 2014
For further information, please call: (512) 424-5848

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.30

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §211.30, concerning Chief Administrator Responsibilities for Class B Waivers. The rule title is amended to add Class A misdemeanor offenses. Subsection

(a) is amended to include Class A misdemeanor offenses. Subsection (b) is added to determine eligibility. Existing subsections (b) - (e) are re-lettered. Relettered subsection (c)(1) is amended to remove redundant cross-referencing to other rule numbers. Relettered subsection (c)(1)(A) - (L) are added to identify mitigating circumstances. Subsection (g) is added to limit waiver to requesting agency. Subsection (f) is re-lettered to subsection (h) and updated to reflect effective date of the changes.

This amendment is necessary to allow a chief administrator to request a waiver on behalf of an applicant with a Class A misdemeanor offense. As with Class B misdemeanors, the Commission may consider the waiver on a case-by-case basis after a five-year waiting period.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be a positive benefit to the public by allowing individuals, who would otherwise be disqualified from enrollment or licensure, to be considered for eligibility.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed amendment.

Comments on the proposal may be submitted electronically to *public.comment@tcole.texas.gov* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of Chapter 1701 of the Texas Occupations Code.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.307, Issuance of License.

No other code, article, or statute is affected by this proposal.

§211.30. Chief Administrator Responsibilities for Class A and B Waivers.

(a) A chief administrator may request the executive director that an individual be considered for a waiver of either the enrollment or initial licensure requirements regarding an otherwise disqualifying [a] Class A or B misdemeanor conviction or deferred adjudication. An individual is eligible for one waiver request. This request must be submitted at least 45 days prior to a regularly scheduled commission meeting.

(b) A chief administrator is eligible to apply for a waiver five years after the date of conviction or placement on community supervision.

(c) [(b)] The request must include:

(1) a complete description of the following mitigating factors: [identified in §215.15 and §217.1 of this title;]

(A) the applicant's history of compliance with the terms of community supervision;

(B) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(C) the applicant's employment record;

(D) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(E) the required mental state of the disposition offense;

(F) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(G) the type and amount of restitution made by the applicant;

(H) the applicant's prior community service;

(I) the applicant's present value to the community;

(J) the applicant's post-arrest accomplishments;

(K) the applicant's age at the time of arrest; and

(L) the applicant's prior military history;

(2) all court and community supervision documents;

(3) the applicant's statement;

(4) all offense reports;

(5) victim(s) statement(s), if applicable;

(6) letters of recommendation;

(7) statement(s) of how the public or community would benefit; and

(8) chief administrator's written statement of intent to hire the applicant as a full time employee.

(d) [(c)] Commission staff will review the request and notify the chief administrator if the request is incomplete. The chief administrator must provide any missing documents before the request can be scheduled for a commission meeting. Once a completed request is received, it will be placed on the agenda of a regularly scheduled commission meeting.

(e) [(d)] The chief administrator will be notified of the meeting date and must be present to present the request to the commissioners. The applicant must be present at the meeting to answer questions about the request. Staff will present a report on the review process.

(f) [(e)] After hearing the request, the commissioners will make a decision and take formal action to approve or deny the request.

(g) If granted, a waiver is issued in the name of the applicant chief administrator, belongs to the sponsoring agency, nontransferable, and is without effect upon the subject's separation from employment. If separated and in the event of subsequent prospective law enforcement employment, a person may seek another waiver through the prospective hiring agency's chief administrator.

(h) [(f)] The effective date of this section is June 1, 2014 [October 26, 2009].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

TRD-201305834
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: June 1, 2014
For further information, please call: (512) 936-7713

CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.2

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.2, concerning Minimum Standards for Telecommunicators. Subsection (a) is amended to conform to legislative amendments. Subsection (a)(7) is amended to conform disqualifying family violence language with current suspension and revocation rules. Subsection (a)(9) is amended to clarify and reflect longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct. Subsections (e) and (f) are amended to conform to legislative amendments. Subsection (g) is updated to reflect effective date of the changes.

This amendment is necessary to conform disqualifying "family violence" language with current suspension and revocation rules. It also clarifies longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be a positive benefit to the public by ensuring qualified applicants and licensees.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no anticipated cost to small business, individuals, or both as a result of the proposed amendment.

Comments on the proposal may be submitted electronically to *public.comment@tcole.texas.gov* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of Chapter 1701 of the Texas Occupations Code.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.405, Telecommunicators.

No other code, article, or statute is affected by this proposal.

§217.2. Minimum Standards for Telecommunicators.

(a) The commission shall issue a license [~~certificate~~] to a telecommunicator who meets the following standards:

(1) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level; or

(B) holds a high school diploma;

(2) is at least 18 years of age;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) community supervision history:

(A) has not ever been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(B) the commission may approve the application of a person who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for certification, and that the public interest would be served by reducing the waiting period;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) conviction history:

(A) has not ever been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(B) the commission may approve the application of a person who was convicted for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for certification, and that the public interest would be served by reducing the waiting period;

(7) has never been convicted in any court of an offense involving [~~of any~~] family violence as defined under Chapter 71, Texas Family Code [~~offense~~];

(8) has been subjected to a background investigation and has been interviewed prior to appointment by representatives of the appointing authority;

(9) has never received [~~not had~~] a dishonorable or other discharge based on misconduct which bars future military service [~~bad conduct discharge~~];

(10) has not had a commission license denied by final order or revoked;

(11) is not currently on suspension, or does not have a surrender of license currently in effect;

(12) meets the minimum training standards by successfully completing the basic telecommunicator course and a commission-approved crisis communications course;

(13) has not violated any commission rule or provision of the Texas Occupations Code, Chapter 1701; and

(14) is a U.S. citizen.

(b) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(c) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(d) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the applicant's history of compliance with the terms of community supervision;

(2) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the applicant's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the applicant;

(8) the applicant's prior community service;

(9) the applicant's present value to the community;

(10) the applicant's post-arrest accomplishments;

(11) the applicant's age at the time of arrest; and

(12) the applicant's prior military history.

(e) The commission may issue a temporary telecommunicator license [~~certificate~~], consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator license [~~certificate~~]. A temporary telecommunicator license [~~certificate~~] expires 12 months from the original appointment date.

(f) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license [~~certificate~~] and shall not accept any appointment. If an application for certification is found to be false or untrue, it is subject to cancellation or recall.

(g) The effective date of this section is June 1, 2014 [~~October 17, 2013~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

TRD-201305835
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: June 1, 2014
For further information, please call: (512) 936-7713

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.11

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

The Texas Commission on Law Enforcement (Commission) proposes the repeal of §217.11, concerning Legislatively Required Continuing Education for Licensees. This section is being replaced by a new rule which incorporates telecommunicator licenses and removes cross-referencing to only peace officers and jailers.

This repeal is necessary to conform to the amended telecommunicator licensee statute by clarifying "licensee" to include telecommunicators.

The Commission has determined that for each year of the first five years the repeal as proposed will be in effect, there may be little to no effect on state or local governments as a result of administering this repeal.

The Commission has determined that for each year of the first five years the repeal as proposed will be in effect, there will be a positive benefit to the public by clarifying requirements for continuing education for licensees.

The Commission has determined that for each year of the first five years the repeal as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed repeal.

Comments on the repeal may be submitted electronically to *public.comment@tcole.texas.gov* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The repeal is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of Chapter 1701 of the Texas Occupations Code.

No other code, article, or statute is affected by this proposal.

§217.11. Legislatively Required Continuing Education for Licensees.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

TRD-201305836
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: June 1, 2014
For further information, please call: (512) 936-7713

♦ ♦ ♦

CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) proposes new §218.3, concerning Legislatively Required Continuing Education for Licensees. This new rule conforms to statutory amendments concerning continuing education requirements for licensees.

This new rule is necessary to set out the Commission's general approval process for all continuing education credit for licensees and conform to statutory amendments by adding "telecommunicator" to agency appointment requirements.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be little to no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring clear and concise requirements for licensees receiving continuing education credit.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcole.texas.gov* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of Chapter 1701 of the Texas Occupations Code.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.405, Telecommunicators; §1701.352, Continuing Education Programs; and §1701.353, Continuing Education Procedures.

No other code, article, or statute is affected by this proposal.

§218.3. Legislatively Required Continuing Education for Licensees.

(a) Individuals appointed as peace officers shall complete at least 40 hours of continuing education training and must complete a training and education program that covers recent changes to the laws of this state and of the United States pertaining to peace officers every 24-month unit of a training cycle.

(b) Each agency that appoints or employs peace officers, reserve law enforcement officers, jailers, or public security officers shall provide each peace officer, reserve law enforcement officer, jailer, or public security officer whom it appoints or employs with a continuing education program at least once every 48-month training cycle. Part of this training program consists of topics selected by the agency. This section does not limit the number of hours of continuing education an agency may provide.

(c) A state agency, county, special district, or municipality that appoints or employs a telecommunicator shall provide training to the telecommunicator of not less than 20 hours during each 24-month period of employment. The training must be approved by the commission and consist of topics selected by the commission and the employing entity. This section does not limit the number of hours of continuing education an agency may provide.

(d) Part of the legislatively required peace officer training in every 48-month training cycle must include the curricula and learning objectives developed by the commission, to include:

(1) for an officer holding a basic proficiency certificate or less, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; and

(C) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics; and

(2) supervision issues for each peace officer appointed to their first supervisory position, this training must be completed within 24 months following the date of appointment as a supervisor.

(e) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall meet the training requirements for civil rights, racial sensitivity, and cultural diversity in every 48-month training cycle unless the person has completed or is otherwise exempted from legislative required training under another commission license or certificate.

(f) A peace officer first licensed on or after January 1, 2011, must complete a basic training program on the trafficking of persons within one year of licensure.

(g) For appointed or elected constables:

(1) An individual appointed or elected to that individual's first position as constable must complete at least 40 hours of initial training for new constables in accordance with Texas Occupations Code §1701.3545(c).

(2) Each constable must complete at least 40 hours of continuing education in accordance with Texas Occupations Code §1701.3545(b), each 48-month cycle.

(h) Each deputy constable shall also complete a 20 hour course of training in civil process during each current training cycle.

(i) In accordance with Texas Occupations Code §1701.358, individuals appointed as "chief" or "police chief" of a police department:

(1) A newly appointed or elected police chief shall complete the initial training program for new chiefs not later than the second anniversary of that individual's appointment or election as chief.

(2) Each police chief must receive at least 40 hours of continuing education provided by the Bill Blackwood Law Enforcement Management Institute each 24-month unit.

(j) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(k) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(l) The commission may take disciplinary action against a licensee for failure to complete the legislatively required continuing education program at least once every training unit.

(m) The commission may take disciplinary action against a licensee for failure to complete the appropriate training within a training cycle.

(n) Individuals licensed as peace officers shall complete the legislatively required continuing education program required under this section beginning in the first complete 24-month unit immediately following the date of licensing.

(o) Individuals licensed as county jailers shall complete the legislatively required continuing education program required under this section beginning in the first complete 48-month cycle immediately following the date of licensing.

(p) All peace officers must meet all continuing education requirements except where exempt by law.

(q) The effective date of this section is June 1, 2014.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

TRD-201305837
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: June 1, 2014
For further information, please call: (512) 936-7713

CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

37 TAC §219.5

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §219.5, concerning Examinee Requirements. Subsection (b) is amended to clarify examination accommodation procedure requests. Subsection (d) is amended to reflect the effective date of the changes.

This amendment is necessary to incorporate examination accommodation procedures into rule.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there will be a positive benefit to the public by clarifying accommodation procedures for qualified individuals testing for licensure.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect, there may be little or no cost to small businesses, individuals, or both as a result of the proposed amendment.

Comments on the proposal may be submitted electronically to *public.comment@tcole.texas.gov* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of Chapter 1701 of the Texas Occupations Code.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.304, Examination.

No other code, article, or statute is affected by this proposal.

§219.5. Examinee Requirements.

(a) In order to attempt an examination, an examinee must:

(1) present PID;

(2) present a valid photo ID;

(3) report on time;

(4) not disrupt the examination;

(5) comply with all the written and verbal instructions of the proctor; and

(6) shall not:

(A) bring any written material into the examination room;

(B) bring any electronic devices into the examination room;

(C) share, copy, or in any way reproduce any part of the examination;

(D) engage in any deceptive or fraudulent act to gain admission; or

(E) solicit, encourage, direct, assist or aid another person to violate any provision of this section or to compromise the integrity of the examination.

(b) Requests for accommodation shall be made according to the following procedures: [~~in a written, notarized format, 90 days prior to the scheduling a licensing examination.~~]

(1) Individuals with diagnosed disabilities may request reasonable accommodation 90 days prior to the scheduling of the initial licensing examination per applicable laws. Special accommodations will not be granted after the third failed attempt.

(2) Request for accommodation shall be made in a written, notarized format, 90 days prior to the scheduling of a licensing examination, preferably before an endorsement is issued. These requests should be submitted to the commission for review and determination. Request responses will be mailed no later than 60 days after receipt of request. Incomplete request packages will be returned without review.

(3) Requested documents include:

(A) A letter from the Academy Coordinator documenting accommodations made during the basic licensing course.

(B) Documentation should include a diagnosis of the learning disability, conducted within two years of accommodation request. The diagnosis must include prescribed accommodation parameters.

(C) The diagnosis must be conducted by a certified specialist or a documented health professional or educational specialist

trained in the disability (i.e., Dyslexia Testing Specialist or a documented health professional or educational specialist trained in dyslexic training and assessment).

(4) The commission should be notified in writing if an individual who has applied for an accommodation decides not to utilize the accommodation or to withdraw a request for review. A waiver of accommodation must be signed by applicant prior to scheduling of licensing examination.

(5) An appeal can be made by the applicant in writing no later than two weeks after a denial determination. The appeal must outline the rationale behind the appeal and a list of further accommodations being requested for consideration. The Appeal will be reviewed by the Executive Director for consideration. Final determinations will be mailed to applicant no more than 30 days after receipt of the appeal.

(c) The commission may deny or revoke any license or certificate held by a person who violates any of the provisions of this section. The commission may file a criminal complaint against any individual who steals or attempts to steal any portion of the examination, reproduces without permission any part of the examination, or who engages in any fraudulent act relating to the examination process.

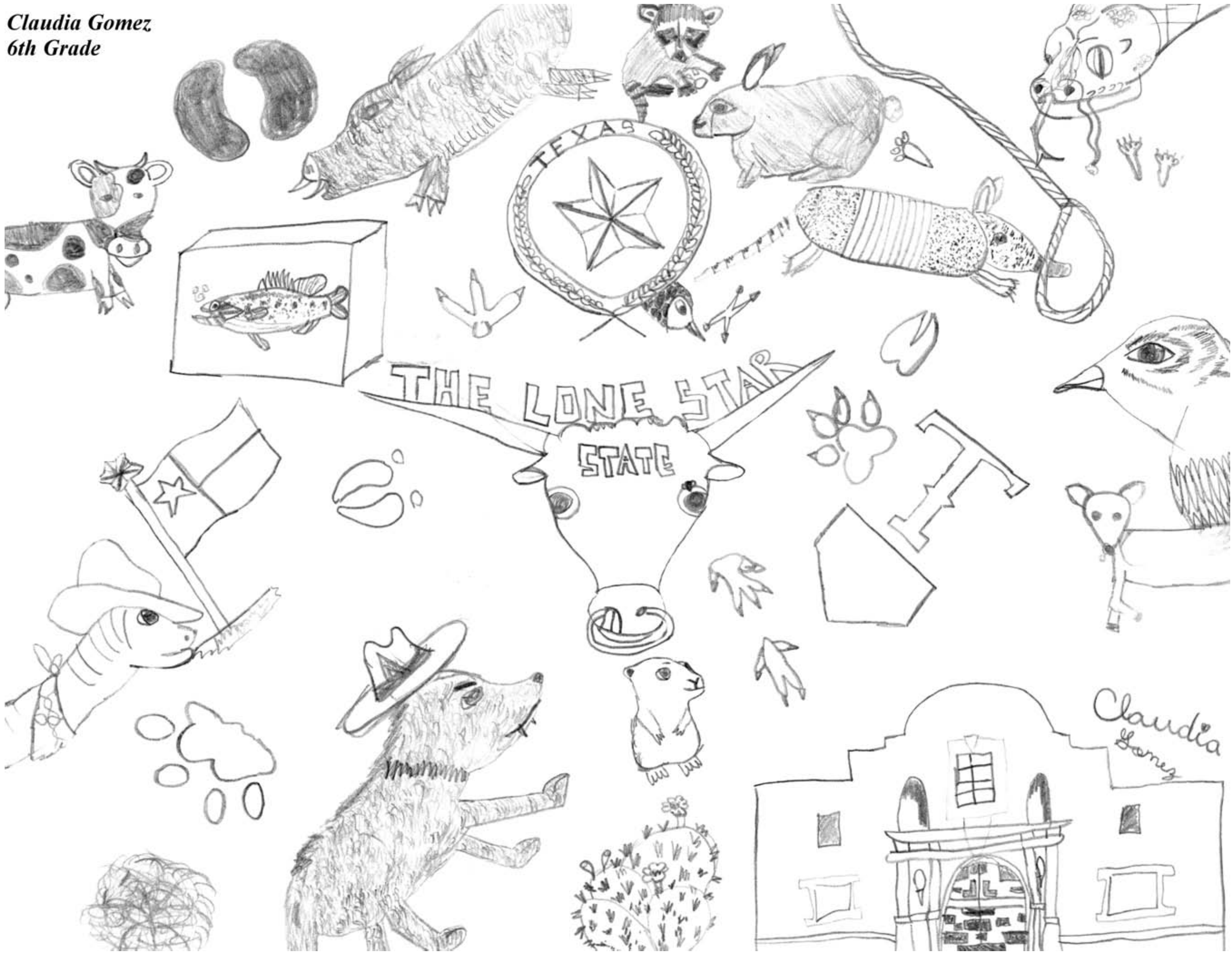
(d) The effective date of this section is June 1, 2014 [~~January 1, 2012~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

TRD-201305838
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: June 1, 2014
For further information, please call: (512) 936-7713

Claudia Gomez
6th Grade



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 366. MEDICAID ELIGIBILITY FOR WOMEN, CHILDREN, YOUTH, AND NEEDY FAMILIES

SUBCHAPTER B. PRESUMPTIVE MEDICAID FOR PREGNANT WOMEN PROGRAM

DIVISION 1. GENERAL

1 TAC §366.203

The Texas Health and Human Services Commission withdraws the proposed amendment to §366.203 which appeared in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7178).

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305734
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 11, 2013
For further information, please call: (512) 424-6900

DIVISION 2. ELIGIBILITY REQUIREMENTS

1 TAC §§366.211, 366.213, 366.215, 366.217, 366.219, 366.221, 366.223, 366.225, 366.227, 366.229, 366.231, 366.233, 366.235, 366.237, 366.239, 366.241, 366.243, 366.245

The Texas Health and Human Services Commission withdraws the proposed repeal of §§366.211, 366.213, 366.215, 366.217, 366.219, 366.221, 366.223, 366.225, 366.227, 366.229, 366.231, 366.233, 366.235, 366.237, 366.239, 366.241, 366.243, and 366.245 which appeared in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7178).

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305735
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 11, 2013
For further information, please call: (512) 424-6900

1 TAC §§366.211, 366.213, 366.215, 366.217, 366.219, 366.221, 366.223, 366.225, 366.227, 366.229, 366.231, 366.233, 366.235, 366.237

The Texas Health and Human Services Commission withdraws the proposed new §§366.211, 366.213, 366.215, 366.217, 366.219, 366.221, 366.223, 366.225, 366.227, 366.229, 366.231, 366.233, 366.235, and 366.237 which appeared in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7178).

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305736
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 11, 2013
For further information, please call: (512) 424-6900

SUBCHAPTER F. MEDICAID FOR TRANSITIONING FOSTER CARE YOUTH

1 TAC §366.611

The Texas Health and Human Services Commission withdraws the proposed repeal of §366.611 which appeared in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7178).

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305737
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 11, 2013
For further information, please call: (512) 424-6900

1 TAC §366.611

The Texas Health and Human Services Commission withdraws the proposed new §366.611 which appeared in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7178).

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305738
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 11, 2013
For further information, please call: (512) 424-6900

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER H. INCOME AND RENT LIMITS

10 TAC §10.1004

The Texas Department of Housing and Community Affairs withdraws the proposed new §10.1004, which appeared in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6795).

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

TRD-201305904
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 12, 2013
For further information, please call: (512) 475-3959

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER SS. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.2261, §21.2264

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §21.2261 and §21.2264 which appeared in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7577).

Filed with the Office of the Secretary of State on December 9, 2013.

TRD-201305684
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: December 9, 2013
For further information, please call: (512) 427-6114

SUBCHAPTER TT. EXEMPTION PROGRAM FOR DEPENDENT CHILDREN OF PERSONS WHO ARE MEMBERS OF ARMED FORCES DEPLOYED ON COMBAT DUTY

19 TAC §21.2271, §21.2273

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §21.2271 and §21.2273 which appeared in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7579).

Filed with the Office of the Secretary of State on December 9, 2013.

TRD-201305685
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: December 9, 2013
For further information, please call: (512) 427-6114

19 TAC §21.2276

The Texas Higher Education Coordinating Board withdraws the proposed new §21.2276 which appeared in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7580).

Filed with the Office of the Secretary of State on December 9, 2013.

TRD-201305686
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: December 9, 2013
For further information, please call: (512) 427-6114

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §22.524

The Texas Higher Education Coordinating Board withdraws the proposed new §22.524, which appeared in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7595).

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305780
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: December 11, 2013
For further information, please call: (512) 427-6114

SUBCHAPTER U. EXEMPTION FOR PEACE OFFICERS ENROLLED IN LAW ENFORCEMENT OR CRIMINAL JUSTICE COURSES

19 TAC §22.538

The Texas Higher Education Coordinating Board withdraws the proposed new §22.538, which appeared in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7596).

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305781
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: December 11, 2013
For further information, please call: (512) 427-6114

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES
SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION
DIVISION 1. GENERAL PROVISIONS

31 TAC §57.972

The Texas Parks and Wildlife Department withdraws the emergency adoption of the amendment to §57.972 which appeared in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7015).

Filed with the Office of the Secretary of State on December 10, 2013.

TRD-201305724
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: December 10, 2013
For further information, please call: (512) 389-4775

Amy Padron
6th Grade

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER L. QUALITY IMPROVEMENT PROCESS FOR CLINICAL INITIATIVES

1 TAC §§354.2501, 354.2503, 354.2505, 354.2507

The Texas Health and Human Service Commission (HHSC) adopts new §§354.2501, 354.2503, 354.2505 and 354.2507, concerning Quality Improvement Process for Clinical Initiatives, without changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7169). The text of the rules will not be republished.

Background and Justification

Senate Bill (SB) 1542, 83rd Legislature, Regular Session, 2013 adds Chapter 538 to the Texas Government Code. The new chapter requires the commission to develop and implement a quality improvement process to receive clinical suggestions that improve the quality of care and cost-effectiveness under the Medicaid program, conduct a preliminary review of each suggestion, and conduct an analysis of clinical initiative suggestions that are selected for analysis. Additionally, the commission is required to prepare a final report on each clinical initiative that has received a full analysis, and potentially implement clinical initiatives that are cost-effective and improve quality of care under Medicaid.

Comments

The 30-day comment period ended November 18, 2013. During this period, HHSC received neutral comments regarding the new rules from the Texas Association for Home Care and Hospice. A summary of comments relating to the rules and HHSC's responses follows.

Comment: A commenter expressed concern that some of the clinical initiatives may have a business cost associated with them and therefore suggested that the Commission add language to this rule to analyze any potential costs to providers in the final reports; and enact a rulemaking process if the clinical initiative will have an adverse economic impact to small business or micro businesses in order to comply with the clinical initiative.

Response: As HHSC's internal process, potential costs to providers will be considered and outlined in the report. HHSC feels that adding the language proposed would create an overly narrow rule and therefore the proposed rules remain unchanged.

Comment: A commenter expressed interest in how HHSC plans to leverage stakeholder input for suggested clinical initiatives.

Response: Public comment/stakeholder input will be considered and noted in the report. The degree to which such input influences future implementation decision will likely depend on the input's relative impact. The clinical suggestions can only come from the authorized submitters outlined in the bill (§538.052). These authorized submitters can only submit suggestions that have the potential to improve the quality of care and cost-effectiveness of the Medicaid program (§538.051). Stakeholders will have a 30-day window to comment on a clinical suggestion that warrants further analysis once the suggestion is posted on the website.

Comment: A commenter encouraged HHSC align proposed clinical initiatives with other projects already taking place in Texas (e.g., State Innovation Models, Texas Institute of Health Care Quality and Efficiency).

Response: HHSC will make effort to align where and when possible to align suggested clinical initiatives with other initiatives in Texas.

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305831
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2014
Proposal publication date: October 18, 2013
For further information, please call: (512) 424-6900

CHAPTER 366. MEDICAID ELIGIBILITY FOR WOMEN, CHILDREN, YOUTH, AND NEEDY FAMILIES

The Texas Health and Human Services Commission (HHSC) adopts the amendments to Chapter 366, concerning the Medicaid program for pregnant women, children, parents and caretaker relatives, and certain former foster care children. Specifically, HHSC adopts the amendment to §366.901, concerning Legal Basis, without changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7178) and will not be republished. HHSC also adopts the repeal of §§366.301, 366.303, 366.305, 366.307, 366.309, 366.311, 366.313, 366.315, 366.317, 366.319, 366.321, 366.323, 366.325, 366.327, 366.329, 366.331, 366.333, 366.335, 366.337, 366.339, 366.341, and 366.343, concerning Pregnant Women's Medicaid; §§366.501, 366.503, 366.505, 366.507, 366.509, 366.511, 366.513, 366.515, 366.517, 366.519, 366.521, 366.523, 366.525, 366.527, 366.529, 366.531, 366.533, 366.535, 366.537, 366.539, 366.541, 366.543, 366.545, 366.547, 366.549, 366.551, and 366.553, concerning Children's Medicaid; §§366.601, 366.603, 366.605, 366.607, 366.609, 366.613, 366.615, 366.617, 366.619, 366.621, 366.623, 366.625, 366.627, 366.629, 366.631, 366.633, 366.635, 366.637, 366.639, 366.641, 366.643, 366.645, and 366.647, concerning Medicaid for Transitioning Foster Care Youth; §§366.701, 366.703, 366.705, 366.707, 366.709, 366.711, 366.713, 366.715, 366.717, 366.719, 366.721, 366.723, 366.725, 366.727, 366.729, 366.731, 366.733, 366.735, 366.737, 366.739, 366.741, 366.743, 366.745, 366.747, 366.749, 366.751, 366.753, 366.755, 366.757, 366.759, and 366.761, concerning TANF-Level Medical Assistance; §§366.801, 366.803, 366.805, 366.807, 366.809, 366.811, 366.813, 366.815, 366.817, 366.819, 366.821, 366.823, 366.825, 366.827, 366.829, 366.831, 366.833, 366.835, 366.837, 366.839, 366.841, 366.843, 366.845, 366.847, 366.849, 366.851, 366.853, 366.855, and 366.857, concerning Medically Needy Program; and adopts new §§366.301, 366.305, 366.307, 366.309, 366.311, 366.313, 366.315, 366.317, 366.319, 366.321, 366.323, 366.325, 366.327, 366.329, 366.331, 366.333, and 366.335, concerning Pregnant Women's Medicaid; §§366.501, 366.505, 366.507, 366.509, 366.511, 366.513, 366.515, 366.517, 366.519, 366.521, 366.523, 366.525, 366.527, 366.529, 366.531, 366.533, 366.535, 366.537, 366.539, and 366.541, concerning Children's Medicaid; §§366.601, 366.605, 366.607, 366.609, 366.613, 366.615, 366.617, 366.619, 366.621, 366.623, 366.625, 366.627, 366.629, 366.631, 366.633, 366.635, and 366.637, concerning Medicaid for Transitioning Foster Care Youth; §§366.701, 366.705, 366.707, 366.709, 366.711, 366.713, 366.715, 366.717, 366.719, 366.721, 366.725, 366.727, 366.729, 366.731, 366.733, 366.735, 366.737, 366.739, 366.741, 366.743, and 366.745, concerning Medicaid for Parents and Caretaker Relatives Program; §§366.801, 366.805, 366.807, 366.809, 366.811, 366.813, 366.815, 366.817, 366.819, 366.821, 366.823, 366.825, 366.827, 366.829, 366.831, 366.833, 366.835, 366.837, 366.839, and 366.841, concerning Medically Needy Program; §§366.1001, 366.1005, 366.1007, 366.1009, 366.1011, 366.1013, 366.1015, 366.1017, 366.1019, 366.1021, 366.1023, 366.1025, 366.1027, 366.1029, 366.1031, 366.1033, 366.1035, and 366.1037, concerning Former Foster Care Children's Program; and §§366.1103, 366.1105, 366.1107, 366.1109, 366.1111, 366.1113, and 366.1115, concerning Modified Adjusted Gross Income Methodology, without changes to the proposal as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7178). The rules will not be republished.

HHSC also adopts §§366.303, 366.503, 366.603, 366.703, 366.723, 366.803, 366.1003, and 366.1101 with changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7178). The text of the rules will be republished.

Elsewhere in this issue of the *Texas Register* HHSC withdraws the proposed amendment of §366.203; the proposed repeal of §§366.211, 366.213, 366.215, 366.217, 366.219, 366.221, 366.223, 366.225, 366.227, 366.229, 366.231, 366.233, 366.235, 366.237, 366.239, 366.241, 366.243, and 366.245; and proposed new §§366.211, 366.213, 366.215, 366.217, 366.219, 366.221, 366.223, 366.225, 366.227, 366.229, 366.231, 366.233, 366.235, and 366.237. HHSC intends to apply new federal income rules to Presumptive Medicaid for Pregnant Women at a later date.

HHSC also withdraws the proposed repeal of §366.611 and new §366.611, as further discussed in the responses to comments.

BACKGROUND AND JUSTIFICATION

HHSC adopts new rules and amendments to existing rules to implement federally required Medicaid eligibility changes. In general, the adopted rules implement Medicaid eligibility changes that are required by federal law, effective January 1, 2014.

The adopted rules implement new income eligibility requirements for Medicaid for pregnant women, children, parents and caretaker relatives, and certain former foster care children, in accordance with §1902(e)(14) of the Social Security Act, 42 U.S.C. §1396a(e)(14). Under new federal income eligibility requirements, household income and composition are based on federal income tax rules, and assets and most income disregards are eliminated, except for a five percentage point income disregard.

HHSC intends to submit a waiver application with the Centers for Medicare and Medicaid Services to authorize HHSC to implement flexible, cost-effective measures such as cost-sharing and assets testing to ensure that health care is available to needy Texans while preserving the state's discretion to regulate the size and scope of the Medicaid program. HHSC also intends to collect asset, income, and resource information from Medicaid applicants and recipients to assist HHSC to examine the impact of federal health care expansion on Texas. Under the adopted rules, HHSC may collect information on assets and resources from Medicaid program applicants and recipients during the eligibility determination process to facilitate accomplishment of these objectives.

The adopted rules specify that HHSC conducts eligibility reviews at 12 months for pregnant women, children, and parents and caretaker relatives in accordance with 42 CFR §435.916(a). Federal regulation requires HHSC, to the extent possible, to use available information to make eligibility redeterminations without requesting information or a renewal application from recipients (referred to as an administrative renewal).

The adopted rules clarify that in-person interviews are not required for application processing for pregnant women, children, parents and caretaker relatives, certain former foster care children, and refugees in accordance with 42 CFR §435.907(d).

The adopted rules generally specify that HHSC allows a reasonable opportunity for recipients to provide or apply for a social security number, in accordance with Social Security Act §1902(ee)(2)(C), 42 U.S.C. §1396a(ee)(2)(C).

The adopted rules increase the Children's Medicaid income limit for children ages 6 to 18 from 100 to 133 percent of the Federal Poverty Level, in accordance with Social Security Act §1902(a)(10)(A)(i)(VII), 42 U.S.C. §1396a(a)(10)(A)(i)(VII).

The adopted rules establish the Former Foster Care Children's Program, which provides Medicaid for former foster care children ages 18 to 25 who aged out of foster care in Texas at age 18 or older and were receiving Medicaid when they aged out of foster care, in accordance with Social Security Act §1902(a)(10)(A)(i)(IX), 42 U.S.C. §1396a(a)(10)(A)(i)(IX).

The adopted rules also align the rules with federal law and regulations and current HHSC policy and process. HHSC will, in future, propose additional amendments to definitions and terminology in Chapter 366 to further align the rules with federal laws and regulations and current HHSC policy and process.

COMMENTS

On November 1, 2013, at a public hearing, HHSC received oral comments from a representative of the Center for Public Policy Priorities and a representative of Texas Industrial Areas Foundation Organizations.

HHSC received written comments from Texans Care for Children, the Children's Hospital Association of Texas, the Texas Association of Community Health Centers, the Children's Rights Clinic, the Center for Public Policy Priorities, and members of the Texas House of Representatives.

The commenters did not indicate whether they favored or opposed the rules generally, but were opposed to particular provisions.

A summary of all of the comments and the responses follow.

Comment: A commenter expressed concern that the Preamble to the proposed rule did not provide sufficient notice that new §366.611(1) would change eligibility rules for the Medicaid for Transitioning Youth in Foster Care Program to not provide Medicaid coverage to children who transitioned out of foster care in another state. These children currently are covered by Medicaid.

Response: HHSC appreciates the comment; however, HHSC has elected to withdraw the proposed rule. It is consequently unnecessary to respond to this comment at this time. HHSC intends to re-propose an amendment to §366.611(1) in the future to include language that ensures that former foster children from any state who were receiving Medicaid services in Texas before the effective date of the new program will continue to be eligible for services. HHSC also may adopt a rule on an emergency basis.

Comment: Commenters suggested that §366.509(a)(1), as proposed, requires an applicant for Children's Medicaid to use only an HHSC-prescribed application. Commenters expressed concern that this language bars the use of a federal application.

Response: HHSC will not revise §366.509 in response to these comments. The rules do not specifically list the applications that are "prescribed by HHSC," and HHSC will accept the federal streamlined application from applicants.

Comment: Commenters also interpreted §366.509(a)(2), as proposed, to require an applicant to provide all information requested in the HHSC-prescribed application. Commenters expressed concern that this language requires an applicant to provide certain information that is not required for an eligibility determination under federal law.

Response: HHSC will not revise §366.509 in response to these comments. Section 366.505, concerning General Eligibility Requirements for the Children's Medicaid Program, states that a person is eligible for that program if, among other things, the person "meets the criteria...of Subchapter K of this chapter (relating to Modified Adjusted Gross Income Methodology)." Section 366.1109(b) of Subchapter K states that "(a)ssets tests do not apply" to a member of a group whose eligibility is determined, in part, in accordance with Subchapter K. In HHSC's view, this makes sufficiently clear that HHSC will not use assets information to determine eligibility for children's Medicaid.

Comment: Commenters suggested that §366.539(b), which requires a recipient of children's Medicaid, "(f)ollowing the first six months of eligibility," to "report any changes that affect eligibility," is inconsistent with Texas Human Resources Code §32.0261, which provides for a six-month period of continuous eligibility for a children's Medicaid recipient until the recipient turns 19, "without additional review...and regardless of changes in the child's resources or income." One commenter admits that state law allows HHSC to check a family's income to ascertain the recipient's eligibility every six months, but the proposed rule, in the commenter's view, sets out a new requirement that a family report to HHSC any changes that occur at any point after the initial six-month period, thus providing the child with, as another commenter describes it, "month-to-month eligibility." One commenter also suggested that §366.539(b), and Texas Human Resources Code §32.0261 itself, are inconsistent with federal requirements. The commenters suggest deleting §366.539(b) or amending it to follow the first six-month period of continuous eligibility with an "ex parte third-party administrative verification of income" that would "simply trigger a subsequent (six)-month" period of continuous eligibility."

Response: HHSC will not delete or revise §366.539(b) in response to these comments. Federal regulation provides that a state may not redetermine the eligibility of a Medicaid recipient whose financial eligibility is determined using MAGI-based income "more frequently than once every 12 months" unless there is a change that affects eligibility. 42 CFR §435.916(a)(1), (d)(1). While federal law does not permit HHSC to redetermine eligibility every six months, as has been HHSC practice, federal law does not prohibit the state from requiring a recipient to report changes in eligibility during the period of a recipient's eligibility.

On the other hand, state law prohibits HHSC from reviewing eligibility of a child under age 19 before the end of the six-month period following the date on which the child's eligibility was determined. Under state law, a six-month period of continuous eligibility is triggered by a determination of eligibility.

This rule thus harmonizes federal and state requirements by providing a children's Medicaid recipient with an initial six-month period of eligibility, with the subsequent six-month period subject to the requirement that a recipient advise HHSC of any changes that affect eligibility. A new continuous eligibility period cannot begin under state law until a new eligibility determination is made at the federally required 12 months.

Comment: Commenters requested that §366.1011, which limits eligibility for the Former Foster Care Children's Program to a person who was "under the conservatorship of this State upon attaining age 18," be revised to extend eligibility to persons who

were under the conservatorship of any state upon attaining age 18.

Response: HHSC will not revise §366.1011 in response to these comments. Extending coverage to children who aged out of foster care in other states is an optional expansion of Medicaid. The Texas Legislature considered expansion options, but did not adopt them. Thus, consistent with direction from state leadership, HHSC is not extending the state option to cover former foster care youth who aged out of foster care in other states.

Comment: Commenters requested that HHSC either delete language in §366.1109(b) that allows HHSC to "collect information on assets and resources from Medicaid program applicants and recipients during the eligibility determination process" or clarify in the rules that asset information is optional and does not affect eligibility.

Response: With all due respect to the commenters, HHSC declines to either delete the language or add language indicating that the provision of asset information is optional. As the state agency to which the Texas Legislature has delegated the authority to administer the Medicaid program (Texas Human Resources Code §32.021(a)), HHSC has a significant interest in analyzing the impact of federal eligibility changes on state expenditures, and, pursuant to that interest, HHSC will collect information regarding an applicant's assets and resources. HHSC will not use the information to determine an applicant's or recipient's eligibility.

HHSC has revised the definition of "authorized representative" in §§366.303, 366.503, 366.603, 366.703, 366.803, and 366.1003 to include an organization, in compliance with federal law. Under 42 CFR §435.923(a)(1), as it will take effect on January 1, 2014, an authorized representative may be a person or an organization. HHSC inadvertently omitted this phrase in the proposed rules. By adding the phrase to the state's definition of "authorized representative" here, HHSC hopes to avert any confusion among readers.

HHSC changed §366.723 by removing a table that listed the income limit thresholds for Medicaid for Parents and Caretaker Relatives. These thresholds are based on the Federal Poverty Level, which is set by the federal government and is subject to change by the federal government. This change will allow HHSC to keep up with changes to the Federal Poverty level without amending §366.723. Instead, the thresholds will be available in HHSC's *Texas Works Handbook,* which can be amended more quickly than rules.

Finally, HHSC changed §366.1101 to delete a reference to Subchapter B (relating to Presumptive Medicaid for Pregnant Women Program), reflecting the withdrawal of the proposed amendments to that subchapter.

SUBCHAPTER C. PREGNANT WOMEN'S MEDICAID

1 TAC §§366.301, 366.303, 366.305, 366.307, 366.309, 366.311, 366.313, 366.315, 366.317, 366.319, 366.321, 366.323, 366.325, 366.327, 366.329, 366.331, 366.333, 366.335, 366.337, 366.339, 366.341, 366.343

LEGAL AUTHORITY

The repeals are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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1 TAC §§366.301, 366.303, 366.305, 366.307, 366.309, 366.311, 366.313, 366.315, 366.317, 366.319, 366.321, 366.323, 366.325, 366.327, 366.329, 366.331, 366.333, 366.335

LEGAL AUTHORITY

The new rules are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§366.303. Definitions.

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

(1) Applicant--A person seeking assistance under Pregnant Women's Medicaid who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) CFR--Code of Federal Regulations.

(4) Child--An adoptive, step, or natural child who is under 19 years of age.

(5) Continuous coverage--Uninterrupted eligibility for the extent of the certification period.

(6) Eligible group--A category of people who are eligible for Pregnant Women's Medicaid.

(7) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

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

(9) Household--The group of individuals whose information is used to establish family size and calculate income.

(10) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(11) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(12) Recipient--A person receiving Pregnant Women's Medicaid services.

(13) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(14) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.dads.state.tx.us/handbooks/TexasWorks.

(15) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(16) U.S.C.--United States Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. CHILDREN'S MEDICAID

1 TAC §§366.501, 366.503, 366.505, 366.507, 366.509, 366.511, 366.513, 366.515, 366.517, 366.519, 366.521, 366.523, 366.525, 366.527, 366.529, 366.531, 366.533, 366.535, 366.537, 366.539, 366.541, 366.543, 366.545, 366.547, 366.549, 366.551, 366.553

LEGAL AUTHORITY

The repeals are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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1 TAC §§366.501, 366.503, 366.505, 366.507, 366.509, 366.511, 366.513, 366.515, 366.517, 366.519, 366.521, 366.523, 366.525, 366.527, 366.529, 366.531, 366.533, 366.535, 366.537, 366.539, 366.541

LEGAL AUTHORITY

The new rules are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§366.503. Definitions.

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

(1) Applicant--A person seeking assistance under Children's Medicaid who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) Caretaker--An adult who is present in the home, who supervises and cares for a child, and who meets relationship requirements in §366.519(b) of this subchapter (relating to Relationship and Domicile).

(4) CFR--Code of Federal Regulations.

(5) Child--An adoptive, step, or natural child who is under 19 years of age.

(6) Continuous coverage--Uninterrupted eligibility for the extent of the certification period.

(7) Eligible group--A category of people who are eligible for Children's Medicaid.

(8) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

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

(10) Household--The group of individuals whose information is used to establish family size and calculate income.

(11) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(12) Newborn--A child from birth through 12 months of age.

(13) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(14) Recipient--A person receiving Children's Medicaid services, including a person who is renewing eligibility for Children's Medicaid.

(15) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(16) Texas Health Steps--Federally mandated Medicaid services that provide medical and dental check-ups, diagnosis, and treatment to eligible clients from birth through age 20. Federally, this program is known as the Early Periodic Screening, Diagnostic, and Treatment (EPSDT) Program.

(17) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.dads.state.tx.us/handbooks/TexasWorks.

(18) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(19) U.S.C.--United States Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. MEDICAID FOR TRANSITIONING FOSTER CARE YOUTH

1 TAC §§366.601, 366.603, 366.605, 366.607, 366.609, 366.613, 366.615, 366.617, 366.619, 366.621, 366.623, 366.625, 366.627, 366.629, 366.631, 366.633, 366.635, 366.637, 366.639, 366.641, 366.643, 366.645, 366.647

LEGAL AUTHORITY

The repeals are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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1 TAC §§366.601, 366.603, 366.605, 366.607, 366.609, 366.613, 366.615, 366.617, 366.619, 366.621, 366.623, 366.625, 366.627, 366.629, 366.631, 366.633, 366.635, 366.637

LEGAL AUTHORITY

The new rules are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§366.603. Definitions.

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

(1) Applicant--A person seeking assistance under the Medicaid for Transitioning Foster Care Youth Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) CFR--Code of Federal Regulations.

(4) Child--An adoptive, step, or natural child who is under age 19.

(5) Eligible group--A category of people who are eligible for MTFCY.

(6) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

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

(8) Household--The group of individuals whose information is used to establish family size and calculate income.

(9) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(10) MTFCY--The Medicaid for Transitioning Foster Care Youth Program.

(11) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(12) Recipient--A person receiving MTFCY services.

(13) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(14) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(15) U.S.C.--United States Code.

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SUBCHAPTER G. TANF-LEVEL MEDICAL ASSISTANCE

1 TAC §§366.701, 366.703, 366.705, 366.707, 366.709, 366.711, 366.713, 366.715, 366.717, 366.719, 366.721, 366.723, 366.725, 366.727, 366.729, 366.731, 366.733, 366.735, 366.737, 366.739, 366.741, 366.743, 366.745, 366.747, 366.749, 366.751, 366.753, 366.755, 366.757, 366.759, 366.761

LEGAL AUTHORITY

The repeals are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. MEDICAID FOR PARENTS AND CARETAKER RELATIVES PROGRAM

1 TAC §§366.701, 366.703, 366.705, 366.707, 366.709, 366.711, 366.713, 366.715, 366.717, 366.719, 366.721, 366.723, 366.725, 366.727, 366.729, 366.731, 366.733, 366.735, 366.737, 366.739, 366.741, 366.743, 366.745

LEGAL AUTHORITY

The new rules are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§366.703. Definitions.

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

(1) Applicant--A person seeking assistance under the Medicaid for Parents and Caretaker Relatives Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) Caretaker--A person who supervises and cares for a dependent child and who meets relationship requirements in §366.719(c) of this subchapter (relating to Relationship and Domicile).

(4) CFR--Code of Federal Regulations.

(5) Dependent child--A child who is:

(A) either:

(i) under the age of 18; or

(ii) 18 and a full-time student in secondary school or equivalent vocational or technical training, if before attaining age 19 the child may reasonably be expected to complete such school or training; and

(B) is deprived of parental support by reason of the death, absence from the home, physical or mental incapacity, or unemployment of at least one parent.

(6) Eligible group--A category of people who are eligible for the Medicaid for Parents and Caretaker Relatives Program.

(7) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

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

(9) Household--The group of individuals whose information is used to establish family size and calculate income.

(10) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(11) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(12) Recipient--A person receiving benefits under the Medicaid for Parents and Caretaker Relatives Program, including a person who is renewing eligibility for the Medicaid for Parents and Caretaker Relatives Program.

(13) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(14) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(15) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(16) U.S.C.--United States Code.

§366.723. Income Eligibility.

(a) HHSC determines income eligibility for the Medicaid for Parents and Caretaker Relatives Program after application of the methodology in Subchapter K of this chapter (relating to Modified Adjusted Gross Income Methodology).

(b) To be eligible for the Medicaid for Parents and Caretaker Relatives Program, an applicant or recipient must have household income for the applicable family size that is equal to or less than the amount determined by HHSC and listed in the *Texas Works Handbook*.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. MEDICALLY NEEDY PROGRAM

1 TAC §§366.801, 366.803, 366.805, 366.807, 366.809, 366.811, 366.813, 366.815, 366.817, 366.819, 366.821, 366.823, 366.825, 366.827, 366.829, 366.831, 366.833, 366.835, 366.837, 366.839, 366.841, 366.843, 366.845, 366.847, 366.849, 366.851, 366.853, 366.855, 366.857

LEGAL AUTHORITY

The repeals are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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1 TAC §§366.801, 366.803, 366.805, 366.807, 366.809, 366.811, 366.813, 366.815, 366.817, 366.819, 366.821, 366.823, 366.825, 366.827, 366.829, 366.831, 366.833, 366.835, 366.837, 366.839, 366.841

LEGAL AUTHORITY

The new rules are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC

to administer the federal medical assistance (Medicaid) program in Texas.

§366.803. Definitions.

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

(1) Applicant--A person seeking assistance under the Medically Needy Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) Caretaker--A person who supervises and cares for a child. A caretaker must be related to the child.

(4) Child--An adoptive, step, or natural child who is under age 19.

(5) CFR--Code of Federal Regulations.

(6) Eligible group--A category of people who are eligible for the Medically Needy Program.

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

(8) Household--The group of individuals whose information is used to establish family size and calculate income.

(9) MAGI--Modified adjusted gross income.

(10) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(11) Medically Needy (MN) Program--A program HHSC administers that provides Medicaid benefits to pregnant women and children whose income is too high to qualify for other Medicaid programs and who have high medical expenses.

(12) Newborn--A child from birth through 12 months of age.

(13) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(14) Provider--A health care practitioner, institution, or other entity that is enrolled with the state Medicaid claims administrator to provide Medicaid services in Texas and is authorized to submit claims for payment or reimbursement of medical assistance.

(15) Recipient--A person receiving Medically Needy Program services.

(16) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(17) Spend down--The amount of income that an applicant must apply toward incurred medical bills before the applicant can be certified for the Medically Needy Program.

(18) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Assistance Nutrition Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(19) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(20) U.S.C.--United States Code.

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SUBCHAPTER I. EMERGENCY MEDICAL SERVICES FOR ALIENS INELIGIBLE FOR REGULAR MEDICAID

1 TAC §366.901

LEGAL AUTHORITY

The amendment is adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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SUBCHAPTER J. FORMER FOSTER CARE CHILDREN'S PROGRAM

1 TAC §§366.1001, 366.1003, 366.1005, 366.1007, 366.1009, 366.1011, 366.1013, 366.1015, 366.1017, 366.1019, 366.1021, 366.1023, 366.1025, 366.1027, 366.1029, 366.1031, 366.1033, 366.1035, 366.1037

LEGAL AUTHORITY

The new rules are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§366.1003. Definitions.

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

(1) Applicant--A person seeking assistance under the Former Foster Care Children Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) CFR--Code of Federal Regulations.

(4) Child--An adoptive, step, or natural child under age 19.

(5) Eligible group--A category of people who are eligible for the Former Foster Care Children's Program.

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

(7) Household--The group of individuals whose information is used to establish family size and calculate income.

(8) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(9) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(10) Recipient--A person receiving Former Foster Care Children's Program services, including a person who is renewing eligibility for the Former Foster Care Children's Program.

(11) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(12) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.dads.state.tx.us/handbooks/TexasWorks.

(13) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(14) U.S.C.--United States Code.

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SUBCHAPTER K. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §§366.1101, 366.1103, 366.1105, 366.1107, 366.1109, 366.1111, 366.1113, 366.1115

LEGAL AUTHORITY

The new rules are adopted under Texas Government Code §531.033 and §531.0055(e), which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021(a) and Texas Government Code §531.0055(b)(1) and §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§366.1101. Purpose and Scope.

This subchapter establishes income eligibility requirements for Medicaid programs in accordance with §1902(e)(14) of the Social Security Act (42 U.S.C. §1396a(e)(14)). This subchapter applies to the following Chapter 366 Medicaid programs: Subchapter C (relating to Pregnant Women's Medicaid), Subchapter E (relating to Children's Medicaid), Subchapter F (relating to Medicaid for Transitioning Foster Care Youth), Subchapter G (relating to Medicaid for Parents and Caretaker Relatives Program), Subchapter H (relating to Medically Needy Program), and Subchapter I (relating to Emergency Medical Services for Aliens Ineligible for Regular Medicaid).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts the amendments to Chapter 370, concerning the State Children's Health Insurance Program (CHIP). Specifically, HHSC adopts amendments to §§370.1, 370.4 and 370.10, concerning Program Administration; §370.22, concerning Completion of Telephone Applications; §§370.43, 370.44 and 370.46, concerning Eligibility Criteria; §§370.60, concerning Renewal; §§370.301, 370.303 and 370.311, concerning Enrollment and Disenrollment; §370.321 and §370.325, concerning Cost-Sharing Requirements; §370.401, concerning Perinates; and adopts new §370.47, concerning Social Security Number, and §§370.801, 370.803, 370.805, 370.807, 370.809, 370.811, 370.813 and 370.815, concerning Modified Adjusted Gross Income Methodology, without changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7209) and will not be republished.

BACKGROUND AND JUSTIFICATION

HHSC adopts new rules and amendments to existing rules to implement federally required CHIP eligibility changes. In general, the adopted rules implement the following CHIP eligibility changes that are required by federal law, effective January 1, 2014.

The adopted rules implement new financial eligibility requirements for CHIP. Under new federal financial eligibility requirements, household income and size are based on federal income tax rules, and assets tests and most income disregards are eliminated, except for a five percentage point standard income disregard.

HHSC intends to submit a waiver application with the Centers for Medicare and Medicaid Services to authorize HHSC to implement flexible, cost-effective measures such as cost-sharing and assets testing to ensure the availability of health care to needy Texans while preserving the state's discretion to regulate the size and scope of the Medicaid program. HHSC also intends to collect asset, income, and resource information from Medicaid applicants to assist HHSC to examine the impact of federal health care expansion on Texas. Under the adopted rules, HHSC may collect information on assets and resources from Medicaid program applicants and recipients during the eligibility determination process to facilitate accomplishment of these objectives.

The adopted rules specify that HHSC allows a period of reasonable opportunity for recipients to provide or apply for a Social Security Number, in accordance with federal laws and regulations.

The adopted rules specify that HHSC conducts eligibility reviews every 12 months for CHIP, in accordance with 42 CFR §435.916. In addition, this federal regulation requires HHSC to use available information to make eligibility redeterminations without requesting information or a renewal application from clients, to the extent possible (referred to as an administrative renewal), and the adopted rules align with this federal requirement.

The adopted rules implement other clarifying changes to align rules with federal laws and regulations and current HHSC policy and process. HHSC will, in the future, propose additional amendments to definitions and terminology in Chapter 370 to further align the rules with federal laws and regulations and current HHSC policy and process.

COMMENTS

HHSC received oral comments from a representative of Texas Industrial Areas Foundation Organizations at a public hearing held in Austin, on November 1, 2013.

During the 30-day comment period, HHSC received written comments from the Children's Hospital Association of Texas and the Texas Association of Community Health Centers. The commenters did not indicate whether they favored or opposed the rules generally, but were opposed to particular provisions. A summary of the comments and the responses follow.

Comment: The commenters recommended deleting text in §370.809 relating to HHSC's collection of assets information from applicants during the eligibility determination process, and indicating on applications that the assets information is optional and does not affect eligibility.

Response: HHSC will not revise the rules in response to this comment. Comments on the application are beyond the scope of the rules. HHSC intends to collect information regarding an applicant's assets and resources. The information will not be used as part of federally required eligibility determinations, but will be used to research the impact of federal eligibility changes on state expenditures.

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §§370.1, 370.4, 370.10

LEGAL AUTHORITY

The amendments are adopted under Texas Government Code §531.033 and §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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SUBCHAPTER B. APPLICATION SCREENING, REFERRAL, PROCESSING, RENEWAL, AND DISENROLLMENT
DIVISION 1. APPLICATION PROCESSES

1 TAC §370.22

LEGAL AUTHORITY

The amendment is adopted under Texas Government Code §531.033 and §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §§370.43, 370.44, 370.46, 370.47

LEGAL AUTHORITY

The amendments and new rules are adopted under Texas Government Code §531.033 and §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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DIVISION 6. RENEWAL PROCESS

1 TAC §370.60

LEGAL AUTHORITY

The amendment is adopted under Texas Government Code §531.033 and §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. ENROLLMENT, RENEWAL, DISENROLLMENT, AND COST SHARING
DIVISION 1. ENROLLMENT AND DISENROLLMENT

1 TAC §§370.301, 370.303, 370.311

LEGAL AUTHORITY

The amendments are adopted under Texas Government Code §531.033 and §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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DIVISION 2. COST-SHARING REQUIREMENTS

1 TAC §370.321, §370.325

LEGAL AUTHORITY

The amendments are adopted under Texas Government Code §531.033 and §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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SUBCHAPTER D. ELIGIBILITY FOR UNBORN CHILDREN

1 TAC §370.401

LEGAL AUTHORITY

The amendment is adopted under Texas Government Code §531.033 and §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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SUBCHAPTER I. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §§370.801, 370.803, 370.805, 370.807, 370.809, 370.811, 370.813, 370.815

LEGAL AUTHORITY

The new rules are adopted under Texas Government Code §531.033 and §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY
SUBCHAPTER C. UTILIZATION REVIEW

1 TAC §§371.200, 371.201, 371.203, 371.204, 371.206, 371.210

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§371.200, 371.201, 371.203, 371.204, 371.206, and 371.210, concerning utilization review of Medicaid and other health and human services programs, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6755) and will not be republished.

Background and Justification

Existing 1 TAC §§371.200, 371.201, 371.203, 371.204, 371.206, and 371.210 describe HHSC Office of Inspector General's (HHSC-OIG) processes for hospital utilization review (HUR) case selection, hospital screening criteria, denials and recoupments, and inpatient utilization review. The existing rules are inconsistent with current Texas Medicaid program policy, which extends outpatient observation time from 24 to 48 hours; add present-on-admission (POA) reporting requirements; and specifies that a claim for an inpatient admission that lacks medical necessity may be denied. The adopted amendments will bring the rules into compliance with existing policies.

The adopted rules extend the defined observation period from 24 to 48 hours prior to discharge to be consistent with the Texas Medicaid Provider Procedures Manual (TMPPM). The adopted rules also provide that a physician consultant make decisions regarding medical necessity, cause of readmission, and appropriateness of setting; describe what constitutes a technical denial, readmission denial, day outlier denial, and cost outlier denial; and provide that the claims administrator recoup monies associated with a denial. They clarify that HHSC may deny a claim associated with an inpatient admission that lacks medical necessity and specifies that HHSC-OIG will send written notice to any provider whose claim for professional services will be denied. Finally, the adopted rules allow for additional focused case selection for reviews.

PUBLIC COMMENT

The HHSC-OIG received written and oral comments from Teaching Hospitals of Texas (THOT), Harris Health, Texas Hospital Association (THA) and Coalition for Nurses in Advance Practice. None of the commenters were expressly in favor of or opposed to the rules, but commented on specific provisions.

A summary of all of the comments and HHSC's responses to the comments follows.

Comment: Concerning §371.200, one commenter suggested that subsection (a)(1) incorrectly cites 42 CFR Part 456, Subparts A, B, and C.

Response: HHSC will not revise the rule in response to this comment. Section 371.200(a)(1) was not proposed to be amended at this time.

Comment: Concerning §371.203, three commenters suggest adding language to require HHSC and HHSC-OIG to comply with nationally established coding guidelines.

Response: HHSC will not revise the rule in response to these comments. Adding the requested language would inappropriately impose policy on the Medicaid program, which is outside the purpose of these rules.

Comment: Concerning §371.206 and §371.210, another commenter suggests using wording to specify the "treating practitioner" instead of referencing "non-physician" provider. In the commenter's view, this change would "acknowledge the critical role" advanced practice registered nurses and physician assistants.

Response: HHSC will not revise the rules in response to these comments. The term non-physician includes both advanced practice registered nurses and physician assistants and may include other professionals who may be afforded authority to practice in their professional capacity. HHSC-OIG believes using the suggested wording would unduly restrict who may be a non-physician.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the Texas Medicaid program; and Texas Government Code §531.102(a), which permits HHSC-OIG to obtain any information or technology necessary to enable the office to meet its responsibilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 375. REFUGEE CASH ASSISTANCE AND MEDICAL ASSISTANCE PROGRAMS

The Texas Health and Human Services Commission (HHSC) adopts amendments to Chapter 375, concerning Refugee Cash Assistance and Medical Assistance Programs. Specifically, HHSC adopts the repeal of Subchapter E, §§375.501, 375.503, 375.505, 375.507, 375.509, 375.511, 375.513, 375.515, 375.517, 375.519, 375.521, 375.523, 375.525, 375.527, 375.529, 375.531, 375.533, 375.535, 375.537 and 375.539, concerning Refugee Medical Assistance; and new Subchapter E, §§375.501, 375.503, 375.505, 375.507, 375.509, 375.511, 375.513, 375.515, 375.517, 375.519, 375.521, 375.523, 375.525, 375.527, 375.529 and 375.531, concerning Refugee Medical Assistance; and Subchapter F, §§375.601, 375.603, 375.605, 375.607, 375.609, 375.611, 375.613 and 375.615, concerning Modified Adjusted Gross Income Methodology, without changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7224) and will not be republished.

BACKGROUND AND JUSTIFICATION

HHSC adopts new rules to implement Refugee Medical Assistance (RMA) eligibility changes, effective January 1, 2014. The proposed rules for RMA align with new federal income eligibility requirements for Medicaid for pregnant women, children, parents and caretaker relatives, and certain former foster care children, in accordance with §1902(e)(14) of the Social Security Act (42 U.S.C. §1396a(e)(14)).

Under these new federal income eligibility requirements, household income and composition are based on federal income tax rules. Before applicants can be considered for RMA coverage, they must first be determined ineligible for Medicaid and the Children's Health Insurance Program (CHIP). In order to align these eligibility determinations, the modified adjusted gross income methodology (MAGI), which is federally-required for certain Medicaid programs and CHIP, will be used for RMA eligibility determinations. An asset test is not currently required for an RMA eligibility determination.

HHSC will, in the future, propose additional amendments to definitions and terminology in Chapter 375 to further align the rules with federal laws and regulations and current HHSC policy and process.

COMMENTS

During the 30-day comment period, HHSC received written comments from the Texas Association of Community Health Centers. The commenter did not indicate whether it favored or opposed the rules generally, but was opposed to particular provisions.

Comment: The commenter recommended making it clear in §375.609 that assets collection is optional and does not affect eligibility.

Response: HHSC will not revise the rules in response to this comment. HHSC believes that the language in §375.609(b) clearly states that asset collection does not affect eligibility for RMA.

SUBCHAPTER E. REFUGEE MEDICAL ASSISTANCE

1 TAC §§375.501, 375.503, 375.505, 375.507, 375.509, 375.511, 375.513, 375.515, 375.517, 375.519, 375.521,

375.523, 375.525, 375.527, 375.529, 375.531, 375.533, 375.535, 375.537, 375.539

LEGAL AUTHORITY

The repeals are adopted under Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

1 TAC §§375.501, 375.503, 375.505, 375.507, 375.509, 375.511, 375.513, 375.515, 375.517, 375.519, 375.521, 375.523, 375.525, 375.527, 375.529, 375.531

LEGAL AUTHORITY

The new rules are adopted under Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 424-6900

SUBCHAPTER F. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §§375.601, 375.603, 375.605, 375.607, 375.609, 375.611, 375.613, 375.615

LEGAL AUTHORITY

The new rules are adopted under Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION

SUBCHAPTER B. GENERAL

7 TAC §3.36

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §3.36, concerning specialty examination fees applicable to state banks, bank affiliates and service providers, and bank holding companies, among others, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7541).

Pursuant to Finance Code, §16.003, the department is charged with responsibility for all direct and indirect costs of its existence and operation, and may not directly or indirectly cause the general revenue fund to incur any of such costs. Under Finance Code, §31.106, each state bank has a duty to pay fees to fund the cost of examination; the equitable or proportionate cost of maintenance and operation of the department; and the cost of enforcement of Finance Code, Title 3, Subtitle A, known as the Texas Banking Act. In that connection, Finance Code, §31.003(a)(4), authorizes the commission to adopt necessary or reasonable rules regarding recovery of the cost of maintaining and operating the department and the cost of enforcing the Texas Banking Act, by imposing and collecting ratable and equitable fees for notices, applications, and examinations. Finance Code, Title 3, Subtitle G, governing bank holding companies, interstate branching, and foreign banks, was once part of Subtitle A, but now separately authorizes the commission to adopt rules under the same standards, see Finance Code, §201.003(a)(4).

Most regulatory programs administered by the department are supported by similar language, requiring each regulated industry to pay its proportionate share of the cost of regulation. The purpose of a fee charged by the department, whether the fee is for an application, an examination, or another purpose, is to en-

able the department to be self-supporting and each regulatory program to be self-sustaining. The department therefore must periodically evaluate its operations to determine whether the department's fee structure equitably allocates the cost of regulation as required by statute.

A key regulatory function for which the cost of operations exceeds related revenue is the examination of state trust companies, state bank fiduciary activities, and other special examinations and investigations, including examinations of bank holding companies, interstate branches of out-of-state, state banks in Texas as host state, state bank affiliates, and third-party contractors performing activities on behalf of state banks.

Prior to amendment, §3.36(h) specified a daily rate of $600 per examiner per day for conducting an examination of a state bank trust department and for other special examinations and investigations, including examination of a bank holding company that owns a state bank, an interstate branch of a state bank in Texas as host state, an affiliate of a state bank, and a third-party contractor performing activities on behalf of a state bank. That rate was last revised a decade ago, see the August 29, 2003, issue of the *Texas Register* (28 TexReg 7347). The adopted rate is expressed as up to $110 per examiner hour (equivalent to $880 per examiner per day), with banking commissioner discretion to charge a lower rate in a specific instance for equitable reasons.

To determine the rate of $110 per examiner hour, the department compiled the salaries of all trust examiners and the chief trust examiner (the supervisor of trust examinations), and divided by available billable hours (excluding vacation leave, sick leave, and holidays). The resulting base rate was grossed up to include indirect payroll costs and a nominal allocation for costs of indirect administration. Additional indirect costs exist that could be and perhaps should be allocated to the specialty examination function, but the department is concerned that the resulting fee increase would be unreasonable to implement in a single step. Although the fee increase will not completely fund the currently anticipated revenue shortfall in future years, the department intends to review the efficiency of its operations and implement examination efficiencies and other expense reduction strategies to achieve a more balanced operation. However, adequacy of the adopted rate of $110 per examiner hour may have to be revisited in two or three years.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §31.003(a)(4) and §201.003(a)(4), which authorizes the commission to adopt necessary or reasonable rules regarding recovery of the cost of maintaining and operating the department and the cost of law enforcement by imposing and collecting ratable and equitable fees for notices, applications, and examinations. As required by Finance Code, §31.003(b) and §201.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
Finance Commission of Texas
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For further information, please call: (512) 475-1300

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 15. CORPORATE ACTIVITIES
SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §15.2, §15.3

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §15.2, concerning certain filing and investigation fees applicable to applications filed with the department by banks and others pursuant to Texas Finance Code, Title 3, Subtitles A and G (Chapters 31-59 and 201-204), and to make conforming amendments to §15.3, concerning expedited filings, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7542).

Pursuant to Finance Code, §16.003, the department is charged with responsibility for all direct and indirect costs of its existence and operation, and may not directly or indirectly cause the general revenue fund to incur any of such costs. Under Finance Code, §31.106, each state bank has a duty to pay fees to fund the cost of examination; the equitable or proportionate cost of maintenance and operation of the department; and the cost of enforcement of Finance Code, Title 3, Subtitle A, known as the Texas Banking Act. In that connection, Finance Code, §31.003(a)(4), authorizes the commission to adopt necessary or reasonable rules regarding recovery of the cost of maintaining and operating the department and the cost of enforcing the Texas Banking Act, by imposing and collecting ratable and equitable fees for notices, applications, and examinations. Finance Code, Title 3, Subtitle G, governing bank holding companies, interstate branching, and foreign banks, was once part of Subtitle A but now separately authorizes the commission to adopt rules under the same standards, see Finance Code, §201.003(a)(4).

Most regulatory programs administered by the department are supported by similar language, requiring each regulated industry to pay its proportionate share of the cost of regulation. The purpose of a fee charged by the department, whether the fee is for an application, an examination, or another purpose, is to enable the department to be self-supporting and each regulatory program to be self-sustaining. The department therefore must periodically evaluate its operations to determine whether the department's fee structure equitably allocates the cost of regulation as required by statute.

A key regulatory function for which the cost of operations is no longer adequately funded by existing fees is applications processing for banks, trust companies, and money services

businesses. Application fees for banks are addressed in this adoption. Adopted amendments to §21.2, concerning application fees for trust companies, and §33.27, concerning license fees for money services businesses, appear elsewhere in this issue of the *Texas Register.*

Section 15.2 specifies fees applicable to corporate applications filed with the department by banks and others pursuant to the Texas Banking Act. The adopted fee increases are necessary because revenue from applications and other corporate filings has not kept pace with the department's operational costs, which have increased over the years due to inflation, the need to attract, hire and retain qualified personnel, and the additional time and attention required by the increasing complexity of filed applications. Revenue generated by the former fees covered only about one-half of the cost of the application processing function.

Adopted amendments to §15.2 increase the amount of most state bank application fees, and these adjustments are long overdue. Most of these fees have not been adjusted since at least 1998, see the March 6, 1998, issue of the *Texas Register* (23 TexReg 2287). Some fees were last adjusted in 1996, see the December 22, 1995, issue of the *Texas Register* (20 TexReg 10999), and the charter and conversion fees were last adjusted in 1988, see the January 5, 1988, issue of the *Texas Register* (13 TexReg 117).

Adopted amendments to §15.3 are for the purpose of conforming §15.3 to the substantive amendments adopted for §15.2.

The adopted fees are as indicated in the revisions, although a few need additional explanation for clarity.

Home office relocation fees were last revised in 1996. If an application to relocate the home office is not eligible for a reduced fee pursuant to §15.2(b)(11) or (13), an application to relocate the home office must be accompanied by the fee specified in §15.2(b)(12), adopted to increase from $1,500 to $2,000. If the home office is being relocated to an existing branch and the existing home office will be retained as a branch, the fee in §15.2(b)(11) applies. This $200 fee is adopted to increase to $500. Finally, if the home office is being relocated within the same community, only a short distance away, the $500 fee in existing §15.2(b)(13) applies. Because the application listed in paragraph (13) is the same application listed in paragraph (12), except that it is eligible for expedited processing, adopted amendments to paragraph (12) would directly incorporate the expedited fee, which increased from $500 to $1,000.

Because the application listed in §15.2(b)(13) is adopted to be combined with §15.2(b)(12), paragraph (13) is adopted to contain a new fee of $500 for the notice required when a bank seeks to establish a loan production office or a deposit production office.

Finally, §15.2(d) has since 1998 required an applicant for a bank charter or conversion to a state bank to pay an investigation fee of $5,000. This fee increased to $10,000.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §31.003(a)(4) and §201.003(a)(4), which authorizes the commission to adopt necessary or reasonable rules regarding recovery of the cost of maintaining and operating the department and the cost of law enforcement by imposing and collecting ratable and equitable fees for notices, applications, and examinations. As required by Finance Code, §31.003(b) and §201.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
Texas Department of Banking
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CHAPTER 17. TRUST COMPANY REGULATION

SUBCHAPTER B. EXAMINATION AND CALL REPORTS

7 TAC §17.22, §17.23

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §17.22, concerning trust company examination and investigation fees, and §17.23, concerning trust company call reports, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7546).

Pursuant to Finance Code, §16.003, the department is charged with responsibility for all direct and indirect costs of its existence and operation, and may not directly or indirectly cause the general revenue fund to incur any of such costs. Under Finance Code, §181.105, each state trust company has a duty to pay fees to fund the cost of examination; the equitable or proportionate cost of maintenance and operation of the department; and the cost of enforcing Finance Code, Title 3, Subtitle F, known as the Texas Trust Company Act. In that connection, Finance Code, §181.003(a)(4), authorizes the commission to adopt necessary and reasonable rules regarding recovery of the cost of maintaining and operating the department and the cost of enforcement by imposing and collecting ratable and equitable fees for notices, applications, and examinations.

Most regulatory programs administered by the department are supported by similar language, requiring each regulated industry to pay its proportionate share of the cost of regulation. The purpose of a fee charged by the department, whether the fee is for an application, an examination, or another purpose, is to enable the department to be self-supporting and each regulatory program to be self-sustaining. The department therefore must periodically evaluate its operations to determine whether the department's fee structure equitably allocates the cost of regulation as required by statute.

A key regulatory function for which the cost of operations exceeds related revenue is the examination of state trust companies, state bank fiduciary activities, and other special examinations and investigations pertaining to banks. Examination fees for state trust companies are addressed in this adoption. An adopted amendment to adjust the fee for special examinations and investigations pertaining to banks, by amending §3.36, appears elsewhere in this issue of the *Texas Register.*

Prior to amendment, §17.22 provided that the fee for examination of trust companies was determined at the rate of $600 per examiner per day. That rate was last revised a decade ago, see the August 29, 2003, issue of the *Texas Register* (28 TexReg 7348). As adopted, the amendment to §17.22(a) provides for a rate of up to $110 per examiner hour (equivalent to $880 per examiner per day), subject to banking commissioner discretion to charge a lower rate in a specific instance for equitable reasons. The adoption of new subsection (e) in §17.22 is to cross-reference to guidance regarding frequency of examination.

To determine the rate of $110 per examiner hour, the department compiled the salaries of all trust examiners and the chief trust examiner (the supervisor of trust examinations), and divided by available billable hours (excluding vacation leave, sick leave, and holidays). The resulting base rate was grossed up to include indirect payroll costs and a nominal allocation for costs of indirect administration. Additional indirect costs exist that could be and perhaps should be allocated to the trust company supervision function, but the department is concerned that the resulting fee increase would be unreasonable to implement in a single step. Although the adopted fee increase will not completely fund the currently anticipated revenue shortfall in future years, the department intends to review the efficiency of its operations and implement examination efficiencies and other expense reduction strategies to achieve a more balanced operation. However, adequacy of the adopted rate of $110 per examiner hour may have to be revisited in two or three years.

Adopted amendments to §17.23 require an exempt trust company to file one annual statement of condition and income (call report) in lieu of filing call reports on a quarterly basis. Other adopted amendments to §17.23 are for the purpose of making conforming changes.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §181.003(a), which authorizes the commission to adopt necessary and reasonable rules regarding implementation and clarification of the Texas Trust Company Act, recovery of the cost of maintaining and operating the department, and the cost of law enforcement by imposing and collecting ratable and equitable fees for notices, applications, and examinations.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 21. TRUST COMPANY CORPORATE ACTIVITIES
SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY
7 TAC §21.2

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §21.2, concerning certain filing and investigation fees applicable to applications filed with the department by trust companies and others pursuant to Texas Finance Code, Title 3, Subtitle F (Chapters 181-199), known as the Texas Trust Company Act, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7548).

Pursuant to Finance Code, §16.003, the department is charged with responsibility for all direct and indirect costs of its existence and operation, and may not directly or indirectly cause the general revenue fund to incur any of such costs. Under Finance Code, §181.105, each state trust company has a duty to pay fees to fund the cost of examination; the equitable or proportionate cost of maintenance and operation of the department; and the cost of enforcing the Texas Trust Company Act. In that connection, Finance Code, §181.003(a)(4), authorizes the commission to adopt necessary and reasonable rules regarding recovery of the cost of maintaining and operating the department and the cost of enforcement by imposing and collecting ratable and equitable fees for notices, applications, and examinations.

Most regulatory programs administered by the department are supported by similar language, requiring each regulated industry to pay its proportionate share of the cost of regulation. The purpose of a fee charged by the department, whether the fee is for an application, an examination, or another purpose, is to enable the department to be self-supporting and each regulatory program to be self-sustaining. The department therefore must periodically evaluate its operations to determine whether the department's fee structure equitably allocates the cost of regulation as required by statute.

A key regulatory function for which the cost of operations is no longer adequately funded by existing fees is applications processing for banks, trust companies, and money services businesses. Application fees for state trust companies are addressed in this adopted rule. Adoption of amendments to §15.2, concerning application fees for state banks, and §33.27, concerning license fees for money services businesses, appear elsewhere in this issue of the *Texas Register.*

Section 21.2 specifies filing and investigation fees applicable to corporate applications filed with the department by trust companies and others pursuant to the Texas Trust Company Act. The adopted fee increases are necessary because revenue from applications and other corporate filings has not kept pace with the department's operational costs, which have increased over the

years due to inflation, the need to attract, hire and retain qualified personnel, and the additional time and attention required by the increasing complexity of filed applications. Revenue generated by these fees currently covers only about one-half of the cost of the application processing function.

Adopted amendments to §21.2 increase the amount of most trust company application fees, and these adjustments are long overdue. Most of these corporate fees have not been adjusted since 1996, see the December 22, 1995, issue of the *Texas Register* (20 TexReg 10999). A few fees have been in place since 1998, see the March 6, 1998, issue of the *Texas Register* (23 TexReg 2287), and the charter fee was last adjusted in 1988, see the January 5, 1988, issue of the *Texas Register* (13 TexReg 117). Although the fee for conversion of a trust institution was formally added to the rule effective September 5, 2002, see the August 30, 2002, issue of the *Texas Register* (23 TexReg 2287), the amount of the fee was based on the conversion fee for banks, last revised in 1988, see the January 5, 1988, issue of the *Texas Register* (13 TexReg 117).

The adopted fees are as indicated in the revisions, although a few need additional explanation for clarity. Existing §21.2(b)(10) and (11) both relate to an office relocation and are adopted to be combined in one paragraph. Existing paragraph (12), which also relates to trust company offices, is renumbered as §21.2(b)(11).

Adopted §21.2(b)(12) contains a new fee for an application to be released from a removal or prohibition order that resulted from activities involving a state trust company. Finance Code, §185.003, authorizes the banking commissioner to remove or prohibit a person from further participation in industries regulated by the department, if the person committed certain intentional acts that harmed a financial institution or benefited the person. Pursuant to Finance Code, §185.0071, effective May 28, 2011, a person who is subject to such an order under the Texas Trust Company Act may apply to the commissioner to be released from the order. The amount of the fee for this application is $500, an amount equal to the fee imposed for an application to be released from a removal or prohibition order that resulted from activities involving a state bank, see the March 2, 2012, issue of the *Texas Register* (37 TexReg 1497).

The quarterly $100 fee for filing a trust company call report, in previously existing §21.2(b)(21), was removed, and the remaining paragraphs (22) and (23) are renumbered as (21) and (22), respectively. Because of the efficiencies introduced by electronic filing of call reports, this fee has been waived for three out of four quarters over the last several years. The department has concluded that the revenue generated by this nominal fee is not worth the effort required to monitor billing for and receipt of the fee.

Finally, §21.2(d) or its predecessor has since 1998 required an applicant for a trust company charter or for conversion to pay an investigation fee of $5,000. This fee as adopted is increased to $10,000.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §181.003(a), which authorizes the commission to adopt necessary and reasonable rules regarding implementation and clarification of the Texas Trust Company Act, and regarding recovery of the cost of maintaining and operating the department and the cost of law enforcement by imposing and collecting ratable and equitable fees for notices, applications, and examinations.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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A. Kaylene Ray
General Counsel
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CHAPTER 24. CEMETERY BROKERS

7 TAC §§24.1 - 24.3

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new Chapter 24, §§24.1, 24.2 and 24.3, concerning cemetery brokers, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7550).

The new chapter provides a framework for the responsibilities required to conduct business as a cemetery broker.

During the 83rd Texas Legislative Session, the Legislature passed House Bill 52 (H.B. 52). H.B. 52 amended several sections of Chapter 711 of the Texas Health and Safety Code, and added new Subchapter C-1 and §711.0381. Among other things, the law requires cemetery plot brokers to register with the department, authorizes the department to charge fees, and requires information to be provided to consumers regarding filing complaints. Amended §711.012(a) and new §711.082 authorize the commission to adopt rules to enforce and administer the new provisions added to the Health and Safety Code by H.B. 52, and to establish fees to defray the cost of administering H.B. 52. H.B. 52 took effect September 1, 2013, but the provisions relating to regulation of cemetery brokers in Subchapter C-1 and §711.0381 do not take effect until January 1, 2014.

New 7 TAC Chapter 24 implements H.B. 52 by establishing: the process and fee for registering as a cemetery broker; a cemetery broker's responsibilities after registration; and the process for handling consumer complaints.

New §24.1 provides that a cemetery broker must pay a $100 registration fee and file a written statement on a form promulgated by the department. It also establishes the timeframe in which the department must process registrations, and states that registration may not be transferred.

New §24.2 requires cemetery brokers to pay a $100 annual administration fee and to notify the department of any material changes to the information filed during registration, including written notice prior to ceasing operations. Section 24.2 also requires a new cemetery broker registration if 25% of the ownership or control of a cemetery broker organization changes.

New §24.3 establishes what information must be presented to consumers about filing complaints, as well as when and how to

provide it. The new rule also specifies a required time limit and content for a cemetery broker's written response to a complaint.

H.B. 52 also authorizes the department to examine records of cemetery brokers, and requires the department to charge an examination fee, and to set any such fee by rule. However, examinations and examination fees are not addressed by new Chapter 24, but are anticipated to be implemented by a future rule.

The Department received no comments regarding the proposed new rules.

The new rules are adopted pursuant to Health and Safety Code, §711.012, which authorizes the commission to adopt rules to enforce and administer Subchapter C-1 and §711.0381.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-1300

CHAPTER 33. MONEY SERVICES BUSINESSES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the repeal of §33.21, concerning how to renew a license; and amendments to §33.27, concerning what fees must be paid to get and maintain a license, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7552).

Section 33.21 is repealed to conform to changes in Texas Finance Code, §151.207, eliminating renewal requirements for money transmission and currency exchange licenses. Amendments to §33.27 are adopted to increase certain application fees applicable to money services businesses in addition to making conforming changes.

The 83rd Texas legislature enacted H.B. 2134, effective September 1, 2013, which made several amendments to Texas Finance Code, Chapter 151, known as the Money Services Act, relating to the regulation of money services businesses. One of these amendments changed Finance Code §151.207, to eliminate license renewal requirements. Under the prior law, money transmission and currency exchange licenses automatically expired on July 1 of each year unless renewed by the license holder. Under the revised law, licenses do not expire. As before, license holders must still annually file a report and pay a license fee to maintain a license, but there is no longer a mandated deadline specified in the statute. Annual reporting deadlines will be established by the Banking Commissioner. Because licenses will no longer be renewed and the deadline required by statute no longer exists, §33.21 has become unnecessary and is repealed.

The adopted amendments to §33.27 revise references to license renewal to conform to H.B. 2134 and, in addition, increase certain application fees pertaining to money services businesses.

Pursuant to Finance Code, §16.003, the department is charged with responsibility for all direct and indirect costs of its existence and operation, and may not directly or indirectly cause the general revenue fund to incur any of such costs. Under Finance Code, §151.102(a)(5), the commission may adopt rules as necessary or appropriate to recover the cost of administering and enforcing the Money Services Act and other applicable law by imposing and collecting proportionate and equitable fees for notices, applications, examinations, investigations, and other actions required to achieve the purposes of the Money Services Act.

Most regulatory programs administered by the department are supported by similar language, requiring each regulated industry to pay its proportionate share of the cost of regulation. The purpose of a fee charged by the department, whether the fee is for an application, an examination, or another purpose, is to enable the department to be self-supporting and each regulatory program to be self-sustaining. The department therefore must periodically evaluate its operations to determine whether the department's fee structure equitably allocates the cost of regulation as required by statute.

A key regulatory function for which the cost of operations is no longer adequately funded by existing fees is applications processing for banks, trust companies, and money services businesses. Application fees for money services businesses are addressed in this adoption. Adopted amendments to §15.2, concerning application fees for state banks, and §21.2, concerning application fees for trust companies, appear elsewhere in this issue of the *Texas Register.*

Section 33.27 specifies filing and investigation fees applicable to corporate applications filed with the department by money services businesses and others pursuant to the Money Services Act. The adopted fee increases are necessary because revenue from applications and other corporate filings has not kept pace with the department's operational costs, which have increased over the years due to inflation, the need to attract, hire and retain qualified personnel, and the additional time and attention required by the increasing complexity of filed applications. Revenue generated by these fees covered only about one-half of the cost of the application processing function.

Adopted amendments to §33.27 increase the amount of most money service business application fees, and these adjustments are long overdue. Most of these fees have not been adjusted since 2006, see the August 25, 2006, issue of the *Texas Register* (31 TexReg 6643). Based upon the department's experience since that time in processing and acting upon applications, renewals and other approvals required in connection with the regulation of money services businesses, several fees are increased to better match actual cost of regulation with the service provided. The application fee for a money transmission license increased from $2,500 to $10,000, the fee for a temporary money transmission license increased from $1,500 to $2,500, and the application fee for a currency exchange license increased from $2,500 to $5,000. In addition, the application fee for a change of control increased from $600 to $1,000, and the fee for a request for prior determination of control increased from $300 to $500.

The Department received no comments regarding the proposed repeal and amended section.

7 TAC §33.21

The repeal of §33.21 is adopted pursuant to Finance Code, §151.102(a), which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305916
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: January 2, 2014
Proposal publication date: November 1, 2013
For further information, please call: (512) 475-1300

7 TAC §33.27

The amendment of §33.27 is adopted pursuant to Finance Code, §151.102(a), specifically §151.102(a)(5), which authorizes the commission to adopt rules necessary or appropriate to recover the cost of maintaining and operating the department and the cost of administering and enforcing Finance Code, Chapter 151, and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to achieve the purposes of Chapter 151. Certain of the fees adopted for amendment in §33.27 are also authorized by Finance Code, §§151.207(b)(1), 151.304(b)(1), 151.306(a)(5), 151.504(b)(1), 151.605(c)(3), and 151.605(i).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201305917
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: January 2, 2014
Proposal publication date: November 1, 2013
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PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 53. ADDITIONAL OFFICES

7 TAC §§53.1, 53.2, 53.5

The Finance Commission of Texas (the Commission) adopts amendments to 7 TAC Chapter 53, §53.1, concerning Establishment and Operation of Additional Offices; §53.2, concerning Types of Additional Offices; §53.5, concerning Loan Production Offices (Loan Offices), Administrative Offices, and Deposit Production Offices, without changes to the text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7555).

In general, the purpose of the amendments is to conform rules to existing business practices and clarify existing rules.

The 30-day comment period ended December 2, 2013, during which no comments were received on the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302 and §66.002, which grant rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Title 3, Subtitle B.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201305918
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: January 2, 2014
Proposal publication date: November 1, 2013
For further information, please call: (512) 475-1297

CHAPTER 75. APPLICATIONS

SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.31, 75.32, 75.34

The Finance Commission of Texas (the Commission) adopts amendments to 7 TAC Chapter 75, §75.31, concerning Establishment and Operations of Additional Offices; §75.32, concerning Types of Additional Offices; and §75.34, concerning Loan Production Offices (Loan Offices), Administrative Offices, and Deposit Production Offices, without changes to the text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7556).

In general, the purpose of the amendments is to conform rules to existing business practices and clarify existing rules.

The 30-day comment period ended December 2, 2013, during which no comments were received on the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302 and §96.002, which grant rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Title 3, Subtitle C.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305919
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: January 2, 2014
Proposal publication date: November 1, 2013
For further information, please call: (512) 475-1297

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CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.73

The Finance Commission of Texas (the Commission) adopts amendments to 7 TAC Chapter 77, §77.73, concerning Investment in Banking Premises and Other Real Estate Owned, without changes to the text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7557).

In general, the purpose of the amendments is to conform rules to existing business practices and clarify existing rules.

The 30-day comment period ended December 2, 2013, during which no comments were received on the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302 and §96.002, which grant rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 93.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305920
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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Proposal publication date: November 1, 2013
For further information, please call: (512) 475-1297

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

The Finance Commission of Texas (commission) adopts amendments to §§88.101, 88.102, 88.103, 88.107, 88.201, 88.202, and 88.305, concerning Consumer Debt Management Services. The adopted changes affect rules contained in Subchapter A, concerning Registration Procedures; Subchapter B, concerning Annual Requirements; and Subchapter C, concerning Operational Requirements. The commission adopts the amendments without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7558).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to 7 TAC Chapter 88 is to implement changes resulting from the commission's review of Chapter 88 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 88 was published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 6044). The agency did not receive any comments on the notice of intention to review.

The amendments to Chapter 88 are technical in nature. In particular, the technical corrections provide clarification on registration procedures, improved grammar and punctuation, consistent terminology, and other minor changes. Any Chapter 88 rule not included in this adoption will be maintained in its current form. The individual purposes of the amendments to each section are provided in the following paragraphs.

Section 88.101, which contains the definition of principal party, has two revisions to improve grammar. First, the verb "shall" has been changed to "will" in the introductory paragraph since the latter term is reflective of a more modern and plain language approach in regulations. Second, the phrase "to include" has been replaced with "including" in paragraph (1) to improve readability.

Section 88.102, Filing of New Application, has experienced several changes to provide consistency, improved grammar, and more accurate punctuation. In §88.102(b)(1)(A)(vi), the words "electronic mail" will be abbreviated to the commonly used term "e-mail," which is consistent with subsection (a). In §88.102(b)(3)(A), the word "services" will be inserted after "debt management." The resulting phrase of "debt management services business" provides more consistent terminology throughout the chapter. A similar consistency change has been made in §88.102(b)(5)(B)(iii) by inserting the word "liability" after the word "professional" in two instances. The amended phrase of "professional liability insurance policy" is uniform with the current language in clause (ii) of subparagraph (B).

To enhance the grammar and punctuation throughout §88.102, commas have been added after "$100,000" in the following provisions: subsection (b)(5)(A)(i)(I)(-b-), subsection (b)(5)(A)(ii)(I)(-b-), and subsection (b)(5)(B)(i). In addition, a more precise citation to the Texas Business and Commerce Code has been added to §88.102(b)(6).

Section 88.103 describes how an application for a debt management services provider registration is processed, including a description of when an application is complete, as well as an explanation of what may occur if an applicant fails to complete an application. Subsection (a) has been revised for this adoption to clarify when a response will be provided by the agency, as follows: "The agency will respond to incomplete applications within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance." The amendments to §88.103(a) remove notification of complete applications and change the initial review time from "15 working days" to "14 calendar days," as consistent with agency practice.

In addition, technical corrections have been made throughout §88.103. To provide proper formatting, the word "it" has been relocated in subsection (b) and the tagline has been removed

from subsection (f)(2). In subsection (d), the citation to the contested case rules has been revised for clarity.

Section 88.107 outlines the required fees for debt management services providers. In subsection (a), the hyphen has been removed from the term "nonrefundable," as this hyphen is deemed unnecessary by modern usage guides. In subsection (e), the phrase "not to exceed" has been added so that annual fees may be discounted when appropriate.

In §88.201, Annual Renewal, parentheticals listing the titles of two internal references made to other rules in the chapter have been added in accordance with Texas Register guidelines.

Section 88.202(c) relating to annual reports has been streamlined by deleting the unnecessary language after "calendar year."

To improve grammar in §88.305, Prohibited Acts and Practices, the word "and" has been replaced with "when" in the first sentence. The amended phrase to end the first sentence reads: "when no fee is associated with the payment."

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §§88.101 - 88.103, 88.107

These amendments are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 394, Subchapter C.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305922
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 2, 2014
Proposal publication date: November 1, 2013
For further information, please call: (512) 936-7621

SUBCHAPTER B. ANNUAL REQUIREMENTS

7 TAC §88.201, §88.202

These amendments are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 394, Subchapter C.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 2, 2014
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For further information, please call: (512) 936-7621

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

7 TAC §88.305

These amendments are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 394, Subchapter C.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.3

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.3 concerning Delinquent Audits and Related Issues, with changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7396). The rule as proposed has been changed to clarify the circumstances under which funds might be withheld for failure to submit a Single Audit Certification Form.

REASONED JUSTIFICATION. This Rule requires Subrecipients and Affiliates to submit a Single Audit Certification Form indicat-

ing whether or not they have expended $500,000 or more in federal and/or state funds. Subrecipients and Affiliates who have expended more than $500,000 in Federal and/or state funds must submit a Single Audit. Failure to do so may result in suspension of payments under current contracts, the inability to enter into new contracts, and/or renew existing contracts.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from October 25, 2013, through November 25, 2013, with comments received from: (1) Stella Rodriguez, Texas Association of Community Action Agencies and (2) Brad Manning with the Texas Neighborhood Services.

COMMENT SUMMARY: Commenters (1) and (2) suggested that the language in §1.3(d) was too punitive and/or not in accord with federal funding source statutes regarding remedies or sanctions related to the Single Audit Certification Form. Specifically, Commenter (2) expressed a concern because the proposed rule could be interpreted to provide that even after a delinquent report or audit certification was received, funds would continue to be withheld and contracts would not be executed.

STAFF RESPONSE: Staff agrees and recommends the following change:

(d) In accordance with OMB Circular A-133 §.225 and the State of Texas Single Audit Circular §.225 the Department may suspend and cease payments under all active contracts and/or not renew or enter into a new contract with a Subrecipient or Affiliate until receipt of the required Single Audit Certification form or Single Audit.

COMMENT SUMMARY: Commenter (1) indicated that the Department did not have a right to require the use of the Single Audit Certification Form and recommends either the elimination of the form or having its failure of submission to carry a lesser penalty.

STAFF RESPONSE: The Single Audit Certification Form is not an additional subject matter audit requirement but is used as a tool to assist in the Department's compliance with A-133 requirements by recording and tracking whether or not an audit is required of its Subrecipients or contractors. The Department will have difficulty in complying with the A-133 requirements if it is unable to determine if a Subrecipient was required to complete a Single Audit. In addition, the Department cannot utilize the final reported expenditure of the Subrecipient's TDHCA awards, since the Department program fiscal year expenditures may not meet the threshold, but the Subrecipient may have other federal/state program expenditures that cause it to meet the threshold. Therefore, no change is recommended.

COMMENT SUMMARY: Commenter (1) recommends deleting the citation to the State of Texas Audit Circular stating that the reference to federal audit requirements is sufficient.

STAFF RESPONSE: Subrecipients that receive no federal funds are not governed by federal audit requirements. Thus, the citation to the State of Texas Audit Circular is needed. Therefore, no change is recommended.

COMMENT SUMMARY: Commenter (1) recommends specific language stating that the Department will follow federal statutes regarding any suspension, reduction, or termination of funding.

STAFF RESPONSE: The Department does not think specific language is necessary because its rules could not be interpreted to violate federal law. Therefore, no change is recommended.

The Board approved the final order adopting the amendments on December 12, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The amendments affect no other code, article, or statute.

§1.3. Delinquent Audits and Related Issues.

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

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this title.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Single Audit--An audit report required by Office of Management and Budget (OMB) Circular A-133 or Texas Government Code, Chapter 738, Uniform Grant and Contract Management.

(4) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds received by the Subrecipient.

(5) Subrecipient--Includes any entity receiving funds or awards from the Department.

(b) Subrecipients and Affiliates are required to submit a Single Audit Certification form within two (2) months after the end of their fiscal year indicating whether they exceeded the expenditure threshold of $500,000 for their respective fiscal year.

(c) Subrecipients and Affiliates that expend $500,000 or more in federal and/or state awards must have a Single Audit or program-specific audit conducted and submit the audit to the Department the earlier of thirty (30) days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal year.

(d) In accordance with OMB Circular A-133 §.225 and the State of Texas Single Audit Circular §.225 the Department may suspend and cease payments under all active contracts and/or not renew or enter into a new contract with a Subrecipient or Affiliate until receipt of the required Single Audit Certification form or Single Audit.

(e) In accordance with §1.5 of this subchapter (relating to Previous Participation Reviews), if a Subrecipient or Affiliate applies for funding or an award from the Department, the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to the Executive Award Review Advisory Committee.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305948
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2014
Proposal publication date: October 25, 2013
For further information, please call: (512) 475-3959

10 TAC §1.19

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, Subchapter A, §1.19 concerning Deobligated Funds without changes to the proposal as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7397). New 10 TAC §1.19 is published concurrently with this repeal in this issue of the *Texas Register.*

REASONED JUSTIFICATION. The purpose of the repeal is to allow for adoption of a simplified policy for the use of deobligated or other available funds the program governs. The Department accepted public comments between October 18, 2013, and November 20, 2013. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on December 12, 2013.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305941
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2014
Proposal publication date: October 25, 2013
For further information, please call: (512) 475-3959

10 TAC §1.19

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Subchapter A, §1.19 concerning the Reallocation of Financial Assistance, without changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7398) and will not be republished. The purpose of the new section is to set forth a simplified policy for the use of deobligated funds. The repeal of 10 TAC §1.19 is published concurrently with this new section in this issue of the *Texas Register.*

REASONED JUSTIFICATION. The purpose of the adopted new rule is to provide greater clarity regarding which contract or program funds are covered by the rule; to allow for the reprogramming of funds into activities already authorized by the Board for that program's funds without recurrent Board approval; to ensure that the rule does not unduly limit or restrict the Department in using funds for permissible activities for which there is a relevant need that has been identified by the Board; to add flexibility to the language relating to the setting aside of HOME funds for the amelioration of disasters (recovery); and to remove details regarding which events trigger a deobligation, since those are captured elsewhere in program rules and guidance.

The Department accepted public comments between October 18, 2013, and November 20, 2013. Comments regarding the repeal were accepted in writing and by fax. No comments were received.

The Board adopted the new rule at the December 12, 2013, meeting of the Board.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. The new rule affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201305940
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: October 25, 2013
For further information, please call: (512) 475-3959

10 TAC §1.21

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.21, relating to Action by Department if Outstanding Balances Exist without changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7399). The rule will not be republished.

REASONED JUSTIFICATION. This Rule provides notice to Persons who may request certain actions that their request may be denied or delayed if required fees are past due and/or if they have past due loan payments.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from October 25, 2013 through November 25, 2013. No comments were received concerning the amendments.

The Board approved the final order adopting the amendments on December 12, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The amendments affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305949

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2014
Proposal publication date: October 25, 2013
For further information, please call: (512) 475-3959

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS
SUBCHAPTER H. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM
10 TAC §5.801

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC §5.801, concerning the Project Access Program, without changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7400) and will not be republished. The purpose of the amendment is to make updates to the Project Access program.

REASONED JUSTIFICATION. The Department determined that in order to serve people with disabilities exiting out of institutions more effectively to make changes to the Project Access Program based on feedback from the Department's Disability Advisory Workgroup. This rule more effectively serves people with disabilities exiting institutions by doing the following: 1) clarifying that the Department's Section 8 program has an explicit preference for Project Access vouchers; 2) clarifying that a household will maintain their eligibility status on the Project Access waiting list if they: Apply for the waiting list prior to exiting the institution and receive continuous assistance from the HOME Investment Partnership program from the time of exit of the institution to the receipt of the Project Access Voucher; 3) allowing someone that exits an institution with assistance from a HOME Investment Partnership program and loses that assistance due to lack of funding from the Participating Jurisdiction to qualify for the At-Risk category; and 4) clarifying that an entire household can qualify for Project Access as long as one person, including a minor child, in the household qualifies for the program requirements.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from October 25, 2013, through November 25, 2013, with comments received from: (1) Judy Telge, Coastal Bend Center for Independent Living.

COMMENT: Commenter (1) supports the proposed rule amendment and also indicated that she liked that being eligible for Project Access voucher is not tied to being on a public housing authority (PHA) waiting list.

STAFF RESPONSE: The Department staff appreciates the support of the rule change comment. However, Project Access is itself a PHA voucher program with a waiting list and eligibility for the program has not been tied to being on another PHA waiting list.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The amendment affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2013.

TRD-201305939
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2014
Proposal publication date: October 25, 2013
For further information, please call: (512) 475-3959

SUBCHAPTER L. COMPLIANCE MONITORING
10 TAC §5.2101

The Texas Department of Housing and Community Affairs (the "Department") adopts 10 TAC Chapter 5, Community Affairs Programs, Subchapter L, Community Affairs Compliance Monitoring Rules, §5.2101, concerning Purpose and Overview, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6792). The rule will not be republished.

REASONED JUSTIFICATION. This subchapter sets forth a procedure for monitoring the Department's Community Affairs programs. This rule establishes the scope and nature of monitoring the Compliance Division will conduct for Subrecipients of Community Affairs programs.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from October 4, 2013, through November 4, 2013. Comment was received from the Texas Association of Community Action Agencies (TACAA).

COMMENT SUMMARY: TACAA commented that they are in support of the rule.

STAFF RESPONSE: Staff appreciates the feedback on the rule.

The Board approved the final order adopting the new section on December 12, 2013.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201305950

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 475-3959

CHAPTER 10. UNIFORM MULTIFAMILY RULES
SUBCHAPTER H. INCOME AND RENT LIMITS

10 TAC §10.1003

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 10, Subchapter H, Income and Rent Limits, §10.1003, concerning Tax Exempt Bond Developments, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6794). The rule will not be republished.

REASONED JUSTIFICATION. This rule prescribes the manner in which income and rent limits will be calculated for Tax Exempt Bond Developments.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from October 4, 2013, through November 4, 2013. No comments were received concerning the amendments.

The Board approved the final order adopting the amendments on December 12, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The amendments affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: October 4, 2013
For further information, please call: (512) 475-3959

10 TAC §10.1005

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, §10.1005, concerning HOME and NSP without changes to the proposed text as published in the October 4, 2013 issue of the Texas Register (38 TexReg 6795) and will not be republished. Proposed §10.1004 is withdrawn.

REASONED JUSTIFICATION. This Rule adopts the manner in which income and rent limits will be calculated for HOME and NSP.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from October 4, 2013, through November 4, 2013. No comments were received concerning the new section.

The Board approved the final order adopting the new section on December 12, 2013.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-3959

CHAPTER 23. SINGLE FAMILY HOME PROGRAM
SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, Subchapter A, §23.1, concerning Purpose, and §23.2, concerning Definitions, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6801). The rules will not be republished.

REASONED JUSTIFICATION. The purpose of the amendments is to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, to add clarity to the State HOME Rule.

The Department accepted public comment between October 4, 2013, and November 4, 2013. Comments regarding the amendments were accepted in writing and by e-mail. No comments were received concerning the specific provisions of Subchapter A; however the following general comments were received from: (2) Kay Howard, A&J HOWCO Services, Inc., and (4) Jean Langendorf, Easter Seals of Central Texas.

General Comments

COMMENT SUMMARY: Commenter (4) recommended that the Department add language to the Single Family HOME Program Rule related to reasonable accommodation requests to further demonstrate a commitment to furthering fair housing.

STAFF RESPONSE: The Department is committed to furthering fair housing in all of its programs and to its obligations under the Fair Housing Act and related statutes. The Department will be proposing a rule change in December 2013 that specifically addresses reasonable accommodation requests that will apply to Department programs through a more holistic approach than could be accomplished by adding language to the Single Family HOME Program Rule. Staff recommends no change to the rule.

COMMENT SUMMARY: Commenter (2) commented on the HOME allocation method and recommended that additional funds should be allocated to single family activities rather than multifamily activities.

STAFF RESPONSE: The HOME allocation method is part of the State of Texas Consolidated Plan: One-Year Action Plan and is not part of the Single Family HOME Rules. Staff recommends no change to the rule.

COMMENT SUMMARY: Commenter (2) recommended that the Department provide a set of construction plans that meet all the state and federal requirements, including energy efficiency, for participating applicants.

STAFF RESPONSE: The Department will be issuing a revised set of property standards in 2014 to add specificity to rehabilitation and reconstruction standards in order to ensure that adequate improvements are made to support the long-term viability of HOME-funded construction activities. These property standards will also ensure compliance with the recently revised federal HOME Program Final Rule at 24 CFR Part 92. While the Department is not planning to provide stock construction plans, the revised standards will cover method and material expectations, as well as energy efficiency standards to assist communities with the development of construction plans that are appropriate to the area where HOME activities will occur. Staff recommends no change to the rule.

The Board approved the final order adopting the amendments on December 12, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, Subchapter B, §§23.20 - 23.29, concerning Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds. Section 23.24 and §23.26 are adopted with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6803). Sections 23.20 - 23.23, 23.25, and 23.27 - 23.29 are adopted without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* and will not be republished.

REASONED JUSTIFICATION. The Department finds a need to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, and to add clarity to the State HOME Rule.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The Department accepted public comment between October 4, 2013, and November 4, 2013. Comments regarding the amendments were accepted in writing and by e-mail, with comments received from: (2) Kay Howard, A&J HOWCO Services, Inc., and (4) Jean Langendorf, Easter Seals of Central Texas.

§23.23(c)

COMMENT SUMMARY: Commenter (4) recommends that the time to cure a deficiency remain at ten days, which is the same timeline that the HOME Staff has to review project set-ups and draws.

STAFF RESPONSE: The rule at §23.21(c) is applicable to Applicants submitting applications for HOME funding, and does not impact the timeline for Administrators who wish to cure an Administrative Deficiency at the time of project setup. Additionally, staff review and response time is not codified in rule. The ten-day timeline for Administrators to cure administrative deficiencies is located in the General Administrative Requirements at §23.28(12), to which no changes were recommended. Staff recommends no change to the rule.

§23.24(3)

COMMENT SUMMARY: Commenter (4) requests changing the reference to the Central Contractor Registration (CCR) to System for Award Management (SAM).

STAFF RESPONSE: Staff agrees that the rule should be updated to include the federal System for Award Management. Staff recommends that the language be added.

§23.25(b)

COMMENT SUMMARY: Commenter (2) recommends that the terms for Contract awards for Homeowner Rehabilitation Assistance change from 24 months to 36 months.

STAFF RESPONSE: The Department's implementation of the Reservation System allows Administrators to continuously administer or apply to administer HOME activities beyond 24 months. Additionally, the recertification process ensures that the Department has the opportunity to review applicants on

a biennial basis to verify their eligibility to participate. Staff recommends no change to the rule.

§23.26(a)

COMMENT SUMMARY: Commenter (2) recommends that the terms for Reservation System Participant Agreement change from 24 months to 36 months.

STAFF RESPONSE: The Reservation System process allows Administrators to reserve funds after a household is deemed income and program eligible on a first come first serve basis. This process allows all Administrators access to HOME funds. Administrators also have the option to request a reservation system participant recertification in order to continue assisting eligible households. The recertification process ensures that the Department has the opportunity to review applicants on a biennial basis to verify their eligibility to participate. Staff recommends no change to the rule.

§23.26(e)

COMMENT SUMMARY: Commenter (2) requests for the Household Commitment Contract completion period change from nine months to twelve months.

STAFF RESPONSE: Staff agrees that the time necessary to execute documents, demolish and construct a unit, including delays, may require more than nine months. Staff recommends amendment to this section to allow twelve months from the execution of the Household Commitment Contract for completion of construction.

§23.26(f)

COMMENT SUMMARY: Commenter (2) requests that a three month extension be allowed if the construction period changes from nine months to twelve months.

STAFF RESPONSE: The current proposed amendment to this subsection is a six-month extension to the Household Commitment Contract. Staff agrees that a three-month extension is feasible because the construction completion period under §23.26(e) will be twelve months.

The Board approved the final order adopting the amendments on December 12, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

§23.24. General Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with:

(1) an Applicant certification of compliance with state and federal laws, rules and guidance governing the HOME Program;

(2) a resolution signed and dated within the six (6) months preceding the Application submission date from the Applicant's direct governing body which includes:

(A) authorization of the submission of the Application;

(B) commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;

(C) source of funds for Match obligation and Match dollar amount, if applicable.

(i) Except for Match that is proposed to meet Application threshold criteria or is otherwise proposed to be provided, the Match requirement is not in effect until January 1, 2015. Any Projects submitted to the Department under a RSP Agreement or Contract award prior to January 1, 2015 will not be required to provide Match as outlined in §23.30 and §23.40 of this chapter. Agreements under the Persons with Disabilities set-aside, Disaster Relief set-aside, and Tenant-Based Rental Assistance program are exempt from the Match requirement.

(ii) An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match, is required at the time of Application submission.

(iii) For Applications submitted to become an RSP, the Department may withhold disbursements if, after every four reservation of funds, sufficient Match documentation has not been provided.

(iv) The Department shall use population figures from the most recently available U.S. Census to determine the applicable tier for an Application. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria in the NOFA and may be different for each Activity.

(D) name and title of the person authorized to represent the organization; and

(E) name and title of the person with signature authority to execute a contract and loan documents, where applicable;

(3) any Applicant requesting $25,000 or more must be registered in the System for Award Management (SAM) and have a current Data Universal Numbering System (DUNS) number. If the property will be owned by a partnership, the partnership must be the registrant. If a partnership will be receiving funds under the CHDO set-aside, the partnership and the CHDO must both be registered;

(4) an Application fee, to be defined in the NOFA or in this chapter;

(5) to be eligible for a new Contract award, an Applicant must have committed funds to at least 80 percent of the total number of contractually required Households or has committed at least 80 percent of the total Project funds on their current Contract for the same Activity. This provision shall not apply to Applications submitted for disaster relief funding or those with an exclusively different Service Area;

(6) an Application must be substantially complete when received by the Department. An Application will be terminated if an entire volume of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application; and

(7) the Department may incentivize or provide preference to Applicants targeting very low and extremely low income Households or to Applicants that have successfully executed a previous HOME Contract with the Department. Such incentives may be established in the form of threshold or selection criteria in the NOFA and may be different for each Activity.

§23.26. Reservation System Participant (RSP) Agreement.

(a) Terms of Agreement. RSP Agreement will have a twenty-four (24) month term for all Activities. Execution of an RSP Agree-

ment does not guarantee the availability of funds under a reservation system.

(b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to five (5) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to thirty (30) at any given time. All required documentation for the reservation of funds must be submitted to the Department twenty (20) days prior to the end of RSP Agreement term.

(c) Extremely Low-Income Households. Except for Households served with disaster relief, homebuyer assistance, or single family development funds, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30% area median family income (AMFI) for the county in which they reside or have an income that is lower than the statewide extremely low-income limit as defined by the U.S. Department of Housing and Urban Development (HUD).

(d) Match. An RSP must meet the tiered Match requirements per Activity for at least every fourth Household submitted and approved for assistance. For example, if Match is not provided for the first three Households assisted by an RSP, the Match provided to the fourth Household must meet the Match requirement for all four Households.

(e) Completion of Construction. For Projects involving construction, an RSP must complete construction within twelve (12) months from the Commitment of Funds for the Project.

(f) Extensions. The Executive Director or his/her designee may approve one three (3) month time extension to the Commitment of Funds to allow for the completion of construction.

(g) An RSP must remain in good standing with the Department, the state of Texas, and HUD. If an RSP is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
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For further information, please call: (512) 475-3959

SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, Subchapter C, §§23.30 - 23.32, concerning Homeowner Rehabilitation Assistance Program, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6808). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds a need to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, and to add clarity to the State HOME Rule.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The Department accepted public comment between October 4, 2013, and November 4, 2013. Comments regarding the amendments were accepted in writing and by e-mail, with comments received from: (2) Kay Howard, A&J HOWCO Services, Inc., (3) Jesus C. "Jesse" Mendoza, Jr. Realtor.

§23.31(a)(4)

COMMENT SUMMARY: Commenter (2) states that the disaster requirement for commitment of HOME funds within 12 months of the date of the disaster is not feasible.

STAFF RESPONSE: This amendment is made to conform to the HOME Federal regulation at 24 CFR 92.2, Definition of reconstruction, and cannot be changed. Assistance to a household who is a victim of a disaster can still be assisted if the twelve month commitment is not met; however the assistance will be considered new construction applicable to the federal affordability period requirements. Staff recommends no change to the rule.

§23.32(a)(14)

COMMENT SUMMARY: Commenter (3) recommends comps or comparisons instead of appraisals be used to satisfy the after rehabilitation value.

STAFF RESPONSE: The cost of a real estate appraisal is an eligible soft cost under the HOME program, and is reimbursable to Administrators. An appraisal is the recommended method to determine the value of the unit by HUD; however, the current rule allows for other valuation methods with approval of the Department. The Department does not feel that a comparison study performed by a realtor is equivalent to an appraisal conducted by a licensed appraiser. Staff recommends no change to the rule.

The Board approved the final order adopting the amendments on December 12, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
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For further information, please call: (512) 475-3959

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SUBCHAPTER D. HOMEBUYER ASSISTANCE PROGRAM

10 TAC §§23.40 - 23.42

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, Subchapter D, §§23.40 - 23.42, concerning Homebuyer Assistance Program, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6812). The rules will not be republished.

REASONED JUSTIFICATION: The Department finds a need to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, and to add clarity to the State HOME Rule.

The Department accepted public comment between October 4, 2013 and November 4, 2013. Comments regarding the amendments were accepted in writing and by e-mail. No comments were received concerning the proposed amendments.

The Board approved the final order adopting the amendments on December 12, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-3959

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SUBCHAPTER E. CONTRACT FOR DEED CONVERSION PROGRAM

10 TAC §§23.50 - 23.52

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, Subchapter E, §§23.50 - 23.52, concerning Contract for Deed Conversion Program, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6814). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds a need to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, to add clarity to the State HOME Rule.

The Department accepted public comment between October 4, 2013, and November 4, 2013. Comments regarding the amendments were accepted in writing and by e-mail. No comments were received concerning the amendments to Subchapter E.

The Board approved the final order adopting the amendments on December 12, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.60 - 23.62

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, Subchapter F, §§23.60 - 23.62, concerning Tenant-Based Rental Assistance Program. Section 23.61 is adopted with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6817). Section 23.60 and §23.62 are adopted without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6817) and will not be republished.

REASONED JUSTIFICATION: The Department finds a need to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, and to add clarity to the State HOME Rule.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS: The Department accepted public comment between October 4, 2013 and November 4, 2013. Comments regarding the amendments were accepted in writing and by e-mail, with comments received from: (1) Belinda Carlton, Texas Council for Developmental Disabilities, and (4) Jean Langendorf, Easter Seals of Central Texas.

§23.61(e)

COMMENT SUMMARY: Commenters (1) and (4) recommend including HUD Section 811 and HUD Section 202 program to the waiting list requirement for TBRA.

STAFF RESPONSE: Staff agrees that the requirement to be placed on a Section 8 Housing Choice Voucher waiting list may be infeasible in some areas of the state due to lengthy wait times and inconsistency in waiting list procedures at various Public Housing Authorities. The addition of Section 811 and Section 202 waiting lists will enable households with elderly members or members who are persons with disabilities to maximize their

time of assistance under the Tenant-Based Rental Assistance program. Staff recommends adding Section 202 and Section 811 housing as eligible waiting lists.

The Board approved the final order adopting the amendments on December 12, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

§23.61. Tenant-Based Rental Assistance (TBRA) Program Requirements.

(a) The Household must participate in a self-sufficiency program.

(b) The amount of assistance will be determined using the Housing Choice Voucher method.

(c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's gross monthly income.

(e) Project funds are limited to:

(1) rental subsidy: The rental subsidy term is limited to no more than twenty-four (24) months under a contract award. Households served under a reservation agreement may be granted a twelve (12) month extension, for a period of assistance not to exceed thirty-six (36) month cumulatively. A household may be eligible for an additional twenty-four months of assistance, for a period of assistance not to exceed sixty (60) months cumulatively, if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and

(C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available;

(2) security deposit: no more than the amount equal to two (2) month's rent for the unit.

(3) utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard must be the current U.S. Department of Housing and Urban Development (HUD) "Fair Market Rent for the Housing Choice Voucher Program" at the time the household is income certified (or the rental coupon is executed). In instances where the area rents exceed the established Fair Market Rent, the Administrator may submit a written request to the Department for approval of a higher payment standard. The request must be evidenced by a market study. For HOME-assisted units, the payment standard must be the current HOME rent applicable for the unit.

(g) The lease agreement start date must correspond to the date of the TBRA rental coupon contract. The dates may be different only upon prior approval of the Executive Director or his/her designee.

(h) Project soft costs are limited to $1,200 per Household assisted for determining household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's service area.

(i) Funds for Administrative costs are limited to 4 percent of Direct Project Costs, excluding Match funds. Funds for Administrative costs may be increased an additional 1 percent of Direct Project Costs if Match is provided in an amount equal to 5 percent or more of Direct Project Costs.

(j) Rental units must be inspected prior to occupancy, annually upon Household recertification, and must comply with Housing Quality Standards established by HUD.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.70 - 23.72

The Texas Department of Housing and Community Affairs ("Department") adopts amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter G, §§23.70 - 23.72, concerning Single Family Development Program, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6819). The rules will not be republished.

REASONED JUSTIFICATION: The Department finds a need to revise language to conform the state HOME Rule with the federal HOME Investment Partnerships Program (HOME) regulations at 24 CFR Part 92, as amended on July 24, 2013, and to add clarity to the State HOME Rule.

The Department accepted public comment between October 4, 2013, and November 4, 2013. Comments regarding the amendments were accepted in writing and by e-mail. No comments were received concerning the amendments to Subchapter G.

The Board approved the final order adopting the amendments on December 12, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. APPLICATION AND CERTIFICATION OF COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS

10 TAC §23.80

The Texas Department of Housing and Community Affairs ("Department") adopts the repeal of 10 TAC Chapter 23, Single Family HOME Program, Subchapter H, §23.80, concerning Application Procedures for Certification of Community Housing Development Organization (CHDO), without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6822).

REASONED JUSTIFICATION: The Department finds that the repealed section is duplicative of the requirements in the HUD HOME Final Rule at 24 CFR Part 92 and does not add clarity to the State HOME Rule.

The Department accepted public comment between October 4, 2013, and November 4, 2013. Comments regarding the repeal were accepted in writing and by e-mail. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on December 12, 2013.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §§16.2 - 16.6, 16.8, 16.9

The Texas Historical Commission (the "Commission") adopts amendments to §§16.2 - 16.6 and new §16.8, relating to Contracts for Public Works, and new §16.9, relating to Disclosure of Personal Customer Information. Sections 16.2 - 16.6 and new §16.8 are adopted without changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5816). New §16.9 is adopted with changes and will be republished.

These amendments and new sections are needed as part of the Commission's overall effort to clarify language in the administration of the program. The new sections are adopted to comply with legislative changes to applicable statutes. Section 16.8 is required under Texas Government Code, §442.101, Authority to Contract, which requires the Commission to adopt policies and procedures consistent with Texas Government Code, Chapter 2254, and other applicable state procurement statutes and rules for soliciting and awarding contracts. Section 16.9 relates to Texas Government Code, §442.0054, in which the Commission is directed to develop rules related to disclosure of personal customer information.

One comment was received requesting clarifying language with respect to §16.9(e)(2) related to the release of confidential information to other agencies. The Commission has made the requested change in language to limit disclosure of information to governmental agencies with authority to request and use the information.

The amendments and new sections are adopted under the authority of Texas Government Code, §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of Texas Government Code, Chapter 442.

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

§16.9. Disclosure of Personal Customer Information.

(a) In accordance with Texas Government Code, §442.0054, the Texas Public Information Act is not applicable to personal customer information obtained from persons who purchase customer products, licenses, or services from the Commission.

(b) The Commission will collect and use personal customer information only as required to carry out Commission functions.

(c) This chapter shall apply to customer information regardless of the form in which the customer information is maintained and shall also apply to mailing lists.

(d) The Commission will not sell or exchange any personal customer information as described in subsection (a) of this section.

(e) The name and address and telephone, social security, driver's license, bank account, credit card, or charge card number of a person who purchases customer products or pays for admission or facility use at a State Historic Site operated by the Commission will not be disclosed except as otherwise required by law or as authorized:

(1) to federal or state law enforcement agency if the agency provides a lawfully issued subpoena; or

(2) to another governmental body with a statutory authority to request and use the information that agrees to maintain confidentiality of the information.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2013.

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Mark Wolfe
Executive Director
Texas Historical Commission
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Proposal publication date: September 6, 2013
For further information, please call: (512) 463-8817

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 57. FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

16 TAC §57.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 57, §57.80, regarding the For-Profit Legal Service Contract Companies program, with changes to the rule as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7032). The section is republished.

The adoption implements Texas Occupations Code, §51.202, which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, Section 2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease will not adversely affect the administration and enforcement of the program.

The amendments to §57.80 reduce the registration, renewal, and other fees as part of the Department's annual fee review. Also, original and renewal fees have been separated into distinct subsections for these individual fees. In a technical change from the proposed rule, the reduction in the administrator renewal fee, as was proposed for other renewal fee reductions, should not take effect until February 1, 2014. This delay is necessary because renewal notices will have been sent with the current fee amounts.

Other amendments to this section change the wording for the "Revised/Duplicate License/Certificate/Permit/Registration" fee to be consistent with the same fee in other Department programs. In addition, the Revised/Duplicate License/Certificate/Permit/Registration fees for company and administrator and sales representative have been separated out and added to this section.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7032). The deadline for public comments was November 12, 2013. The Department received four public comments on the proposed rule during the 30-day public comment period.

Public Comment 1: An individual submitted a comment supporting the amendments to reduce the registration, renewal and other associated fees. The individual also suggested additional changes to either waive the fees after making a one-time payment or to have the renewals occur every five years.

Department Response: The statute requires that registration fees be paid on an annual basis, and the rules reflect this statutory requirement by stating that a registration is valid for one year and must be renewed annually. The Department did not make any changes to the rule proposal as a result of this comment.

Public Comment 2: An individual, who is a sales representative, submitted a comment asking why the $20 annual registration fee for a sales representative was not proposed to be reduced.

Department Response: The Department has performed a financial analysis of the fees necessary to administer the Legal Service Contract program as a whole and to issue individual registrations. The sales representative initial and renewal registration is already set at a minimal amount of $20 per year. The Department did not make any changes to the rule proposal as a result of this comment.

Public Comment 3: Another individual, who is a sales representative, commented that the sales representative registration should be renewed every two years for $20 instead of every year for $20.

Department Response: Texas Occupations Code, §953.055, requires sales representatives to pay an annual registration fee. Rule §57.22 reflects this statutory requirement by stating that a sales representative registration is valid for one year and must be renewed annually. The Department did not make any changes to the rule proposal as a result of this comment.

Public Comment 4: Another individual expressed support for only having to pay $20 in the upcoming year to renew the individual's "Prepaid Legal contract to the State of Texas."

Department Response: It appears that the individual is referring to the $20 annual renewal fee for sales representatives. The proposed rules do not change the annual renewal fee for sales representatives, although the fee appears new in the proposed rules because original and renewal fees have been separated. This fee will remain at $20 per year. The Department did not make any changes to the rule proposal as a result of this comment.

The amendments are adopted under Texas Occupations Code, Chapter 51 and 953, which authorize the Commission, the Department's governing body, to adopt rules as necessary to im-

plement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and 953. No other statutes, articles, or codes are affected by the adoption.

§57.80. Fees.

(a) All fees are non-refundable.

(b) The original registration fee is:

(1) $250 for a company that sells 0 to 1,000 legal service contracts during the twelve (12) months preceding the date of the application;

(2) $500 for a company that sells 1,001 to 2,500 legal service contracts during the twelve (12) months preceding the date of the application;

(3) $750 for a company that sells 2,501 or more legal service contracts during the twelve (12) months preceding the date of the application;

(4) $20 for a sales representative; and

(5) $25 for an administrator.

(c) The renewal registration fee is:

(1) For a company that sells 0 to 1,000 legal service contracts during the twelve (12) months preceding the date of the application, $500 for registrations expiring before February 1, 2014; $250 for registrations expiring on or after February 1, 2014;

(2) For a company that sells 1,001 to 2,500 legal service contracts during the twelve (12) months preceding the date of the application, $750 for registrations expiring before February 1, 2014; $500 for registrations expiring on or after February 1, 2014;

(3) For a company that sells 2,501 or more legal service contracts during the twelve (12) months preceding the date of the application, $1,000 for registrations expiring before February 1, 2014; $750 for registrations expiring on or after February 1, 2014;

(4) $20 for a sales representative; and

(5) $50 for administrator registrations expiring before February 1, 2014; $25 for administrator registrations expiring on or after February 1, 2014.

(d) For purposes of subsection (b) if a company that sold no legal service contracts in this state in the preceding year previously sold prepaid legal service contracts under Article 5.13-1, Texas Insurance Code, the company's registration fee shall be based on the number of prepaid legal service contracts sold under the Texas Insurance Code in the preceding year.

(e) By March 1 of each year, companies must also pay an annual premium tax replacement fee. The premium tax replacement fee is equal to the difference between an amount equal to 1.7% of the amount a company collects for legal service contracts sold by the company in Texas in the previous year and the amount the company paid to the state in franchise taxes in the same year.

(f) Revised/Duplicate License/Certificate/Permit/Registration fees:

(1) Company and administrator--$25

(2) Sales representative--$20

(g) Late renewal fees for registrations issued under this chapter are provided for in §60.83 of this title (relating to Late Renewal Fees).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS

16 TAC §59.3

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 59, §59.3, regarding the Continuing Education Requirements program, with changes to the rule as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6822). The section is republished.

The adoption implements Senate Bill (SB) 562, 83rd Legislature, Regular Session (2013) which amended Texas Occupations Code, Chapter 1703, relating to the regulation of polygraph examiners regarding mandatory continuing education.

The amendments to §59.3 add polygraph examiners to the list of occupations regulated by the Department that require continuing education.

Additional amendments to §59.3 implement House Bill (HB) 3038, 83rd Legislature, Regular Session (2013) which eliminated the licensing and regulation of associate auctioneers. Since the Department no longer regulates associate auctioneers, the adoption deletes them from the list of occupations that require continuing education.

Water well and pump installer apprentices are also deleted from §59.3. The Department believes that Texas Occupations Code, Chapters 1901 and 1902, do not authorize this regulation. Effective March 1, 2013, 16 TAC Chapter 76 was amended to remove all references to water well drillers and pump installer apprentices.

Editorial corrections have been made to the published rule proposal to remove all references to associate auctioneers and water well and pump installer apprentices.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6822). The deadline for public comments was November 4, 2013. The Department did not receive any comments on the rule proposal during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapter 51, 1703, 1802, 1901, and 1902, which authorize the Commission, the Department's governing body, to adopt rules

as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and 1703. No other statutes, articles, or codes are affected by the adoption.

§59.3. Purpose and Applicability.

These rules are promulgated to establish continuing education provider and course requirements for the following occupations regulated by the Department of Licensing and Regulation:

(1) Air conditioning and refrigeration contractors, as provided by Texas Occupations Code, Chapter 1302. Additional continuing education requirements relating to air conditioning and refrigeration contractors may be found in Chapter 75 of this title.

(2) Auctioneers, as provided by Texas Occupations Code, Chapter 1802. Additional continuing education requirements relating to auctioneers may be found in Chapter 67 of this title.

(3) Cosmetologists, as provided by Texas Occupations Code, Chapters 1602 and 1603. Additional continuing education requirements relating to cosmetologists may be found in Chapter 83 of this title.

(4) Electricians, as provided by Texas Occupations Code, Chapter 1305. Additional continuing education requirements relating to electricians may be found in Chapter 73 of this title.

(5) Licensed court interpreters, as provided by Texas Government Code, Chapter 57, Subchapter C. Additional continuing education requirements relating to licensed court interpreters may be found in Chapter 80 of this title.

(6) Polygraph examiners, as provided by Texas Occupations Code, Chapter 1703. Additional continuing education requirements relating to polygraph examiners may be found in Chapter 88 of this title.

(7) Property tax consultants, as provided by Texas Occupations Code, Chapter 1152. Additional continuing education requirements relating to property tax consultants may be found in Chapter 66 of this title.

(8) Registered accessibility specialists, as provided by Texas Government Code, Chapter 469. Additional continuing education requirements relating to registered accessibility specialists may be found in Chapter 68 of this title.

(9) Towing operators, as provided by Texas Occupations Code, Chapter 2308. Additional continuing education requirements relating to towing operators may be found in Chapter 86 of this title.

(10) Water well drillers and pump installers, as provided by Texas Occupations Code, Chapters 1901 and 1902. Additional continuing education requirements relating to water well drillers and pump installers may be found in Chapter 76 of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Commission of Licensing and Regulation (Commission) adopts the repeal of an existing rule at 16 Texas Administrative Code (TAC) Chapter 60, §60.32; new §§60.34, 60.35, 60.500 - 60.504, 60.510, 60.520, and 60.521; and amendments to §60.83, regarding the Procedural Rules of the Commission and the Department, without changes to the proposal as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7034). The text of the rules will not be republished.

The Texas Legislature during the 83rd Regular Session (2013) passed several bills affecting occupational licensing of military service members, veterans and spouses. Senate Bill 242 (SB 242) amended Texas Occupations Code, Chapter 51, the enabling statute for the Department and the Commission, the Department's governing body. Senate Bill 162 (SB 162) and House Bill 2254 (HB 2254) amended Texas Occupations Code, Chapter 55, related to military service members, veterans and spouses. House Bill 2029 (HB 2029) amended Texas Occupations Code, Chapter 1305, related to electricians.

SB 162, SB 242, and HB 2029 allow military service members and veterans to receive credit for verified military service, training, or education toward fulfilling the licensing requirements, other than examination requirements, for a license issued by the Department. HB 2254 allows an applicant to receive credit for verified military service, training, or education that is relevant to toward meeting any required apprenticeship licensing requirements. In addition, SB 162 allows a military spouse who holds a current license in another jurisdiction that has licensing requirements that are substantially equivalent to the Texas licensing requirements to obtain a Texas license in an expedited manner. In addition, HB 2029 directs the Department to expedite the issuance of a temporary license or license by endorsement or reciprocity under Texas Occupations Code, Chapter 1305 to an applicant who has verified military experience and holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the Texas license requirements.

The rule adoption is necessary to implement the changes made by SB 162, SB 242, HB 2029 and HB 2254 to Texas Occupations Code, Chapters 51, 55 and 1305. The rules, in part, consolidate existing rules and new rules regarding military service members, veterans and spouses into one new subchapter under 16 TAC Chapter 60, Subchapter K. This new structure is intended to assist military service members, veterans and spouses and Department staff in easily locating provisions specific to military service members, veterans and spouses.

Senate Bill 1892 (SB 1892) amended Texas Government Code, Chapter 434, Veteran Assistance Agencies, to expand the composition of the Texas Coordinating Council for Veterans Services to include additional state agencies including the Department; however, no rules are necessary to implement SB 1892.

The adoption repeals §60.32, Licensing for Military Spouses. This section was adopted in 2011 to implement Senate Bill 1733 (SB 1733), 82nd Legislature, Regular Session (2011). This section implemented Texas Occupations Code §55.004, Alternative License Procedure for Military Spouse. Section 60.32 is repealed and relocated to new Subchapter K as new §60.521. The text of the rule has been amended to reflect the existing military spouse provision under Texas Occupations Code §55.004, and the new military spouse provisions under Texas Occupations Code §55.005 and §55.006.

The rule adoption adds new §60.34, Substantially Equivalent License Requirements, which identifies the criteria the Department will review and evaluate in determining whether the licensing requirements of another state or jurisdiction are "substantially equivalent" to the Texas licensing requirements as they are applicable to a specific license. The criteria include education requirements, examination requirements, experience requirements, training requirements, and license requirements. This section is applicable for: (1) programs that have statutory authority to review and consider "substantially equivalent" license requirements of other states or jurisdictions for purposes of obtaining a specific Texas license; or (2) applicants who are military spouses and who are applying for a license under 16 TAC Chapter 60, Subchapter K.

The rule adoption adds new §60.35, Determining the Amount of Experience, Service, Training, or Education, which specifies how the Department will determine the amount of experience an applicant has for purposes of meeting specific licensing requirements or for purposes of an applicant receiving credit for verified military experience, service, training, or education. This section is applicable for: (1) programs that have statutory authority to review and determine an applicant's experience, service, training, or education toward meeting the licensing requirements of a specific license; (2) applicants who are military spouses and who are applying for a license under 16 TAC Chapter 60, Subchapter K; or (3) applicants who are military service members or military veterans and who are applying for a license under 16 TAC Chapter 60, Subchapter K.

The adoption amends §60.83, Late Renewal Fees, by deleting subsection (e) regarding late renewal fees for an individual who fails to renew a license in a timely manner because the individual was on active duty in the U.S. armed forces serving outside Texas. This subsection implemented Texas Occupations Code §55.002, Exemption from Penalty for Failure to Renew License, which was enacted during the 76th Legislature, Regular Session (1999). Section 60.83(e) is deleted and relocated under new Subchapter K as new §60.503, Exemption from Late Renewal Fees.

The adoption adds a new Subchapter K, Licensing Provisions Related to Military Service Members, Veterans and Spouses, to the rules under 16 TAC Chapter 60. These rules include new §§60.500 - 60.504, 60.510, 60.520, and 60.521.

New §60.500, Military Subchapter, states the purpose of new Subchapter K, which is to implement the provisions related to military service members, veterans and spouses under Texas Occupations Code, Chapters 51 and 55, and other statutes applicable to specific programs regulated by the Commission and the Department.

New §60.501, Military Definitions, adds definitions for terms used in new Subchapter K. Terms include: apprenticeship or apprenticeship program; armed forces of the United States; military service member; military veteran; National Guard; reserve component of the armed forces of the United States, including the National Guard; and state military service of any state.

New §60.502, Determining the Amount of Military Experience, Service, Training, or Education, specifies how the Department will determine and credit verified military experience, service, training, or education toward meeting the licensing requirements for a specific license.

New §60.503, Exemption from Late Renewal Fees, is similar to the former §60.83(e), which is deleted and relocated under new Subchapter K. This section, which implements Texas Occupations Code §55.002, provides that an individual is exempt from late renewal fees if the individual was on active duty in the armed forces of the United States serving outside Texas at the time the license was due for renewal. The individual is exempt from paying the late renewal fee if the individual furnishes to the Department satisfactory documentation that the individual failed to renew in a timely manner due to serving on active duty in the armed forces of the United States outside of Texas.

New §60.504, Extension of Certain Deadlines, implements Texas Occupations Code §55.003. This section applies to an individual who holds a license, 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 the proper authority. This section allows the individual additional time, as prescribed by the rule, to complete any continuing education requirements and any other requirements related to the renewal of the individual's license.

New §60.510, Military Service Members and Military Veterans--License Requirements for Applicants with Military Experience, Service, Training, or Education, implements Texas Occupations Code §§51.4013, 55.005 (as added by HB 2254, 83rd Legislature, Regular Session, (2013)), 55.007, and 1305.1645(a). (Two new §55.005's were enacted during the 83rd Legislature, Regular Session (2013). HB 2254 added one section regarding apprenticeship requirements for applicants with military experience, and SB 162 added the other section regarding expedited license procedures for military spouses.) New §60.510 sets out the procedures for a military service member or a military veteran as defined under §60.501 to receive credit for verified military experience, service, training, or education in meeting the licensing requirements, other than examination requirements, for a specific license or in meeting any apprenticeship licensing requirements.

The adoption adds two new rules related to licensing for military spouses, §60.520 and §60.521. Two separate rules are adopted because the statutory provisions related to military spouses, Texas Occupations Code §§55.004, 55.005 and 55.006, have different scopes in terms of which military spouses are included in the provisions and how the military spouses may apply for and obtain a Texas license.

Texas Occupations Code §55.004, which was added by the 82nd Legislature, Regular Session, (2011), applies to "an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States." A military spouse under §55.004 may obtain a Texas license issued by the Department in a variety of ways: (1) the applicant holds a current license in another state that has licensing requirements that are substantially equivalent to the Texas licensing requirements; (2) the applicant within the five years preceding the application date held the license in Texas and that license expired while the ap-

plicant lived in another state for at least six months; (3) the applicant demonstrates competency by alternative methods as specified by rule; and (4) the applicant obtains a license by endorsement in the same manner as prescribed under Texas Occupations Code §51.404.

Texas Occupations Code §55.005 and §55.006, which were added by SB 162, 83rd Legislature, Regular Session (2013), apply to a "military spouse" as defined under §55.001. Under new §55.001(1-b), a "military spouse" is a "person who is married to a military service member who is currently on active duty." Under new §55.001(1-a) and new §60.501, a "military service member" is defined as a "person who is currently serving 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." A military spouse under §55.005 and §55.006 may obtain a Texas license issued by the Department, in an expedited manner, if the applicant holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the Texas licensing requirements.

Sections 55.004 - 55.006 all apply to a spouse of a person serving on active duty in the armed forces of the United States. Because of the current statute, a spouse of a person serving on active duty in the armed forces of the United States may apply for a license under new §60.520 or new §60.521.

New §60.520, Expedited Licensing Procedures for Military Spouses--Substantially Equivalent Licenses, implements Texas Occupations Code §§55.004, 55.005 (as added by SB 162, 83rd Legislature, Regular Session (2013)) and 55.006, as they relate to "substantially equivalent" licenses. (Two new §55.005's were enacted during the 83rd Legislature, Regular Session (2013). HB 2254 added one section regarding apprenticeship requirements for applicants with military experience, and SB 162 added the other section regarding expedited license procedures for military spouses.)

Section 60.520 applies to the spouse of a person who is currently serving 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. This section does not apply to the spouse of a military service member who is not on active duty. A military spouse, as defined under this section, is eligible to obtain a license issued by the Department, in an expedited manner, if the military spouse applicant holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the Texas licensing requirements. The rule specifies the documentation to be submitted with the license application, and it states that the individual must comply with all license renewal requirements for the specific license obtained.

New §60.521, Additional and Alternative Licensing Procedures for Military Spouses of Active Duty Members of the Armed Forces of the United States, relocates and amends the current rule under §60.32, Licensing for Military Spouses, which is repealed. New §60.521 implements Texas Occupations Code §55.004, Alternative License Procedure for Military Spouse, to the extent that the provisions are not already addressed under Texas Occupations Code §55.005 and §55.006 and new §60.520.

Section 60.521 only applies to a person who is the spouse of a person serving on active duty as a member of the armed forces of the United States. This section does not apply to the spouse of a person serving: (1) in the reserve component of the armed forces of the United States, including the National Guard; (2) in the state military service of any state; or (3) in any branch of the military where the person is not on active duty.

This section implements additional and alternative methods for a military spouse, as defined under this section, to obtain a Texas license. These methods are in addition to the "substantially equivalent license" method described under §60.520. First, a military spouse under this section may obtain a license if the applicant within the five years preceding the application date held the license in Texas and that license expired while the applicant lived in another state for at least six months. Second, the Department may allow a military spouse applicant under this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a specific license. These alternative methods are specified in the rule and are the same methods as contained in §60.32, which is repealed. Third, the Executive Director may issue a license by endorsement to a military spouse applicant under this section in the same manner as prescribed under Texas Occupations Code §51.404.

In addition, the rule specifies the documentation to be submitted with the license application, and it states that the individual must comply with all license renewal requirements for the specific license obtained.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7034). The deadline for public comments was November 12, 2013. The Department received one public comment on the proposed rules during the 30-day public comment period.

Public Comment 1: The individual commented that there should be greater leniency for military spouses with respect to reciprocity, since military spouses move from state to state and lose valuable income in the process, and in some cases, are unable to work. The individual explained the individual's particular situation in trying to obtain a Texas barber instructor license through reciprocity.

Department Response: SB 1733 (82nd Legislature, Regular Session, 2011) and SB 162 (83rd Legislature, Regular Session, 2013) were enacted to assist military spouses in obtaining a Texas license if they held a current license from a state or jurisdiction that has "substantially equivalent" licensing requirements as the Texas licensing requirements. SB 1733 also provided a military spouse of an active duty member of the armed forces of the United States with several additional options for obtaining a Texas license. The rules address the military spouse licensing requirements. The rules also identify the criteria the Department uses to determine whether the licensing requirements of another state or jurisdiction are substantially equivalent to the Texas licensing requirements. The Department will continue to evaluate other states' licensing requirements for specific licenses to ensure that the Department recognizes substantially equivalent licenses for military spouses. The Department did not make any changes to the proposed rules based on this public comment.

SUBCHAPTER C. LICENSE APPLICATIONS

16 TAC §60.32

The repeal is adopted under Texas Occupations Code, Chapters 51, 55, and 1305, which authorize the Commission, the Depart-

ment's governing body, to adopt rules as necessary to implement these chapters.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51, 55 and 1305. No other statutes, articles, or codes are affected by the adopted repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

16 TAC §60.34, §60.35

The new sections are adopted under Texas Occupations Code, Chapters 51, 55, and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 55 and 1305. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. FEES

16 TAC §60.83

The amendment is adopted under Texas Occupations Code, Chapters 51, 55, and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 55 and 1305. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, VETERANS, AND SPOUSES

16 TAC §§60.500 - 60.504, 60.510, 60.520, 60.521

The new sections are adopted under Texas Occupations Code, Chapters 51, 55, and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 55 and 1305. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 61. COMBATIVE SPORTS

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

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 61, §§61.10, 61.20, 61.23, 61.30, 61.40, 61.48, 61.80 and 61.120, regarding the Combative Sports program, without changes to the proposed text as published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 5973). The text of the rules will not be republished.

The adoption implements Senate Bill 618 (SB 618), 83rd Legislature, Regular Session (2013), which amended Texas Occupations Code, Chapter 2052.

The 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 licensing ringside physicians, the amendments authorize the Department to assign individuals with unrestricted and unlimited

Texas Medical Board licenses who demonstrate by training, education or experience, that they have knowledge in the diagnoses and treatment of sports related trauma. The amendments 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 amendments eliminate the timekeeper license type and instead establish an assignment process for timekeepers assigned to combative sports events.

A summary of each rule amendment was included in the notice of proposed rules published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 5973).

The Department drafted and distributed the proposed amendments to persons internal and external to the agency. The proposed amendments were published in the September 13, 2013, issue of the *Texas Register.* The deadline for public comment was October 14, 2013. The Department did not receive any comments to the proposed amendments during the 30-day public comment period.

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
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For further information, please call: (512) 463-7348

CHAPTER 64. TEMPORARY COMMON WORKER EMPLOYERS

16 TAC §64.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 64, §64.80, regarding the Temporary Common Worker Employers program, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6823). The text of the rule will not be republished.

The adoption implements Texas Occupations Code, §51.202 which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, Section 2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease will not adversely affect the administration and enforcement of the program.

The amendments to §64.80 reduce the application fee for an initial and renewal license as part of the Department's annual fee review. Other amendments to this section add the "Revised/Duplicate License/Certificate/Permit/Registration" fee to be consistent with the same fee in other Department programs.

The Department drafted and distributed the proposed amendments to persons internal and external to the agency. The proposed amendments were published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6823). The deadline for public comments was November 4, 2013. The Department did not receive any comments on the proposed amendments during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapter 51, and Texas Labor Code, Chapter 92, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, and Texas Labor Code, Chapter 92. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

16 TAC §66.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 66, §66.80, regarding the Registration of Property Tax Consultant program, without changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7040). The text of the rule will not be republished.

The adoption is necessary to implement Texas Occupations Code, §51.202 which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, Section 2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease will not adversely affect the administration and enforcement of the program.

The amendments to §66.80 reduce the application fee for a property tax consultant and delete the examination fee as part of the Department's annual fee review. The examination fee is no longer necessary in rule because examinees pay a fee directly to the Department's examination vendor. Also, the wording for the issuance of a duplicate registration fee has been changed to "Revised/Duplicate License/Certificate/Permit/Registration" to be consistent with the same fee in other Department programs.

The Department drafted and distributed the proposed amendments to persons internal and external to the agency. The proposed amendments were published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7040). The deadline for public comments was November 12, 2013. The Department did not receive any comments on the proposed amendments during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1152, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 67. AUCTIONEERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 67, §§67.20, 67.25, 67.40 and 67.65, and the repeal of §§67.21, 67.71, 67.72 and 67.94, regarding the Auctioneers program, without changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7041). The text of the rules will not be republished.

The amendments to §67.10 and §67.70, and new §67.30 are adopted with changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register.* The text of the rules will be republished.

The adoption implements House Bill (HB) 3038, 83rd Legislature, Regular Session (2013), which amended Texas Occupations Code, Chapter 1802. The provisions of HB 3038 included the abolishment of the associate auctioneer program, increasing the minimum balance in the Auctioneer Education and Recovery Fund, the appointment of a new member to the Auctioneer Education Advisory Board, and an expansion of the role of the Auctioneer Education Advisory Board. HB 3038 also amended Chapter 1802 of the Texas Occupations Code by broadening the definition of 'auctioneer' and the threshold for requiring an auctioneer license.

The new law became effective June 14, 2013. Due to the necessity of implementing and adopting rules that address the immediate administrative changes, a subsequent rulemaking will address more complex and substantive changes which require additional review and analysis.

The amendments to §67.10 add new definitions to clarify terms used in HB 3038 and to delete definitions no longer needed.

Amendments to §67.20 delete the requirement for experience as an associate auctioneer to qualify for an auctioneer license.

Section 67.21 is repealed because the associate auctioneer program was abolished by HB 3038.

Amendments to §67.25 delete language relating to associate auctioneers.

New §67.30 clarifies the exemption in Texas Occupations Code, §1802.002(4) relating to persons selling their own property at auction and to clarify under what circumstances multiple offers to purchase real estate are not competitive bids.

Amendments to §67.40 increase the minimums allowed to be paid from the Auctioneer Education and Recovery Fund for claims made against it.

Amendments to §67.65 add a new member to and incorporate the new name of the Advisory Board to "Auctioneer Education Advisory Board" and expand the authority of the Board to include advising the Commission on operational matters and common practices within the auction industry.

The amendments to §67.70 update the references to advertisements, remove references to supervision of an associate auctioneer, and in subsection (e) adopted new language that does not limit auctions to live bid calling.

Section 67.71 and §67.72 are repealed because they relate to the licensing and regulation of associate auctioneers which was repealed by HB 3038.

Section 67.94 is also repealed because the authority for disciplinary action in subsection (a) is contained in Texas Occupations Code, Chapters 51, 53, and 1802, and subsection (b) is not supported by statutory authority.

The Department drafted and distributed the proposal to persons internal and external to the agency. The proposal was published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7041). The deadline for public comments was November 12,

2013. The Department received comments from 15 interested parties regarding the proposal during the 30-day public comment period.

Public Comment. Commenter expressed that the definition of "operated" in §67.10(5) needs further clarification to define what is an auction 'conducted in Texas.'

Department Response. The Department agrees that further study needs to be done in order to clarify what an auction 'conducted in Texas' is specifically with regard to the possibility of online auctions. The Department has planned further rulemaking with regard to HB 3038's changes to address the more substantive changes. This rulemaking primarily implements the administrative changes brought about by the new law.

Public Comment. One commenter recommended a change to §67.25.

Department Response. Section 67.25(g) and (h) were proposed to be deleted because they are obsolete language needed at a prior rule filing.

Public Comment. Two commenters expressed that new §67.30(a) is not enforceable.

Department Response. The Department acknowledges the difficulty of proving that a person acquired property with the intention of selling it 'at auction'.

Public Comment. Two commenters expressed that new §67.30(b) is not enforceable because it is too confusing.

Department Response. The Department believes that the rule may be confusing as written, the rule means that if there are material terms other than price that are not the same then the 'bidding' does not rise to a 'competitive bid' as defined in Chapter 1802 of the Texas Occupations Code. A competitive bid for purposes of Chapter 1802 of the Texas Occupations Code is if the only material term subject to bid is the price of the item. The Department will consider rewording the rule, and using FAQ's to help explain.

Public Comment. Commenter expressed that §67.70(c) should be amended to delete only the reference to 'associate auctioneer' and leave the requirement to not allow an unlicensed auctioneer to call bids intact.

Department Response. The Department is of the opinion that since auctioneering is no longer just live bid calling, the rule be amended to include all auctioneering acts now contemplated by HB 3038.

Public Comment. Several commenters expressed that in proposed §67.70(f), the email address needs to be specified for notifying the Department.

Department Response. The Department concurs and the words 'email address' is replaced with 'web site www.tdlr.texas.gov'.

Public Comment. The Department received several comments regarding §67.70(a) and how to add a license number on a one-line yellow page ad.

Department Response. The Department is of the opinion that all advertising should contain a license number, to be consistent with other programs and for consumer protection. However, a general listing in a yellow page or other phone directory may not be an advertisement and solicitation for auction business.

Public Comment. The Department received one comment that §67.70(b) was too vague and the word 'internet' was too ambiguous.

Department Response. The Department agrees and has replaced 'internet' with 'website'.

Public Comment. The Department received one comment that §67.70(b) was overburdensome with regard to 'social media pages, phone numbers'.

Department Response. The Department is of the opinion that if an auctioneer owns an auction business and has placed that business on social media, the auctioneer should provide that information to the Department.

Public Comment. The Department received one comment related to §67.70(d) that it is ambiguous, regarding ensuring the announcement of certain information.

Department Response. The language has been in the rule; however, the Department acknowledges that taking the 'and' out will make it easier to understand.

Public Comment. The Department received a comment that asked how §67.70(a) is compared to §1802.051(b).

Department Response. Section 67.70(a) is required for any advertisement. Texas Occupations Code, §1802.051(b) is required for any advertisement of an auction.

Public Comment. One commenter requested that we 'keep the continuing education program.'

Department Response. The Department is authorized in §51.401, Texas Occupations Code, to require continuing education in a particular program. The continuing education for auctioneers has not been discontinued, except for the associate auctioneer program which the Department no longer has authority to regulate.

Public Comment. The Department received a comment that recommended that in §67.30(a) and (b) the reference to the Code should be 1802 and not 1801.

Department Response. The Department concurs and has made the recommended corrections.

Public Comment. Commenter expressed concern regarding why §67.94 was repealed, and mentioned, "I question the reason for the deletion of this chapter as the bill only added 'or executive director' to the law?"

Department Response. The Department is of the opinion that §67.94(a) is repetitive, in that there are other statutes which provide for these sanctions. The Department's opinion is that §67.94(b) is not supported by statutory authority. The 'adding of the executive director to the law' was apparently in Section 16 of the bill, adding the words 'executive director'. This section does not relate to revocation for criminal offenses, however; but with the procedures the Department follows when notifying a person of a hearing.

Public Comment. Commenter expressed generally that there are no new rules addressing the many definitions in §1802.001 and §1802.002, saying specifically, "Are there no new rules or rule changes expected to be issued on these changes in the law and the Department is to enforce the law as is without rules?"

Department Response. The Department's response is to assure the commenter that ongoing study is required in order to further

clarify and define these new terms, and the new, broader scope of 'auctioneering' in Texas.

Public Comment. The Department received six comments that expressed unhappiness with the loss of the Associate Auctioneer program.

Department Response. Because the abolishment of the program was in the statute (HB 3038), the Department has no option but to remove the program, as it has no authority to continue it without statutory authority.

Public Comment. Commenter requested that the licensing requirements in §67.20 be removed because they are duplicated in §1802.052 of the Texas Occupations Code.

Department Response. The Department acknowledges that the requirements are set forth both in the statute and the rules. In order to be consistent with other programs, and rulemaking, the Department is of the opinion that §67.20 remain.

Public Comment. Commenter commented generally that a new §67.30(c) be added to require unlicensed persons selling their own property to announce if they are conducting an auction.

Department Response. Persons who are exempt from the law are not required to follow auction rules.

Public Comment. Commenter recommended a rule be added to §67.65 addressing waiving the quarterly auction board meeting requirement in the statute.

Department Response. It is not necessary to do this to have meetings less than once a quarter.

Public Comment. Commenter generally commented that the Auctioneer Board should become more involved in decisions regarding the Fund.

Department Response. With the expanded role of the Board in §1802.101 of the Texas Occupations Code, this could be a discussion for an agenda item in future meetings.

Public Comment. Commenter generally commented that the Department should be 'upgrading to learning outcome assessments' from traditional course objectives.

Department Response. The Department welcomes input with regard to the education model for Auctioneers.

Public Comment. Commenter generally expressed satisfaction with proposal; one commenter expressed general dissatisfaction with the proposal.

Department Response. We encourage all comments and welcome public participation in the rulemaking process.

The Auctioneer Education Advisory Board met on November 20, 2013, to discuss the proposed rules as published in the *Texas Register* and the public comments received.

16 TAC §§67.10, 67.20, 67.25, 67.30, 67.40, 67.65, 67.70

The amendments and new rule are adopted under Texas Occupations Code, Chapters 51 and 1802, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1802. No other statutes, articles, or codes are affected by the adoption.

§67.10. Definitions.

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

(1) Advertisement--Any written, print, or broadcast commercial message that promotes the services of an auctioneer. For purposes of this chapter and the Texas Occupations Code, a general listing in a telephone directory that does not otherwise solicit auction business is not an advertisement.

(2) Auction listing contract--An agreement executed by the auctioneer and the seller which authorizes the auctioneer to conduct the auction, identifies the property to be sold at auction, and sets out the terms of the agreement and the rights and responsibilities of each party. This includes seller and consignment contracts.

(3) Auction without reserve (also called Absolute Auction)--An auction in which property put up for sale is sold to the highest bidder, where the seller may not withdraw the property from the auction after the auctioneer calls for bids unless no bid is made in a reasonable time, and where the seller may not bid himself or through an agent.

(4) Auction with reserve--An auction in which the seller or his agent reserves the right to establish a minimum bid, accept or reject any and all bids, and withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer.

(5) Operated--To have fiduciary and operational responsibilities for an auction company's auctions conducted in Texas.

§67.30. Exemptions.

(a) A person is not engaged in the business of selling property at auction for purposes of Texas Occupations Code, §1802.002(4), if the person acquired the property at issue for reasons other than resale at auction.

(b) For purposes of this chapter and Texas Occupations Code, Chapter 1802, the sale of real or personal property is not considered to be a competitive bid subject to this chapter if all of the material terms of the transaction other than price are not the same.

§67.70. Requirements--Auctioneer.

(a) An auctioneer must list his license number in any advertisement.

(b) An auctioneer must furnish to the department the name, including assumed names, addresses, website, or social media pages, and phone numbers of all auction companies which he owns or operates.

(c) A licensee may not allow any person who is not a licensed auctioneer to call bids at a sale.

(d) A licensee may not knowingly use, or permit the use of false bidders at any auction.

(e) Before beginning an auction, a licensee must ensure the announcement of, give notice, display notice or disclose:

(1) that the auctioneer conducting the sale is licensed by the department;

(2) the terms and conditions of the sale including whether a buyer's premium will be assessed; and

(3) if the owner, consignor, or agent thereof has reserved the right to bid.

(f) If an auctioneer advertises an auction as "absolute" or "without reserve", no lots included may have a minimum bid. Advertising may include the wording, "many lots are without reserve"; however, the auction may not be titled, headed or called an "absolute" or "without reserve" auction unless all lots meet that criteria.

(g) All auctioneers shall notify consumers and service recipients of the name, mailing address, website www.tdlr.texas.gov, and telephone number of the department for purposes of directing complaints to the department. The notification shall be included on any auction listing contract and on at least one of the following. This subsection is effective January 1, 2015.

(1) A sign prominently displayed at the place of the auction or on any auction website;

(2) Bills of sale or receipt to be given to buyers; or

(3) On bidder cards.

(h) An auctioneer who intends to charge a buyer's premium at an auction must state this condition and the amount of the buyer's premium in all advertising for the auction.

(i) Any statement in an advertisement for an auction that alters the meaning of another statement in the advertisement must be in a type font at least as large as the type font of the statement it alters.

(j) An auctioneer must report any change of address to the department within 30 days.

(k) Each licensed auctioneer must:

(1) maintain a separate trust or escrow account in a federally insured bank or savings and loan association, in which shall be deposited all funds belonging to others which shall come into the auctioneers possession;

(2) deposit all proceeds from an auction into his trust or escrow account within 72 hours of the auction unless the owner/consignor of the property auctioned is paid immediately after the sale or the written contract stipulates other terms, such as sight drafts;

(3) pay any public monies, including but not limited to state sales tax, received into the State Treasury at the times and as per the regulations prescribed by law; and

(4) pay all amounts due the seller within 15 banking days of the auction unless otherwise required by statute or a written contract between license holder and seller.

(l) Each licensed auctioneer shall keep records relative to all auctions for at least two years from the date of the sale.

(m) The records for each auction must state the name(s) and address of the owners of the property auctioned, the date of the sale, the name of the auctioneer and clerk for the sale, the gross proceeds, the location and account number of the auctioneer's trust or escrow account, an itemized list of all expenses charged to the consignor or seller, a list of all purchasers at the auction and a description and selling price for each item sold.

(n) In addition, the auctioneer shall keep, as part of the records for each auction, all documents relating to the auction. These documents shall include, but are not limited to, settlement sheets, written contracts, copies of advertising and clerk sheets.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §§67.21, 67.71, 67.72, 67.94

The repeal is adopted under Texas Occupations Code, Chapters 51 and 1802, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1802. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §67.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 67, §67.80, regarding the Auctioneers program, without changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7045). The text of the rule will not be republished.

The adoption implements Texas Occupations Code, §51.202 which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, Section 2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease will not adversely affect the administration and enforcement of the program.

The amendments to §67.80 reduce the curriculum review fee as part of the Department's annual fee review. Also, the wording for the duplicate license fee has been changed to "Revised/Duplicate License/Certificate/Permit/Registration" to be consistent

with the same fee in other Department programs. The examination fee is no longer necessary because examinees pay a fee directly to the Department's examination vendor, therefore it has been deleted.

Additional amendments to §67.80 implement House Bill (HB) 3038, 83rd Legislature, Regular Session (2013) which eliminated the licensing and regulation of associate auctioneers. Since the Department no longer regulates associate auctioneers the adopted amendments delete all fees relating to an associate auctioneer license.

The Department drafted and distributed the proposed amendments to persons internal and external to the agency. The proposed amendments were published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7045). The deadline for public comments was November 12, 2013. The Department did not receive any comments on the proposed amendments during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1802, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1802. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 71. WARRANTORS OF VEHICLE PROTECTION PRODUCTS

16 TAC §71.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 71, §71.80, regarding the Warrantors of Vehicle Protection Products program, with changes to the rule as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6824). The rule will be republished.

The adoption implements Texas Occupations Code, §51.202 which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Department's jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, §2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease will not adversely affect the administration and enforcement of the program.

The amendments to §71.80 reduce registration and renewal fees as part of the Department's annual fee review. Also, the wording for the duplicate or amended registration certificates has been changed to "Revised/Duplicate License/Certificate/Permit/Registration" to be consistent with the same fee in other Department programs.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6824). The deadline for public comments was November 4, 2013. The Department did not receive any comments on the proposed rule during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 2306, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2306. No other statutes, articles, or codes are affected by the adoption.

§71.80. Fees.

(a) All fees are non-refundable.

(b) The original registration fee for a warrantor of vehicle protection products shall be $250.

(c) The renewal registration fee is:

(1) $350 for registrants who became obligated as warrantors of 0 to 999 vehicle protection product warranties during the twelve (12) months preceding the date of the application for registrations expiring before February 1, 2014; $250 for registrations expiring on or after February 1, 2014;

(2) $750 for registrants who became obligated as warrantors of 1,000 to 1,999 vehicle protection product warranties during the twelve (12) months preceding the date of the application for registrations expiring before February 1, 2014; $500 for registrations expiring on or after February 1, 2014; and

(3) $1,000 for registrants who became obligated as warrantors of 2,000 or more vehicle protection product warranties during the twelve (12) months preceding the date of the application.

(d) Revised/Duplicate License/Certificate/Permit/Registration--$25

(e) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 72. PROFESSIONAL EMPLOYER ORGANIZATION

16 TAC §§72.10, 72.20 - 72.23, 72.25, 72.70, 72.71, 72.73

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 72, §§72.10, 72.25, and 72.71 and new §72.73, regarding the Professional Employer Organization (PEO) program (formerly Staff Leasing Services), without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6825). Sections 72.20 - 72.23 and 72.70 are adopted with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6825) and are republished.

The Commission also proposed new §72.72 in the October 4, 2013, issue of the *Texas Register* but will not adopt that section. The Commission will withdraw proposed §72.72 at a future date.

The amendments and new rule implement Senate Bill (SB) 1286, 83rd Legislature, Regular Session (2013) which made changes to Texas Labor Code, Chapter 91. The amendments to the law include replacing the outdated term "staff leasing services company" with "professional employer organization," and also replacing related terms, such as "assigned employee" with "covered employee" and adding new terms "coemployer" and "coemployer relationship." Some of the more substantive changes to the law include authorizing a client company to purchase workers' compensation insurance for covered employees, and for the professional employer organization to offer a self-funded health insurance plan, provided the plan is approved by the Texas Department of Insurance.

The amendments to §72.10 add definitions that clarify some new terms used in SB 1286 and define "offer to perform" to be consistent with other programs regulated by the Department.

The amendments to §§72.20 - 72.23, 72.25, and 72.71 replace "staff leasing" with "professional employer organization" and "assigned employee" with "covered employee."

The amendments to §72.70 rewrite and reorganize the sections to clarify new notice requirements in SB 1286 relating to providing notice to covered employees of the coemployment relationship between a PEO and a client.

New §72.72 was added in the proposed version to clarify that a PEO is responsible for providing to the Department which party in the coemployment relationship (if any) carries workers' compensation insurance. The Department is not adopting new §72.72 at this time.

New §72.73 is added to clarify that a PEO that offers a self-funded health insurance plan to covered employees must provide proof to the Department that the plan is approved by the Texas Department of Insurance.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6825). The deadline for public comments was November 4, 2013. The Department received comments from three interested parties during the 30-day public comment period: (1) an individual representative of a PEO, (2) the National Association of Professional Employer Organizations (NAPEO) and (3) an attorney representing a PEO.

Comment: NAPEO and an individual representative of a PEO questioned the requirement in new §72.72 regarding notifying the Department when workers' compensation is obtained by a client.

Department Response: The Department is of the opinion that §72.72 is not needed, because it is burdensome, and there is a requirement already in the law in Texas Labor Code, §91.042(a-1).

The National Association of Professional Employer Organizations (NAPEO) made several additional comments.

Comment: Section 72.70 should be amended to allow PEOs to notify employees of the coemployment relationship (but not be required to provide the entire agreement) and §72.70(b)(3) modified to receive electronic confirmations from covered employees when covered employees receive notice of coemployment. Reasons given include possible proprietary information contained in the entire agreement.

Department Response: This change seems reasonable in light of the explanation, and the Department will make the change to the first sentence of §72.70(b)(1) as well as the recommended changes to §72.70(b)(3) except for the deletion of the last sentence of §72.70(b)(3).

Comment: Section 72.10(4) should be amended to include only business organizations such that an individual may not be licensed as a PEO.

Department Response: The Department will not license individuals, and does not see the necessity for amending this rule, as it may impair its ability to prosecute unlicensed persons.

Comment: General cleanup amendments to reflect current PEO practices. (§§72.20(e), 72.21(f), 72.22(a)(2) and (4), and 72.23(a)(2) and (f).)

Department Response: The Department agrees that the clerical changes streamline the rules. The rules have been changed in response to this comment.

The amendments and new rule are adopted under Texas Occupations Code, Chapter 51, and Texas Labor Code, Chapter 91, both of which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, and Texas Labor Code, Chapter 91. No other statutes, articles, or codes are affected by the adoption.

§72.20. License Requirements--Full License.

(a) Any person who performs or offers to perform PEO services as defined by the Code, must be licensed with the department.

(b) To obtain an original PEO license, a person must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form, including any applicable attachments or application forms;

(2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7);

(3) fingerprint cards for the applicant and any controlling persons;

(4) a completed criminal history questionnaire, as applicable;

(5) documentation from the Texas Secretary of State recognizing the person's authority to do business in this state;

(6) proof of positive working capital as described under §72.40; and

(7) the required fees.

(c) Each individual applicant and all controlling persons must pass a background investigation that includes:

(1) A comparison of the person's fingerprints by appropriate state or federal law enforcement agencies with fingerprints on file; and

(2) A criminal history check with appropriate state and federal law enforcement agencies.

(d) Falsification of a required document by the applicant is grounds for denial and/or revocation of license.

(e) Falsification of documentation provided by a controlling person disqualifies that person from serving as a controlling person.

§72.21. License Renewal Requirements--Full License.

(a) In order for a PEO to continue operating in this state, a license must be renewed annually.

(b) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) To renew a PEO license, a person must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form, including any applicable attachments or application forms;

(2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7), or a form indicating there has been no change in the personal information form since the previous license application or renewal from each controlling person;

(3) fingerprint cards for any new controlling persons;

(4) a completed criminal history questionnaire, as applicable;

(5) proof of positive working capital as described under §72.40; and

(6) the required fees.

(d) Each individual applicant and all controlling persons of the PEO must submit to a background investigation as described in §72.20(c) each year at the time of renewal.

(e) Falsification of a required document by the applicant is grounds for denial and/or revocation of license.

(f) Falsification of documentation provided by a controlling person disqualifies that person from serving as a controlling person.

(g) The department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Labor Code, Chapter 91, this chapter, or a rule or an order issued by the commission or executive director.

§72.22. License Requirements--Limited License.

(a) To qualify for a limited license, a person at all times must:

(1) employ less than 50 covered employees in this state at any one time;

(2) not provide covered employees to clients that are based or domiciled in the state;

(3) not maintain an office in this state; and

(4) not solicit clients located or domiciled in this state.

(b) A person applying for a limited license must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form, including any applicable attachments or application forms;

(2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7);

(3) a completed criminal history questionnaire, as applicable;

(4) proof of current licensure as a PEO, in good standing, if licensed in another state;

(5) documentation from the Texas Secretary of State recognizing the person's authority to do business in this state;

(6) proof of positive working capital as described under §72.40; and

(7) the required fees.

(c) Falsification of a required document by the applicant is grounds for denial and/or revocation of license.

(d) Falsification of documentation provided by a controlling person disqualifies that person from serving as a controlling person.

(e) After the person obtains the limited license, the person must continue to meet all of the requirements under subsection (a) in order to retain the limited license. Failure to continue meeting the requirements will result in loss of the limited license.

§72.23. License Renewal Requirements--Limited License.

(a) In order for a limited license PEO to continue operating in this state, a limited license must be renewed annually.

(b) Non-receipt of a limited license renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) To continue qualification for a limited license, a person at all times while licensed must:

(1) employ less than 50 covered employees in this state at any one time;

(2) not provide covered employees to clients that are based or domiciled in the state;

(3) not maintain an office in this state; and

(4) not solicit clients located or domiciled in this state.

(d) To renew a limited license, a person must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form, including any applicable attachments or application forms;

(2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7), or a form indicating there has been no change in the personal information form since the previous license application or renewal from each controlling person;

(3) a completed criminal history questionnaire, as applicable;

(4) proof of current licensure as a PEO, in good standing, if licensed in another state;

(5) proof of positive working capital as described under §72.40; and

(6) the required fees.

(e) Falsification of a required document by the applicant is grounds for denial of the application and/or revocation of a license.

(f) Falsification of documentation provided by a controlling person disqualifies that person from serving as a controlling person.

(g) The person must continue to meet all of the requirements under subsection (a) in order to retain the limited license. Failure to continue meeting the requirements will result in loss of the limited license.

§72.70. Responsibilities of Licensee--General.

(a) Notices to Clients.

(1) A licensee must notify its clients of the name, mailing address, and telephone number of the department. The notice also must contain a statement that unresolved complaints concerning a licensee or questions concerning the regulation of PEO's may be addressed to the department.

(2) The notice required by this subsection must be made a part of all agreements between licensees and clients. The notification shall appear in a typeface no smaller than the body of the contract and shall be printed in bold face, all capital letters or contrasting color of ink to set it out from the surrounding written material.

(b) Notices to Covered Employees.

(1) A licensee must provide written notice of a professional employer services agreement to each covered employee that sets forth the general nature of the coemployment relationship, the name, mailing address, website www.tdlr.texas.gov, and telephone number of the department, and a statement that unresolved complaints concerning a licensee or questions concerning the regulation of PEO services may be addressed to the department.

(2) A licensee must notify each covered employee that, pursuant to §91.032(c) of the Code, a client company is solely obligated to pay any wages for which:

(A) an obligation to pay is created by an agreement, contract, plan, or policy between the client company and the covered employee; and

(B) the PEO has not contracted to pay.

(3) A licensee shall have each covered employee either sign a document or electronically acknowledge that the covered employee has received the notice required by §72.70(b)(1) and other notices set forth in this subsection. The signed document or electronic record must be kept on file for two years after employment is terminated. The signed document or electronic record may be included as part of the professional employer services agreement or other agreement with the covered employee or may be a separate document.

(c) Notwithstanding subsection (b)(2), a PEO may process payments for wages that it has not contracted to pay at the request or direction of its clients.

(d) A licensee must update the information provided to the department as part of the original or renewal license application within 45 days after any change to the information.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §72.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 72, §72.80, regarding the Professional Employer Organization program, with changes to the proposed rule as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6828). The rule will be republished.

The adoption implements Texas Occupations Code, §51.202 which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, §2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease will not adversely affect the administration and enforcement of the program.

The amendments to §72.80 reduce the license and renewal fees as part of the Department's annual fee review. Also, the wording for issuance of the duplicate or revised license fee has been changed to "Revised/Duplicate License/Certificate/Permit/Registration" to be consistent with the same fee in other Department programs.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6828). The deadline for public comments was Novem-

ber 4, 2013. The Department did not receive any comments on the proposed rule during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapter 51, and Texas Labor Code, Chapter 91, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, and Texas Labor Code, Chapter 91. No other statutes, articles, or codes are affected by the adoption.

§72.80. Fees.

(a) Application Fees.

(1) All application fees are non-refundable.

(2) The application fee is a required fee that is separate from the required license fee.

(3) The original application fee is $150.

(4) The renewal application fee is $150.

(5) The limited license original application fee is $150.

(6) The limited license renewal application fee is $150.

(b) License Fees.

(1) The license fee is a required fee that is separate from the required application fee.

(2) The original license fee is:

(A) $150 for 0 to 249 assigned employees;

(B) $300 for 250 to 750 assigned employees; and,

(C) $550 for more than 750 assigned employees.

(3) The renewal license fee is:

(A) For 0 to 249 assigned employees, $250 for licenses expiring before February 1, 2014; $150 for licenses expiring on or after February 1, 2014;

(B) For 250 to 750 assigned employees, $500 for licenses expiring before February 1, 2014; $300 for licenses expiring on or after February 1, 2014; and,

(C) For more than 750 assigned employees, $750 for licenses expiring before February 1, 2014; $550 for licenses expiring on or after February 1, 2014.

(4) The limited license original license fee is $150.

(5) The limited license renewal license fee is $750 for licenses expiring before February 1, 2014; $150 for licenses expiring on or after February 1, 2014.

(c) Late renewal fees for licenses and limited licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) Revised/Duplicate License/Certificate/Permit/Registration--$25.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 73. ELECTRICIANS

16 TAC §§73.10, 73.20, 73.24 - 73.26, 73.28, 73.53, 73.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 73, §§73.10, 73.20, 73.25, 73.26, 73.28, 73.53, and 73.100, regarding the Electricians program, without changes to the proposed rules as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6829). The rules will not be republished.

Section 73.24 is adopted with changes to the rule as proposed in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6829) and is republished.

The adoption implements House Bill 796 (H.B. 796), 83rd Legislature, Regular Session (2013) which amended Texas Occupations Code, Chapter 1305 relating to the regulation of electricians and updates the current technical standard to the current edition of the National Electrical Code. The amendments add the journeyman lineman license class into the definitions and administrative procedures for application and qualification for licensure, reciprocity, continuing education, emergency licensure, responsibilities for performing electrical work and update the technical requirement to the latest edition of the National Electrical Code.

The amendments to §73.10 mirror the changes in definition of an instrument in H.B. 796.

The amendments to §73.20 add journeyman linemen to the list of licensee types required to submit applications proving qualification for licensure and to pay an application fee.

The amendments to §73.24 allow journeyman lineman licensees to obtain a reciprocal license in an equivalent state without examination.

Amendments to §73.26 require applicants for licensure as a journeyman lineman to provide verified proof of experience and training on a form acceptable by the Department.

Amendments to §73.28 add journeyman lineman into the list of emergency licenses that may be granted in case of a declared emergency.

The amendments to §73.53 add non-exempt journeyman lineman work into the list of responsibilities of all persons performing this work under applicable code and statutes.

Amendments to §73.100 update technical requirements by adopting the most recent edition of the National Electrical Code as adopted by the National Fire Protection Association, Inc.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 4, 2013, issue of the *Texas Reg-*

ister (38 TexReg 6829). The deadline for public comments was November 4, 2013. The Department received two comments on the proposed rules during the 30-day public comment period.

There was one comment in support of the amendments. It further supported the creation of a master journeyman lineman class. Such a change would need a statutory change and is outside the scope of the posting.

A second comment advocated testing for licensure, work verification from masters only, and a 90-day license. The statute requires testing for licensure, work verification from electrical contractors, electric utilities, electric cooperatives, or municipality owned utilities. A 90-day license is impractical and would increase the cost of the license.

The substance of these rule changes was recommended by the Electrical Safety and Licensing Advisory Board at its meeting on November 7, 2013. The Advisory Board recommended striking §73.24(d) as it is duplicative and somewhat confusing, and unanimously recommended the adoption of the remaining proposed rules.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adoption.

§73.24. Licensing Requirements-Waiver of Examination Requirements.

(a) An applicant who is licensed in another state that has entered into a reciprocity agreement with Texas regarding licensure of electricians, sign electricians, journeyman lineman, or residential appliance installers may obtain an equivalent license in Texas without passing the examination, provided that all other licensure requirements are met, as defined by Texas Occupations Code, Chapter 1305.

(b) The examination requirement is waived if, based upon acceptable proof, the executive director determines that the provisions of §73.21(b) are met.

(c) Acceptable proof of an applicant's qualifications must be presented on a form prescribed by the department that:

(1) certifies completion of the required hours of on-the-job training under the supervision of a master electrician or master sign electrician as appropriate, or

(2) is completed by the municipality or region in which the applicant was licensed for at least one year.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §73.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.80, regarding the Electricians program, without changes to the rule as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6831) and will not be republished.

The adoption implements Texas Occupations Code, §51.202 which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, §2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease will not adversely affect the administration and enforcement of the program.

The amendments to §73.80(a)(5) and (b)(5) include a new fee for application and renewal of a journeyman lineman's license which is a new license class created by House Bill (HB) 796, 83rd Legislature, Regular Session (2013). Other proposed amendments to §73.80 reduce various application and renewal fees as part of the Department's annual fee review.

Amendments to this section also change the wording for revised or duplicate license fees to "Revised/Duplicate License/Certificate/Permit/Registration" fee to be consistent with the same fee in other Department programs. In addition, the Revised/Duplicate License/Certificate/Permit/Registration fees for residential wireman and maintenance electrician have been added to this section.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6831). The deadline for public comments was November 4, 2013. The Department did not receive any comments on the proposed rule during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 75, §75.25 and §75.80 and the repeal of existing rule §75.26, regarding the Air Conditioning and Refrigeration program, without changes to the proposed rules as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6832). The rules will not be republished.

Senate Bill (SB) 383, 83rd Legislature, Regular Session (2013), amended Texas Occupations Code, Chapter 1302, related to the regulation of air conditioning and refrigeration contractors and technicians. SB 383 repealed Subchapter H of Chapter 1302, relating to the regulation of refrigerants and the state certificates of registration to purchase refrigerants, and it repealed other related provisions throughout Chapter 1302. The adopted amendments and repeal implement the changes made by SB 383 to Texas Occupations Code, Chapter 1302. The adoption also includes general clean up by standardizing the duplicate license fee language.

In addition, the Department's Air Conditioning and Refrigeration Contractors Advisory Board recommended at its November 14, 2012, meeting, that the continuing education rules be amended. The Advisory Board recommended that the total number of hours remain at eight hours per license period, but that the number of hours required for statute and rule courses be reduced from two hours to one hour. The adoption implements the Advisory Board's recommendation.

Section 75.25, Continuing Education. The amendments to §75.25 reduce the number of continuing education hours required for statute and rule courses from two hours to one hour. The total number of continuing education hours will remain at eight hours per licensing period. This change will apply to contractor licenses that expire on or after June 1, 2014.

Section 75.26, Sale and Use of Refrigerants--Certificate of Registration. Section 75.26 related to the state certificates of registration to purchase refrigerants is repealed since Subchapter H of Texas Occupations Code, Chapter 1302 was repealed by SB 383. While the state certificates issued by the Department are repealed, persons purchasing refrigerants and equipment containing refrigerants still need to comply with the federal law and regulations for purchasing refrigerants and equipment containing refrigerants, including obtaining the required federal EPA refrigerant certificate.

Section 75.80, Fees. The amendments to §75.80 delete the fees associated with the state certificates of registration to purchase refrigerants, since they are repealed as a result of SB 383. In addition, the wording for the "Revised/Duplicate License/Certificate/Permit/Registration" fee has been changed to be consistent with the same fee in other Department programs.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6832). The deadline for public comments was November 4, 2013. The Department received three public comments on the proposed rules during the 30-day public comment period.

Public Comment 1: One individual commented on unlicensed contractors and asked how a person could purchase air conditioning and refrigeration parts from a vendor with an expired license. The person asked if the vendors could be required to have a current license from a purchaser.

Department Response: The suggestion to regulate the purchase of air conditioning and refrigeration parts would require a statutory change. This change cannot be addressed by rule. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment 2: An individual from Sahara Air commented on the proposal to keep the total number of continuing education hours, but to reduce the number of hours for statute and rule courses. The individual stated that the statute and rule courses may be needed most of all, since the statutes and rules are not always followed now.

Department Response: The total number of continuing education hours that air conditioning and refrigeration contractors must take every year will remain at eight hours. Contractors will still have to take at least one hour of statute and rules courses, and they are not prevented or restricted from taking more than the one hour minimum. The Advisory Board recommended the change to allow some flexibility in the continuing education courses that contractors are required to take every year. In addition, the Advisory Board recommended that industry organizations submit the necessary information to the Department so that industry conferences and seminars could be approved for continuing education credit. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment 3: An individual from Castillo Training commented that the new ACR contractors coming into the individual's classes do not know about the state law. The individual tries to make sure that when the students leave the individual's 8-hour course they understand the law. The individual offers 8-hour courses because many contractors want to learn about the law and refresh on the other six hours. The individual also alleged that there are ACR contractors who have had other people take their online classes, and that these contractors still do not know the law. The individual stated that the Department had been notified about these claims in the past, but that these claims were not investigated. Finally, the individual stated that the individual had asked the Department to submit a rule to get online participants to take a class every other year, but that the individual's request was not approved by the Advisory Board.

Department Response: The total number of continuing education hours that air conditioning and refrigeration contractors must take every year will remain at eight hours. Contractors will still have to take at least one hour of statute and rules courses,

and they are not prevented or restricted from taking more than the one hour minimum. The Advisory Board recommended the change to allow some flexibility in the continuing education courses that the contractors are required to take every year. In addition, the Advisory Board recommended that industry organizations submit the necessary information to the Department so that industry conferences and seminars could be approved for continuing education credit. As to the claim that other people are taking the online courses for the contractors, the individual may file a complaint with the Department's Enforcement Division. The Department did not make any changes to the proposed rules based on this public comment.

The Air Conditioning and Refrigeration Contractors Advisory Board met on Thursday, November 14, 2013, to discuss the proposed rules as published in the *Texas Register* and the public comments submitted to the Department. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.*

16 TAC §75.25, §75.80

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §75.26

The repeal is adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the adopted repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 82. BARBERS

16 TAC §§82.10, 82.20, 82.23, 82.28, 82.31, 82.70 - 82.72

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 82, §§82.10, 82.20, 82.23, 82.28, 82.31 and 82.70 - 82.72, regarding the Barbering program, without changes to the proposed rules as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6099). The rules will not be republished.

The adoption implements House Bill 2095 (HB 2095) and House Bill 619 (HB 619), 83rd Legislature, Regular Session (2013), which amended Texas Occupations Code, Chapters 1601, 1602, and 1603. The amendments are also in response to the Commission's rule simplification initiative and to make clean-up changes in the rules for barbering.

The amendments add definitions for "student permit" and amend the definitions for "booth renter," "dual shop," "hair braider," and "hair weaver"; eliminate the shampoo apprentice permit; allow barber students to shampoo and condition hair in a facility licensed under Texas Occupations Code, Chapters 1601 and 1603; authorize licensees to provide barbering services outside a licensed facility when a customer is unable to travel to the facility because of mental or physical illness; and permit the Department to waive any reciprocity license requirements for some practices of barbering that have license requirements from another state or country substantially equivalent to those of Texas.

A summary of each rule amendment was included in the notice of proposed rules published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6099).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6099). The deadline for public comment was October 21, 2013. The Department received public comments from five interested parties regarding the proposed rules during the 30-day public comment period.

Three commenters asked questions and did not make specific comments on the proposed rules. One commenter expressed support for the proposed rule that would allow licensees to perform barbering services outside a licensed facility when a customer is ill and unable to get to the barber shop. The fifth commenter, a licensed barber, made the following comments.

Public Comment: Issuing law and rule books are a waste of time and money because there isn't a requirement for most licensees and facilities to have a law and rule book.

Department Response: This comment is apparently made in response to proposed rule §82.80(j) which will include the law and rule book fee in the application and renewal fees for students,

individuals and establishment licenses, certificates and permits. Distributing the law and rule books to a greater number of licensees will help to achieve the goal of furthering knowledge and compliance with the law and rule requirements. In addition, sending a current law and rules book to each barber student at the time of issuing the permit will decrease the Department's need to use inspection and enforcement resources to ensure that a barber school has provided the law and rules book to each student. The Department makes no changes to the rule in response to this comment.

Public Comment: Proposed rule §82.10(10) which defines the booth rental permit as a permit that is issued at the same time as the license or license renewal has no value because the Commission has no authority to issue booth rental permits.

Department Response: The long standing rules of the Commission and the prior Barber Commission along with the Commission's general rulemaking authority under Texas Occupations Code, Chapter 51, authorize the issuing of the booth rental permit. The Department makes no changes to the rule in response to this comment.

Public Comment: Proposed amendment to §82.70(c) which deletes the advertising references to yellow pages and telephone directory should be worked on some more because just saying "advertising" may not prevent someone from posting on their own website or on social media that they provide barber services.

Department Response: The amendment is made to ensure that advertising in any manner is not authorized. The Department makes no changes to the rule in response to this comment.

At its meeting on November 4, 2013, the Barber Advisory Board recommended that the proposed rules be adopted with no changes.

The amendments are adopted under Texas Occupations Code, Chapters 51, 1601, 1602, and 1603, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602, and 1603. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §82.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 82, §82.80, regarding the Barbering program, without changes to the proposed rule as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6104). The rule will not be republished.

The adoption implements Texas Occupations Code, §51.202, which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, Section 2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease in fees will not adversely affect the administration and enforcement of the program. The fees are set in amounts that will cover the Department's costs and ensure that the Department has adequate resources to operate effectively and efficiently.

The amendments to §82.80 reduce various application, renewal, and other fees as part of the Department's annual fee review. The renewal fee reductions will take effect on a later date, February 1, 2014, rather than January 1, 2014, the anticipated effective date of the rule. This delay is necessary because license renewal notices with the current fee amounts will have been sent out in advance.

The separate fee for the booth rental permit is eliminated because the cost of this permit application will be adequately covered by the related individual license or certificate application or renewal fee. The booth rental permit will now be issued or renewed simultaneously with the related license or certificate, as a part of that license or certificate.

The law and rules book fee will now be included in the application and renewal fees for student, individual, and establishment licenses, certificates, and permits. The law and rules book will be distributed to a greater number of licensees, with the goal of furthering knowledge of and compliance with the law and rule requirements.

A technical change is made to conform the wording of the Revised/Duplicate License/Certificate/Permit/Registration to the same provision in other program rules.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6104). The deadline for public comments was October 21, 2013. The Department received comments from one interested party regarding the proposed rule during the 30-day public comment period.

The commenter made several comments about the fee reductions and related rule changes. The commenter opposed issuing law and rule books upon the issuing or renewing of licenses and permits as a waste of time and money. The commenter disagreed with a statement in the proposed rule preamble and pointed out that most licensees and facilities in the barber program are not currently required to have a law and rule book. Further, the commenter pointed out that the Department has moved

more to electronic means of communication with licensees, and for those who renew just before law or rule changes, the book will be obsolete for almost two years. Finally, the commenter stated that the reduced barber application fee of $55 is approximately twice the actual cost of operating the barber program and therefore should be reduced even further.

Department Response: The commenter's comments related to booth rental permit rules will be addressed as part of a separate rulemaking. The Department disagrees that issuing law and rule books to licensees upon issuing or renewing the license or permit would be a waste of time and money. Distributing the printed law and rule book to a greater number of licensees is intended to further knowledge of and compliance with the law and rule requirements. Issuing the books along with the license or license renewal is an efficient way to distribute the books. The commenter's point that most licensees and facilities are not currently required to have a law and rule book is noted. However, barber schools are currently required to ensure that all students have law and rule books, and this requirement is deleted in a separate rulemaking. As a result of that change and the changes to §82.80, there is no longer a need to use compliance and enforcement resources to ensure that schools have furnished law and rule books to students.

The Department disagrees with the commenter's statement about the cost to operate the barber program. Department staff conducted an analysis as part of its annual fee review to allocate the Department's estimated costs necessary to operate each program and to recommend appropriate fee levels for each program. The fee reductions that are a part of this rulemaking are based on the staff's analysis of the amount of revenue that is necessary to cover the Department's costs.

The Advisory Board on Barbering met on November 4, 2013, to review public comments. The Board recommended the Commission adopt the rule as proposed and published without changes.

The amendments are adopted under Texas Occupations Code, Chapter 51, 1601, and 1603, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.20, 83.25, 83.28, 83.31, 83.65, 83.70 - 83.73, 83.103, 83.120

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 83, §§83.20, 83.25, 83.28, 83.31, 83.65, 83.70 - 83.73, 83.103 and 83.120 regarding the Cosmetology program without changes to the proposed rules as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6105).

Section 83.10 is adopted with changes to the proposed rule as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6105) and is republished.

The adoption implements Senate Bill 362 (SB 362), House Bill 2095 (HB 2095), and House Bill 619 (HB 619), 83rd Legislature, Regular Session (2013), which amended Texas Occupations Code, Chapters 1601, 1602, and 1603. The amendments are also in response to the Commission's rule simplification initiative and to make clean-up changes in the rules for cosmetology.

The amendments eliminate the shampoo conditioning specialty certificate; eliminate the shampoo apprentice permit; allow cosmetology students to shampoo and condition hair in a facility licensed under Texas Occupations Code, Chapter 1602 and 1603; authorize licensees to perform cosmetology services outside a licensed facility when a customer is unable to travel to the facility because of mental or physical illness; allow for the employment of part-time instructors in beauty culture schools; and expand the practice of cosmetology to include shaving as preparatory or ancillary to treating a person's hair or shaving a person's neck. Minor editorial corrections were made to the proposed language of §74.10(4) for clarity.

A summary of each rule amendment was included in the notice of proposed rules published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6105).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6105). The public comment period closed October 21, 2013. The Department received comments from nine interested parties regarding the proposed rules during the 30-day public comment period.

Six comments were not directed to the proposed rules and one comment was made regarding statutory changes which the Department has no authority to change. Two commenters expressed support for the change allowing cosmetologists to shave.

The Cosmetology Advisory Board met on November 4, 2013, and recommended that the Commission adopt the proposed rules as published in the *Texas Register.*

The amendments are adopted under Texas Occupations Code, Chapter 51, 1601, 1602, and 1603, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602, and 1603. No other statutes, articles, or codes are affected by the adoption.

§83.10. Definitions.

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

(1) Act--Texas Occupations Code, Chapters 1602 and 1603.

(2) Beauty Culture School--A cosmetology school, public or private that is subject to regulation under the Act.

(3) Board--The Advisory Board on Cosmetology.

(4) Booth rental license--A license issued or renewed to an applicant the same time the applicant is issued one of the following license types: operator, manicurist, esthetician, esthetician/manicurist, eyelash extension specialist, hair weaver, hair braider, wig specialist, instructor, or specialty instructor, which allows the holder to lease space on the premises of a beauty shop, specialty shop, or dual shop to engage in the practice of cosmetology as an independent contractor.

(5) Department--The Texas Department of Licensing and Regulation.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Cosmetology establishment--A beauty salon, specialty salon, dual shop, mobile shop, or beauty culture school, public or private, that is subject to regulation under the Act.

(8) Dual Shop--A shop owned, operated, or managed by a person holding a dual barber and beauty shop license issued under Texas Occupations Code, Chapter 1603.

(9) Eyelash Extension Application--The process of applying and removing a semi-permanent, thread-like, natural or synthetic single fiber to an eyelash, including cleansing of the eye area and lashes prior to applying and after removing extensions.

(10) Eyelash Extension Specialist--A person who holds a specialty license and who is authorized to practice the service defined in Texas Occupations Code §1602.002(a)(12).

(11) Esthetician--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1602.002(a)(6) - (9) and (12). The term esthetician in this chapter includes the term facialist.

(12) Esthetician/Manicurist--An esthetician/manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(6) - (12).

(13) Hair braider--A person who holds a hair braiding specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(2).

(14) Hair weaver--A person who holds a hair weaving specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(2), (3), and (13).

(15) Instructor--An individual authorized by the department to perform or offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(16) Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code, Chapter 83.

(17) License--A department-issued permit, certificate, approval, registration, or other similar permission required by law.

(18) License by reciprocity--A process that permits a cosmetology license holder from another jurisdiction or foreign country to obtain a Texas cosmetology license without repeating cosmetology education or examination license requirements.

(19) Manicurist--A manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(10) and (11).

(20) Mobile Shop--A beauty salon, specialty salon, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(21) Operator--An individual authorized by the department to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(22) Preparation--A substance used to beautify a person's face, neck or arms or to temporarily remove superfluous hair from a person's body including but not limited to antiseptics, tonics, lotions, powders, oils, clays, creams, sugars, waxes and/or chemicals.

(23) Provisional license--A license that allows a person to practice cosmetology in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(24) Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(25) Safety Razor--A razor that is fitted with a guard close to the cutting edge of the razor that is intended to prevent the razor from cutting too deeply and reduces the risk and incidence of accidental cuts.

(26) Shampoo Apprentice--A person authorized to perform the practice of cosmetology as defined in Texas Occupations Code §1602.002(a)(3), relating to shampooing and conditioning a person's hair.

(27) Specialty Instructor--An individual authorized by the department to perform or offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(a)(7), (9), (10) and/or (12).

(28) Specialty Salon--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(a)(2), (4), (7), (9), (10), (12), or (13) is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(29) Student Permit--A permit issued by the department to a student enrolled in cosmetology school which states the student's name and the name of the school. A person holding an active student permit may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1602 and 1603.

(30) Tweezing Technique--Any type of temporary hair removal procedure involving the extraction of hair from the hair follicle by use of, but not limited to, an instrument, appliance or implement made of metal, plastic, thread or other material.

(31) Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

(32) Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

(33) Wig Specialist--A person who holds a wig specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(4).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §83.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 83, §83.80 regarding the Cosmetology program, without changes to the proposed rule as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6111). The rule will not be republished.

The adoption implements Texas Occupations Code, §51.202, which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, Section 2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease in fees will not adversely affect the administration and enforcement of the program. The fees are set in amounts that will cover the Department's costs and ensure that the Department has adequate resources to operate effectively and efficiently.

The amendments to §83.80 reduce various application, renewal, and other fees as part of the Department's annual fee review. The separate fee for the booth rental (independent contractor) license is eliminated because the cost of this license application will be adequately covered by the related, individual operator or specialty license application or renewal fee. The booth rental license will now be issued or renewed simultaneously with the operator or specialty license, as a part of that license.

The law and rules book fee will now be included in the application and renewal fees for student, individual, and establishment licenses. The law and rules book will be distributed to a greater number of licensees, with the goal of furthering knowledge of and compliance with the law and rule requirements. Additionally, by sending a current law and rules book to each licensee at the time of issuing or renewing the license, the Department will no longer have a need to use inspection and enforcement resources to ensure that an establishment or other licensee has obtained a current copy of the law and rules book.

A technical change is made to conform the wording of the Revised/Duplicate License/Certificate/Permit/Registration to the same provision in other program rules.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6111). The deadline for public comments was October 21, 2013. The Department did not receive any comments on the proposed rule during the 30-day public comment period. The Advisory Board on Cosmetology met on November 4, 2013, and recommended adoption of the proposed rule.

The amendments are adopted under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 87. USED AUTOMOTIVE PARTS RECYCLERS

16 TAC §87.85

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 87, §87.85, regarding the Used Automotive Parts Recyclers program, without changes to the proposed rule as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6834). The rule will not be republished.

The adoption implements Texas Occupations Code, §51.202 which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, Section 2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease

will not adversely affect the administration and enforcement of the program.

The amendments to §87.85 reduce various permit application, license, and renewal fees as part of the Department's annual fee review. Also, the wording for the duplicate and amended permit and license fees has been changed to "Revised/Duplicate License/Certificate/Permit/Registration" to be consistent with the same fee in other Department programs.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6834). The deadline for public comments was November 4, 2013. The Department did not receive any comments on the proposed rule during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapter 51 and Texas Labor Code, Chapter 92, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Labor Code, Chapter 92. No other statutes, articles, or codes are affected by the adoption.

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CHAPTER 88. POLYGRAPH EXAMINERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 88, §88.10, and §88.70; new §§88.25, 88.100 and 88.101; and the repeal of §88.100 regarding the Polygraph Examiners program without changes to the proposed rules as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6835).

Section 88.20 is adopted with changes to the proposed rule as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6835) and is republished.

The adoption of the amendments, new rules, and repeal implement Senate Bill 562 (SB 562), 83rd Legislature, Regular Session (2013) which amended Texas Occupations Code, Chapter 1703 relating to the regulation of polygraph examiners.

Amendments to §88.10 mirror the statutory changes in definition of an instrument in SB 562.

The amendments to §88.20 delete the licensing option of a 12-month polygraph examiner internship. This alternative was eliminated in statute by SB 562.

New §88.25 creates mandatory continuing education requirements for polygraph examiners as required by SB 562. Six hours of continuing education is mandated per year.

The amendments to §88.70 change the term "curriculum" to "training" or "training material" to update the terminology to industry standard.

The repeal of existing §88.100 deletes the curriculum standards for the 12-month internship, for it was statutorily eliminated under SB 562, and replaces it with new §88.100 which updates the polygraph examiner education course to 320 hours of specific course content and hours for each subject consistent with current industry standards. In addition, new §88.100 delineates the fundamental subjects and hours for the statutorily designated six-month internship.

New §88.101 provides placement in the rules for the consideration of other instruments and instrumentation by the Commission as provided for in SB 562.

The Department drafted and distributed the rule proposal to persons internal and external to the agency. The proposed rules were published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6835). The deadline for public comments was November 4, 2013. The Department received comments from six interested parties during the 30-day public comment period.

Comment: One commenter states that their association's continuing education hours requirement is 20 hours over two years and to reduce the hours to six hours per year would cause an increase in substandard examiners and ineffective examinations.

Department Response: The association could continue with their 20 hours course. The continuing education hours reflected in rule are just a minimum. Any examiner or association could certainly give or take more.

Comment: Section 88.10 should include galvanic skin response/electrodermal activity of the subject.

Department Response: The rule definition mirrors the definition in statute. The Department refrains from adding any new provision in rule to a definition in statute.

Comment: The license requirements under §88.20 are inadequate. They should only allow baccalaureate degrees from an accredited college or university recognized by the southern association of educational standards. No degrees, obtained by only paying a fee, should be allowed as qualification for licensure.

Department Response: This is not a comment on a proposed rule amendment as published.

Comment: Section 88.20 allows satisfaction of licensing qualifications with a university degree or investigative experience during the five years preceding the application. This is unsatisfactory for it could allow one day of experience to satisfy the requirement. It doesn't do enough to qualify the length or form of the experience. The standard should be four years' experience within the last five as an investigator with a police agency assigned to person(s) or property crimes conduction criminal interrogations/interviews of felony/misdemeanor suspects.

Department Response: This is not a comment on a proposed rule amendment as published.

Comment: Applicants should have to pass a background check and have no felony convictions; no convictions of family violence; no identified conduct or convictions of moral turpitude; or convictions of sexual abuse, child abuse, or any sex crime.

Department Response: This is not a comment on a proposed rule amendment as published.

Comment: In §88.25 "maintenance of trust accounts" should be removed as this is something only lawyers are required to do as part of their occupations. "Marketing" should also be removed.

Department Response: This is not a comment on a proposed rule amendment as published.

Comment: Section 88.101 should be removed entirely. Any new instrumentation or instruments need to be professionally evaluated, tested, and have peer review research conducted prior to any adoption or approval for use.

Department Response: The Department with the support of the Advisory Committee will take any new recommendations for new instrumentation under the full consideration of professional evaluation and recommendation. However, at this time, no new instrumentation is being offered in this rule posting.

Comment: It is hard for most examiners to attend offered continuing education.

Department Response: Continuing education is required in statute.

Comment: Allow online continuing education courses.

Department Response: The Department will evaluate any course for the appropriate substantive material and security. Extensive comment was made on voice stress analysis and its relation to polygraph examination. The current rules do not include voice stress analysis. The Department will consider these comments in any future considerations of the inclusion of voice stress analysis in rule.

The Department has changed the language in §88.20(5) to "complete an acceptable polygraph examiner course of study" instead of "graduate from a department-approved polygraph school" to more closely follow the statute.

16 TAC §§88.10, 88.20, 88.25, 88.70, 88.100, 88.101

The amendments and new rules are adopted under Texas Occupations Code, Chapter 51 and 1703, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and 1703. No other statutes, articles, or codes are affected by the adoption.

§88.20. Licensing Requirements--Polygraph Examiner.

To be eligible for a polygraph examiner license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §88.80;

(3) provide a copy of an insurance policy, surety bond or bond continuation certificate required under §88.40;

(4) either:

(A) hold a baccalaureate degree from a college or university; or

(B) have active investigative experience during the five (5) years preceding the application;

(5) complete an acceptable polygraph examiner course of study and satisfactorily complete a six (6) month polygraph examiner internship;

(6) pass a written and practical examination required under §88.29; and

(7) successfully pass a criminal background check.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §88.100

The repeal is adopted under Texas Occupations Code, Chapter 51 and 1703, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapter 51 and 1703. No other statutes, articles, or codes are affected by the adopted repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 94. PROPERTY TAX PROFESSIONALS

16 TAC §§94.20, 94.21, 94.25

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to 16 Texas Administrative Code (TAC) Chapter 94, §94.20 regarding the Property Tax Professionals program, without changes to the proposed rule as

published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7046).

Section 94.21 and §94.25 are adopted with changes to the proposed rules as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7046). The rules will be republished.

The adoption implements changes recommended by the Tax Professional Advisory Committee relating to the regulation of property tax professionals and to implement the statutory changes made by House Bill 585 (HB 585) and Senate Bill 546 (SB 546), 83rd Legislature, Regular Session (2013).

The amendments to §94.20 are necessary to recognize the changes in SB 546. Under §94.20 "person required to register" is clarified to not include a county assessor-collector for they are now exempt from the Texas Occupations Code under SB 546. Section 94.20(b) is stricken because of this new exemption.

The amendment to §94.21 strikes "professional" from ethics. The Department will no longer use the term "professional ethics". Amendments to §94.21(8)(A)(iv)(III) were recommended by the Advisory Committee to reduce the number of USPAP hours in the USPAP refresher course from seven to 3.5 if the 15 hours core USPAP course had been completed in the last two years. The Advisory Committee felt it was unnecessarily burdensome for a refresher course to be seven hours. Additionally, "and" was removed from §94.21(8)(A)(ii)(II)(-a-).

Amendments to §94.25 change the required continuing education from seven hours in USPAP to 3.5 in USPAP and subsection (i) is deleted eliminating the requirement for registrants to retain copies of their completed courses. These changes were also recommended by the Advisory Committee. Additional amendments to §94.25 accommodate the changes in HB 585 which require the continuing education hours for certified chief appraisers to include fifteen hours in subjects from the Chief Appraiser Training Program and two hours in ethics for chief appraisers including the ethics of maintaining a tax office free from political pressure.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7046). The deadline for public comments was November 12, 2013. The Department received five comments on the proposed rules during the 30-day public comment period.

Several comments were in favor of the Advisory Committee's recommended changes. Three commenters advocated that the requirements become effective in 2015. One commenter advocated that the rule changes only affect elected officials. The statute largely dictated the demands, deadlines, and subjects of the rule changes. With the exception of the Advisory Committee's recommendations, the rules simply facilitate the statutory changes.

The Advisory Committee met on November 18, 2013, to discuss the rule proposal and public comments. In response to public comments, the Advisory Committee unanimously recommended extending the deadline for compliance with the new continuing education standards to January 1, 2015.

The amendments are adopted under Texas Occupations Code, Chapter 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and 1151. No other statutes, articles, or codes are affected by the adoption.

§94.21. Registration.

To be registered an applicant must:

(1) be at least 18 years of age;

(2) be a resident of the State of Texas;

(3) be a person of good moral character;

(4) be a graduate of an accredited high school or holder of high school graduation equivalency;

(5) be actively engaged in appraisal, assessing/collecting, or collecting for an appraisal district, tax office, or private firm working for an appraisal district or tax office;

(6) submit a completed application on a form approved by the department;

(7) pay the applicable fees under §94.80; and

(8) successfully complete all requisites appropriate for the applicant's classification level:

(A) Appraisers

(i) A Class I appraiser must be registered.

(ii) A Class II appraiser must:

(I) be a Class I appraiser registrant; and

(II) successfully complete within twelve months of registration:

(-a-) no less than 32 hours in the basics of the Texas property tax system;

(-b-) no less than 8 hours in ethics; and

(iii) A Class III appraiser must:

(I) be registered as a Class II appraiser registrant; and

(II) successfully complete within thirty-six months of registration:

(-a-) no less than 18 hours in the income approach to value;

(-b-) no less than 18 hours in the theory and practice of personal property appraisal;

(-c-) no less than 15 hours in USPAP;

(-d-) no less than 24 hours in the theory and practice of appraisal of real property; and

(-e-) pass the Class III examination.

(iv) A Class IV appraiser (RPA) must:

(I) be registered as a Class III appraiser registrant; and

(II) successfully complete within sixty months of registration:

(-a-) no less than 18 hours in analyzing real property appraisal;

(-b-) no less than 16 hours in Texas Property Tax Law; and

(-c-) no less than 18 hours in mass appraisal;

(III) successfully complete no less than 3.5 hours in USPAP if the 15 hour USPAP course has not been completed in the last two years;

(IV) pass the appraiser Class IV examination within five years of registration; and

(V) have a minimum of three years experience as a registered appraiser.

(B) Assessor/Collectors

(i) A Class I assessor/collector must be registered.

(ii) A Class II assessor/collector must:

(I) be registered as a Class I assessor/collector registrant; and

(II) successfully complete within twelve months of registration:

(-a-) no less than 32 hours in the basics of the Texas property tax system; and

(-b-) no less than 8 hours in ethics.

(iii) A Class III assessor/collector must:

(I) be registered as a Class II assessor/collector registrant; and

(II) successfully complete within thirty-six months of registration:

(-a-) no less than 16 hours in Texas Property Tax Law; and

(-b-) no less than 18 hours in assessment and collection.

(iv) A Class IV assessor/collector (RTA) must:

(I) be registered as a Class III assessor/collector registrant;

(II) successfully complete within sixty months of registration:

(-a-) no less than 18 hours in advanced assessment and collections;

(-b-) no less than 12 hours in truth in taxation;

(III) pass the Class IV assessor/collector examination within five years of registration; and

(IV) have a minimum of three years experience as a registered assessor/collector.

(C) Collectors

(i) A Class I collector must:

(I) be registered; and

(II) successfully complete within twelve months of registration:

(-a-) no less than 32 hours in the basics of the Texas property tax system; and

(-b-) no less than 8 hours in ethics.

(ii) A Class II collector must:

(I) be registered as a Class I registrant; and

(II) successfully complete:

(-a-) no less than 16 hours in Texas Property Tax Law;

(-b-) no less than 18 hours in assessment and collection; and

(-c-) no less than 18 hours in advanced assessment and collections.

(iii) A Class III collector (RTC) must:

(I) be registered as a Class II collector registrant;

(II) pass the collector Class III examination within three years of registration; and

(III) have a minimum of two years experience as a registered collector.

(D) The provisions in this paragraph apply to registrations that renew on or after January 1, 2011.

§94.25. Continuing Education.

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

(b) A Registered Professional Appraiser (RPA) must complete 30 hours of approved continuing education to be eligible to renew the registration. The continuing education must include:

(1) two hours in ethics as required by §94.25(j)(3);

(2) a state laws and rules update course; and

(3) 3.5 hours in USPAP.

(c) A Registered Professional Appraiser (RPA) that is a chief appraiser must complete 30 hours of approved continuing education to be eligible to renew the registration. The continuing education must include:

(1) 3.5 hours in USPAP;

(2) a state laws and rules update course;

(3) two hours in chief appraiser ethics, as required by §94.25(j)(3); and

(4) 15 hours in one or more of the topics listed in §94.25(j)(1), (3), (4), (5), or (6).

(5) The provisions of subsection (c) are effective for those registrations expiring on or after January 1, 2015.

(d) A Registered Texas Assessor-Collector (RTA) must complete 30 hours of approved continuing education to be eligible to renew the registration. The continuing education must include:

(1) two hours in ethics; and

(2) a state laws and rules update course.

(e) A Registered Texas Collector (RTC) must complete 10 hours of approved continuing education to be eligible to renew the registration. The continuing education must include:

(1) two hours in ethics; and

(2) a state laws and rules update course.

(f) Continuing education credit must be completed during the 24 month period before the expiration of the license. Newly certified registrants are not required to complete continuing education until their second renewal after their certification deadline.

(g) For a late renewal, the continuing education hours must have been completed within the two-year period prior to the date of renewal.

(h) A course approved for use under §94.21 may be taken for continuing education credit.

(i) A registrant may not receive continuing education credit for attending the same department-numbered course more than once within the two-year period prior to the date of renewal.

(j) To be approved by the Comptroller, a provider's course must be dedicated to instruction in:

(1) appraisal procedures and methods;

(2) tax assessment and collection;

(3) ethics;

(A) general; or

(B) chief appraiser;

(4) laws and rules;

(5) USPAP; or

(6) customer service.

(k) The provisions in this section apply to registrations that renew on or after January 1, 2011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305902
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: January 1, 2014
Proposal publication date: October 11, 2013
For further information, please call: (512) 463-7348

16 TAC §94.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 94, §94.80, regarding the Property Tax Professionals program, without changes to the rule as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7048). The rule will not be republished.

The adoption implements Texas Occupations Code, §51.202, which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, Section 2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease will not adversely affect the administration and enforcement of the program.

The amendments to §94.80 reduce various application and renewal fees as part of the Department's annual fee review. The examination fees are unnecessary and are deleted because examinees pay a fee directly to the Department's examination vendor.

In addition, the wording for revised or duplicate license fees has been changed to "Revised/Duplicate License/Certificate/Permit/Registration" to be consistent with the same fee in other Department programs.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7048). The deadline for public comments was November 12, 2013. The Department did not receive any comments on the proposed rule during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapter 51 and 1151, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and 1151. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 8. TEXAS RACING COMMISSION

CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

SUBCHAPTER C. PROCEEDINGS BY STEWARDS AND RACING JUDGES

16 TAC §307.64, §307.69

The Texas Racing Commission adopts amendments to 16 TAC §307.64 and §307.69. Section 307.64 relates to penalties for violations of the Texas Racing Act or the Commission's rules. Section 307.69 relates to the executive secretary's ability to review and modify penalties. The amendments are adopted without changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7411) and will not be republished.

The amendments will bring the rules into conformity with amendments to the Texas Racing Act that were implemented through House Bill (HB) 1187 (83rd Legislature, Regular Session, 2013). HB 1187 raised the maximum fine that stewards and racing judges may impose from $5,000 to $25,000 and the maximum suspension from one year to five years. It also raised the maximum fine that the executive secretary may impose from

$10,000 to $100,000 and the maximum suspension from two years to five years.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §3.07, which requires the Commission to adopt rules specifying the authority and duties of each racing official.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305905
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 1, 2014
Proposal publication date: October 25, 2013
For further information, please call: (512) 833-6699

CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.3

The Texas Racing Commission adopts an amendment to 16 TAC §319.3, relating to medications that are restricted in horses and greyhounds, without changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7412). The rule will not be republished.

The amendment will enable the executive director to conform the agency's medication thresholds to standards established by the Association of Racing Commissioners International by permitting thresholds in excess of "trace" levels for the non-steroidal anti-inflammatory drugs flunixin and ketoprofen. The amendment will also delete the reference to phenylbutazone in the rule so that the threshold for this drug may also be established by the executive director.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §3.16, which requires the Commission to adopt rules relating to the use of prohibited substances at a racetrack.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 1, 2014
Proposal publication date: October 25, 2013
For further information, please call: (512) 833-6699

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT
SUBCHAPTER A. PROCUREMENT

16 TAC §401.105

The Texas Lottery Commission (Commission) adopts new 16 TAC §401.105, concerning Major Procurement Approval Authority and Responsibilities. The new section is adopted with changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5403). The new section is adopted to implement changes to Texas Government Code, Chapter 466, made pursuant to §3 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. Specifically, §3 of H.B. 2197 amended Texas Government Code, Chapter 466, by adding new §466.1005, Procurements, which allows the Commission to make any purchases, leases, or contracts necessary for the purpose of carrying out the requirements of Chapter 466. Furthermore, new Texas Government Code §466.1005 also requires the Commission to review and approve all major procurements as defined by Commission rule. It also allows the Commission to delegate to the Executive Director the authority to approve procurements other than major procurements. Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

Adopted new §401.105 outlines the procedure for approval authority of the major procurements before the Commission. The adopted new section identifies what constitutes a major procurement. The adopted new section also delegates all approval authority not reserved by the Commission to the Executive Director, and discusses authority to execute contracts for the agency. The adopted new section further describes contract planning updates provided to the Commission. The Commission is adopting this section with changes to clarify that the Commission will approve any contract that specifically requires its approval, under law, even if such contract is not defined as a major procurement.

The Commission received no written comments from individuals during the public comment period.

The new section is adopted under the authority of Texas Government Code §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery and §466.1005(b), which provides that the commission by rule shall establish a procedure to determine what constitutes a major procurement. The new section is also adopted under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the commission's jurisdiction.

This adoption is intended to implement §3 and §45 of H.B. 2197, 83rd Legislature, Regular Session, 2013.

The following statutes are affected by this adoption: Texas Government Code §466.1005 and §466.101.

§401.105. Major Procurement Approval Authority and Responsibilities.

(a) Purpose. The purpose of this rule is to establish the approval authority and responsibilities for all formal procurements.

(b) Applicability. This rule applies to all formal procurements made by the agency.

(c) Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Contract--A written agreement between the agency and a vendor for goods or services. As used in this section, "contract" includes letters of agreement, interagency agreements with other government entities, and other documents in which state funds allocated to the agency are exchanged for the delivery of goods or services.

(2) Formal Procurement--A formal competitive solicitation, for the purchase or lease of goods and/or services expected to exceed $25,000, conducted in order to receive at least three sealed competitive bids or proposals pursuant to the issuance of an IFB, RFP, RFQ, or another statewide contract process, respectively.

(3) Value--The agency adopts by reference the determination of contract value set forth in the State of Texas Contract Management Guide. The determination of contract value shall be based on the original term of the contract, including any renewal periods. The agency shall base its determination of the proposed length of and compensation during the original term and the renewal periods of the contract on best business practices, state fiscal standards and applicable law, procedures and regulations.

(d) Major Procurement. Any formal procurement for goods or services that has a cumulative contract value equal to or greater than ten (10) million dollars is a major procurement.

(e) Approval Authority.

(1) Texas Lottery Commission Approval. The executive director or his/her designee shall present all major procurements to the Texas Lottery Commission for review and approval. After a vendor is selected and a contract has been fully negotiated, the Texas Lottery Commission shall provide final approval of the contract with the selected vendor.

(2) Agency Approval. Except for a contract that by law requires the Commission's approval, the Texas Lottery Commission delegates authority to the executive director (or his/her designee) to approve all contracts and purchase orders not defined as major procurements in subsection (d) of this section.

(f) Authority to Execute Contracts. The Texas Lottery Commission delegates authority to the executive director to execute all contracts for the agency. This authority may be delegated by the executive director.

(g) Contract Planning.

(1) The agency will present the status of certain contracts to the Texas Lottery Commission annually for informational purposes. The report will be presented at the beginning of each fiscal year.

(2) As deemed necessary by the executive director or his/her designee, updates to the status of certain contracts may be provided to the Texas Lottery Commission periodically throughout the fiscal year for informational purposes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201305839
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: January 1, 2014
Proposal publication date: August 23, 2013
For further information, please call: (512) 344-5275

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SUBCHAPTER C. PRACTICE AND PROCEDURE

16 TAC §401.203

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.203, Contested Cases. The amendments are adopted with non-substantive changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5404). The purpose of the adoption is to implement changes to Texas Government Code, Chapter 466, made pursuant to §6 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. Specifically, §6 of H.B. 2197 amended Texas Government Code §466.160(c) by deleting the provision that Texas Government Code Chapter 2001 (Administrative Procedure Act) does not apply to lottery retailer license summary suspension hearings and providing that a hearing under this section is subject to §2001.058(e). Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

The Commission received no written comments from individuals during the public comment period.

The amendments are adopted under §466.015 of the Texas Government Code, which authorizes the Commission to adopt rules governing the operation of the lottery, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The adoption implements changes to Chapter 466 of the Texas Government Code.

§401.203. Contested Cases.

(a) A contested case proceeding is initiated when a case is filed at the State Office of Administrative Hearings. It includes a request for relief from actions initiated by the agency to deny, revoke, or suspend licenses administered by the agency, including preliminary summary suspension proceedings described in subsection (b) of this section.

(b) If the Lottery Operations Director summarily suspends a license:

(1) the Lottery Operations Director will notify the licensee in writing by registered or certified mail, return receipt requested, that the license has been summarily suspended and will state the reasons for the action. That notification shall also state the date, time, and place for

a preliminary suspension hearing on the summary suspension, which date shall not be later than ten days after the date of the preliminary summary suspension, unless the parties agree to a later date;

(2) at the preliminary suspension hearing, the licensee must show cause by a preponderance of the evidence why the license should not remain suspended pending a final hearing on the suspension or revocation of the license;

(3) the preliminary suspension hearing will be held by the assigned administrative law judge and shall be governed by Texas Government Code, Chapter 466, (in Lottery cases); Texas Occupations Code, Chapter 2001, (in Bingo cases); Texas Government Code, Chapter 2001; Title 1 of the Texas Administrative Code; and these Rules; and

(4) an order issued after a preliminary suspension hearing, continuing a summary suspension pending a final contested case hearing, is not a final order.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5275

16 TAC §401.211

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.211, Law Governing Contested Cases. The amendments are adopted without changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5405). The purpose of the adoption is to implement changes to Texas Government Code, Chapter 466, made pursuant to §6 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. Specifically, §6 of H.B. 2197 amended Texas Government Code §466.160(c) by deleting the provision that Texas Government Code Chapter 2001 (Administrative Procedure Act) does not apply to lottery retailer license summary suspension hearings and providing that a hearing under this section is subject to §2001.058(e). Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

The Commission received no written comments from individuals during the public comment period.

The amendments are adopted under §466.015 of the Texas Government Code, which authorizes the Commission to adopt rules governing the operation of the lottery, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The adoption implements changes to Chapter 466 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
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Proposal publication date: August 23, 2013
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SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.317

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.317 "Powerball®" On-Line Game Rule with an effective date of January 19, 2014. The amendments are adopted without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6838). The purpose of the adopted amendments is to make changes to the Power Play add-on game feature, with the first drawing with the new Power Play occurring on or around January 22, 2014, (subject to change by the executive director and/or the Multi-state Lottery Association Member Lotteries) and to make other non-substantive changes. The Texas Lottery presently offers Powerball under an agreement between the Mega Millions Party Lotteries and MUSL (herein called the Reciprocal Game Agreement). Should the Texas Lottery later decide to join the MUSL Powerball Product Group, the Texas Lottery will offer Powerball under the MUSL Powerball Group Rules, not the Reciprocal Game Agreement.

The Commission received no written comments from individuals during the public comment period.

These amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption is intended to implement Texas Government Code, Chapter 466.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201305845
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: January 19, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 344-5275

16 TAC §401.321

The Texas Lottery Commission (Commission) adopts new 16 TAC §401.321, concerning Instant Game Tickets Containing Non-English Words. The new section is adopted without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6843). The new section is adopted to implement changes to Texas Government Code, Chapter 466, made pursuant to §7 of Tex. H.B. 2197, 83rd Leg., R.S. (2013). Specifically, §7 of H.B. 2197 added new provision, Texas Government Code §466.252(c), which directs the Commission to establish, by rule, that a ticket containing a certain number of words in a language other than English must include disclosures in the same language. Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

Adopted new §401.321 defines the minimum threshold of Non-English words printed on an Instant Ticket that trigger the requirement for the Commission to print that ticket with added disclosures in that same Non-English language. Regardless of this requirement, disclosures will always be provided in English.

The Commission received no written comments from individuals during the public comment period.

The new section is adopted under the authority of §466.015 of the Texas Government Code, which authorizes the Commission to adopt rules governing the operation of the lottery, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction. The new section is also adopted pursuant to new §466.252(c) of the Texas Government Code, which requires the Commission to establish, by rule, that a ticket containing a certain number of words in a language other than English must include disclosures in the same non-English language.

The adopted new rule implements changes to Chapter 466 of the Texas Government Code, made pursuant to §7 and §45 of H.B. 2197, 83rd Leg., Regular Session, 2013. The following statutes are affected by this adoption: Texas Government Code §466.252(c).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

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Bob Biard
General Counsel
Texas Lottery Commission
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 344-5275

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION
SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.200

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.200, concerning General Restrictions on the Conduct of Bingo, with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6843). The purpose of the amendments is to implement changes to §2001.420 of the Texas Occupations Code, made pursuant to H.B. 394, 83rd Leg., R.S. (2013), and to clarify how certain game information must be conveyed to bingo players. For reasons explained in this preamble, the Commission has altered the proposed language in §402.200(h)(4) and (5) and (n) and adopted amendments to §402.200(f) and (g) that were not included in the proposed text.

As proposed, the amendments to §402.200(h)(4) would require a bingo conductor to make a written game schedule available to all patrons prior to the start of the bingo occasion. Under the proposed language, the game schedule must contain, among other things, a list of *all games* to be played and the corresponding prize(s) for each game. The purpose of the proposed amendments to §402.200(h)(5) was to allow bingo conductors to make changes to the written game schedule, including the list of games to be played, during the bingo occasion. However, based on comments received from the public, it is apparent that the amendments' purpose was not clear. Therefore, the adopted amendments to §402.200(h)(4) and (5) provide further clarification. First, the requisite game schedule to be provided to patrons prior to the start of the bingo occasion must include a list of all *regularly scheduled* games to be played. The adopted amendments also clarify that the game schedule may be amended during the course of the bingo occasion and that licensed authorized organizations may conduct bingo games that were not originally listed on the game schedule, provided that proper notice is given to patrons and that all games actually played are accounted for on the game schedule upon the conclusion of the bingo occasion.

As proposed, the amendments to §402.200(h)(4)(D) would require a bingo conductor to list on the requisite game schedule the current retail price of any non-cash bingo prizes. Under current rule §402.200(f), any non-cash bingo prize must be valued at its current retail price. Therefore, the proposed amendments to §402.200(h)(4)(D) do not offer a new value standard, but merely reference the "current retail price" standard already in place. Though the "current retail price" standard is, and has been, in place for some time, some members of the public have commented that the standard is too vague and unworkable. The Commission believes that the standard has been proven to be workable, but nevertheless has agreed to permit bingo conductors to value a non-cash bingo prize at the price that was actually paid for the prize, provided that the organization maintains written proof of that price. The amendments to §402.200(f) incorporate this change. The amendments to §402.200(g) only clarify that donated bingo prizes must be valued at their current retail price, which is the current standard. The proposed amendment text in §402.200(h)(4)(D) has been modified to reflect these changes.

Section 2001.420 of the Texas Occupations Code generally prohibits a person from offering or awarding, on a single bingo occasion, prizes with an aggregate value of more than $2,500. With the recent passage of H.B. 394, Texas Occupations Code §2001.420 was amended so that bingo games that award prizes of $50 or less are now exempt from the $2,500 prize cap. As originally proposed, new §402.200(n) was intended to clarify the

requirements necessary for a bingo game to qualify for the exemption from the $2,500 prize cap. The Commission received several comments, including comments from the two legislative sponsors of H.B. 394, arguing that the proposed language would contradict the plain language of the statute by impermissibly restricting the applicability of the exemption. Based on the Commission's review of the proposed language and the comments, the Commission has determined that the original language for proposed §402.200(n) is not necessary to implement Texas Occupations Code, §2001.420. Therefore, the proposed language will not be adopted. The Commission will, however, adopt language in new §402.200(n) clarifying that in order to qualify for the exemption from the $2,500 prize cap, the total aggregate amount of the prize(s) actually awarded in a particular game must not exceed $50. The Commission believes this language to be in accordance with the plain language and legislative intent of H.B. 394. The following are two examples of how the Commission intends to enforce Texas Occupations Code, §2001.420, and this rule:

(1) A bingo game with an advertised prize of $100 is won by a patron with a half-pay bingo card (entitling the patron to half of the prize, or $50). The $50 prize is the only prize awarded in the game. Because the game actually awarded only $50 or less as the bingo prize, the game qualifies for the exemption from the $2,500 prize cap regardless of the advertised prize.

(2) A bingo game with an advertised prize of $100 is won by two patrons with full-pay cards. The two patrons must split the $100 prize, which means that each receives $50. While each individual patron only receives $50, the total aggregate amount of the prizes awarded in that game amount to $100. Therefore, the game is not exempt from the $2,500 prize cap.

A public comment hearing was held on Wednesday, October 16, 2013, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. Several members of the public provided comments at this hearing and all were against some of the proposed amendments: a representative of Littlefield Corporation, a representative of Bingo Interest Group, a representative of Texas Charity Advocates, a representative of Fort Worth Bookkeeping, a representative of Austin Capital Group, LLC, and a representative of Trend Gaming Systems, LLC. The Commission also received written comments against the proposed amendments, including comments from the two legislative sponsors of H.B. 394 and representatives of River City Bingo, Arc of the Capital Area, Texas Hillel Foundation, North Austin Foundation, Family Eldercare, Inc., Project Normalization, Austin Capital Group, LLC, Texas Charity Advocates, and Trend Gaming Systems, LLC. Commission staff also met with several representatives of the bingo community on three separate occasions to discuss any issues or concerns with the proposed rule.

COMMENT SUMMARY: Several commenters requested changes to the proposed text in §402.200(h)(5) in order to clarify that the requisite game schedule can be amended during the course of a bingo occasion. Some commenters were concerned that bingo conductors could not conduct any bingo games unless the games were listed on the game schedule prior to the start of the occasion.

COMMISSION RESPONSE: The Commission agrees with the comments. As previously explained in this preamble, §402.200(h)(5) has been clarified to allow written game schedules to be amended during the course of a bingo occasion and to permit licensed authorized organizations to conduct bingo games that were not originally listed on the game schedule. That was the original intent of the proposed text, but the adopted text will provide the requested clarification.

COMMENT SUMMARY: One commenter requested that, instead of amending the requisite game schedule during the course of a bingo occasion to note any additional games being played, the bingo conductor be permitted to note any additional games on the prize schedule, which is required under another rule.

COMMISSION RESPONSE: The Commission declines to alter the amendments as requested. The Commission believes the Charitable Bingo Operations Division will be better able to audit bingo conductors if all games played during a bingo occasion are listed on a written game schedule. Furthermore, the Commission believes the burden on bingo conductors to note any additional games on the game schedule will be minimal.

COMMENT SUMMARY: Several commenters requested that the proposed language in new §402.200(n) be deleted because it is in conflict with the plain language of Texas Occupations Code §2001.420, as amended by H.B. 394.

COMMISSION RESPONSE: The Commission agrees with the comments. As previously explained in this preamble, the proposed language in new §402.200(n) will not be adopted. In its place, the Commission adopts language clarifying that in order to qualify for the exemption from the $2,500 prize cap, the total aggregate amount of the prize(s) actually awarded in a particular game must not exceed $50.

COMMENT SUMMARY: Some commenters request changes to the proposed text in §402.200(h)(4) in order to clarify that only regularly scheduled games must be listed on the game schedule. The commenter is concerned that the proposed language could stifle the ability of bingo conductors to offer games not originally listed on the schedule.

COMMISSION RESPONSE: The Commission agrees that only a bingo conductor's regularly scheduled games need be listed on the game schedule *prior to the start of the bingo occasion.* The text in §402.200(h)(4) has been altered to reflect this change. However, the text in §402.200(h)(5) has also been altered to clarify that all games actually played during a bingo occasion must be listed on the game schedule upon the conclusion of the bingo occasion. This will allow the Charitable Bingo Operations Division to conduct more thorough and complete audits, while at the same time giving bingo conductors the flexibility to conduct games not originally listed on the schedule.

COMMENT SUMMARY: Some commenters contend that the requirement in proposed §402.200(h)(4)(D), that bingo conductors list on the requisite game schedule the current retail price of any non-cash bingo prize, is problematic. The commenter does not believe that valuing non-cash prizes at their current retail price is a workable standard because the retail price is often not clear. The commenter suggests that bingo products offered as prizes be valued at the price for which they are regularly sold, while other non-cash prizes be listed at the price actually paid for the prize.

COMMISSION RESPONSE: As previously explained in this preamble, current Commission rules require that non-cash bingo prizes be valued at their current retail price. The proposed language for §402.200(h)(4)(D) only requires that bingo conductors list that value on the game schedule. The Commission has not experienced any notable problems using the "current retail price" standard and therefore declines to alter it. However, as an alter-

native to the "current retail price" standard, the Commission will allow bingo conductors to value non-cash prizes at the price actually paid for the prize, provided that the conductor maintains documentation on the actual price paid. Section 402.200(f) has been amended to incorporate this change.

The amendments are adopted under §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted amendments implement Chapter 2001 of the Texas Occupations Code.

§402.200. General Restrictions on the Conduct of Bingo.

(a) A bingo occasion that is fairly conducted by a licensed authorized organization is one that is impartial, honest, and free from prejudice or favoritism. It is also conducted competitively, free of corrupt and criminal influences, and follows applicable provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(b) Inspection and use of equipment.

(1) All bingo equipment is subject to inspection at any time by any representative of the Commission. No person may tamper with or modify or allow others to tamper with or modify any bingo equipment in any manner which would affect the randomness of numbers chosen or which changes the numbers or symbols appearing on the face of a bingo card. A licensed authorized organization has a continuing responsibility to ensure that all bingo equipment used by it is in proper working condition.

(2) A registered bingo worker must inspect the bingo balls prior to the first game of each bingo occasion, making sure all of the balls are present and not damaged or otherwise compromised.

(3) Bingo balls that are missing, damaged, or otherwise compromised shall be replaced in complete sets or individually if the bingo balls are of the same type and design. The replacement of the set or individual bingo ball(s) must be documented on the bingo ball inspection log.

(4) A registered bingo worker must inspect the bingo console and flashboard to ensure proper working order prior to the first game of each bingo occasion.

(5) The organization must maintain on a specified form a log of each inspection of bingo balls, bingo console and flashboard signed by the registered worker conducting the inspection for forty-eight (48) months.

(6) The organization must establish and adhere to a written procedure that addresses problems during a bingo occasion concerning:

(A) bingo equipment malfunctions; and

(B) improper bingo ball calls or placements.

(c) Location of bingo occasion. A bingo occasion may be conducted only on premises which are:

(1) owned by a licensed authorized organization;

(2) owned by a governmental agency when there is no charge to the licensed authorized organization for use of the premises;

(3) leased, or used only by the holder of a temporary license; or

(4) owned or leased by a licensed commercial lessor.

(d) All bingo games must be conducted and prizes awarded on the days and within the times specified on the license to conduct bingo. If a circumstance occurs that would cause a regular bingo game to continue past the time indicated on the license, the licensed authorized organization may complete the regular bingo game. A written record detailing the circumstance that caused the bingo game to continue past the time indicated on the license must be maintained by the organization for forty-eight (48) months.

(e) Pull-tab bingo event tickets may not be sold after the occurrence of the event unless the organization has a policy and procedure in their house rules addressing the sale and redemption of pull-tab bingo event tickets after the event has taken place.

(f) Merchandise prizes. Any merchandise or other non-cash prize, including bingo equipment, awarded as a bingo prize shall be valued at its current retail price. However, with the exception of bingo equipment, a non-cash prize awarded as a bingo prize may be valued at the price actually paid for that prize provided that the licensed authorized organization maintains a receipt or other documentation evidencing the actual price paid. Prize fees must be collected on merchandise and non-cash prizes.

(g) Donated bingo prizes. Only licensed authorized organizations holding a non-annual temporary license may accept or award donated bingo prizes. A donated bingo prize shall be valued at its current retail price.

(h) The licensed authorized organization is responsible for ensuring the following minimum requirements are met to conduct a bingo occasion in a manner that is fair:

(1) A licensed authorized organization shall obtain, maintain, keep current, and make available for review during their bingo occasion to any person upon request a copy of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) The licensed authorized organization must make the following information available to players prior to the selling of a pull-tab bingo event ticket game:

(A) how the game will be played;

(B) the prize to be awarded if not United States currency; and

(C) how the winner(s) will be determined.

(3) Each licensed authorized organization shall conspicuously display during all bingo occasions a sign indicating the name of the operator in charge of the occasion.

(A) The letters on the sign shall be no less than one inch tall.

(B) The sign shall inform the players that they should direct any questions or complaints regarding the conduct of the bingo occasion to the operator listed on the sign.

(C) The sign should further state that if the player is not satisfied with the response given by the operator that the player has the right to contact the Commission and file a formal complaint.

(4) Prior to the start of a bingo occasion, the licensed authorized organization shall make a written game schedule available to all patrons. The game schedule must contain the following information:

(A) all regularly scheduled games to be played;

(B) the order in which the games will be played;

(C) the patterns needed to win;

(D) the prize(s) to be paid for each game, including the value of any non-cash bingo prizes as set in subsections (f) and (g) of this section;

(E) whether the prize payout is based on sales or attendance;

(F) the entrance fee and the number of cards associated with the entrance fee, if any; and

(G) the price of each type of bingo card offered for sale.

(5) The licensed authorized organization may amend the game schedule during the bingo occasion to correctly reflect any changes to game play during that occasion provided that the amendments are announced to the patrons and documented, in writing, on the game schedule. If not otherwise prohibited by law, the licensed authorized organization may conduct a bingo game that was not originally listed on the game schedule if the game and the prize(s) to be awarded for that game are announced to the patrons prior to the start of the game and documented, in writing, on the game schedule. Upon completion of the bingo occasion, the final game schedule must properly account for all games played during that occasion and the prizes awarded for those games. The final game schedule shall be maintained pursuant to §402.500(a) of this title.

(i) Reservation of bingo cards. Except where otherwise expressly permitted by this chapter, no licensed authorized organization may reserve, or allow to be reserved, any bingo card or cards for use by a bingo player.

(j) Bingo worker requirements.

(1) Bingo staff and employees may not play bingo during an occasion in which the bingo staff or employees are conducting or assisting in the conduct of the bingo occasion.

(2) A bingo worker shall not:

(A) communicate verbally, or in any other manner, to the caller the number(s) or symbol(s) needed by any player to win a bingo game;

(B) require anything of value from players, other than payment, for bingo cards, electronic card minding devices, pull-tab bingo tickets, and supplies; or

(C) deduct any cash or portion of a winning prize other than the prize fee without the player's permission.

(k) Caller requirements. The caller shall:

(1) be located so that one or more players can:

(A) observe the drawing of the ball from the bingo receptacle; and

(B) gain the attention of the caller when the players bingo;

(2) be the only person to handle the bingo balls during each bingo game;

(3) call all numbers and make all announcements in a manner clear and audible to all of the playing areas of the bingo premises;

(4) announce:

(A) the amount of the prize prior to the end of the game if the prize amount is based on sales or attendance;

(B) that the game, or a specific part of a multiple-part game, is closed after asking at least two (2) times whether there are any other bingos and pausing to permit additional winners to identify themselves;

(C) whether the bingo is valid and if not, that there is no valid bingo and the game shall resume. The caller shall repeat the last number called before calling any more numbers; and

(D) the number of winners for the game.

(5) return the bingo balls to the bingo receptacle only upon the conclusion of the game; and

(6) not use cell phones, personal digital assistants (PDAs), computers, or other personal electronic devices to communicate any information that could affect the outcome of the bingo game with anyone during the bingo occasion.

(l) Verification.

(1) Winning cards. The numbers appearing on the winning card must be verified at the time the winner is determined and prior to prize(s) being awarded in order to insure that the numbers on the card in fact have been drawn from the receptacle.

(A) This verification shall be done either in the immediate presence of one or more players at a table or location other than the winner's, or displayed on a TV monitor visible by all of the players or by an electronic verifier system visible by all the players.

(B) After the caller closes the game, a winning disposable paper card or an electronic representation of the card for each game shall also be posted on the licensed premises where it may be viewed in detail by the players until at least 30 minutes after the completion of the last bingo game of that organization's occasion.

(2) Numbers drawn. Any player may request a verification of the numbers drawn at the time a winner is determined and a verification of the balls remaining in the receptacle and not drawn.

(A) Verification shall take place in the immediate presence of the operator, one or more players other than the winner, and player requesting the verification.

(B) Availability of this additional verification, done as a request from players, shall be made known either verbally prior to the bingo occasion, printed on the playing schedule, or included with the bingo house rules.

(m) Each licensed authorized organization must establish and adhere to written procedures that address disputes. Those procedures shall be made available to the players upon request.

(n) In order for a bingo game to qualify for the exemption in §2001.420(b)(2) of the Occupations Code, the total aggregate amount of the prize(s) actually awarded for that game must not exceed $50.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.400

The Texas Lottery Commission (Commission) adopts amendments to 16 Texas Administrative Code §402.400, General Licensing Provisions, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6844). The purpose of the adopted amendments is to incorporate recent amendments to another Commission rule and to remove obsolete language.

The adopted amendments to §402.400(n)(3) increase the fee a bingo conductor must pay when requesting a determination of eligibility status from the Commission. The previous fee of $100 has been raised to $132 so that it continues to match the fee for the lowest class of bingo conductor licenses. The fee for the lowest class of bingo conductor licenses was raised from $100 to $132 in a previous amendment to §402.404. The fee increase for bingo conductor licenses was recommended by the Sunset Advisory Commission, and the 83rd Legislature made certain funding for the Commission contingent on the Commission increasing fee rates. Pursuant to §6.16, Article IX, of the 2014-2015 General Appropriations Act, the Commission hereby gives notice to the payers of the fee to determine eligibility status that the fee rate has been set by the Commission and not mandated by the Legislature.

The adopted amendments to §402.400(l) remove an obsolete reference to system service providers because the Commission no longer licenses system service providers.

A public comment hearing was held on Wednesday, October 16, 2013, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public provided comments on the proposed amendments at the hearing, and the Commission did not receive any written comments on the proposed amendments.

The amendments are adopted under §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted amendments implement Chapter 2001 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

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16 TAC §402.402

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.402, concerning Registry of Bingo Workers, with one non-substantive change to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6845).

The purpose of the amendments is to implement changes to Occupations Code, Chapter 2001, made pursuant to §§18, 21, and 32 of Texas House Bill (HB) 2197, 83rd Leg., R.S. (2013). Section 18 and §21 of HB 2197 amended Occupations Code, Chapter 2001, to change the statutory parameters governing licensure or registration following criminal conviction. Section 32 of HB 2197 amended Occupations Code, §2001.313, by authorizing the Commission to set and charge a bingo worker registration application fee. Section 45 of HB 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

Specifically, these amendments conform the section to those changes made in H.B. 2197 relating to charging fees and licensure or registration following criminal conviction. The amendments also make references to implement the requirements of new Occupations Code, §2001.0541, which states the commission shall adopt rules and guidelines to comply with Occupations Code, Chapter 53, in using criminal history information to issue or renew bingo licenses or to list or renew bingo registry workers. H.B. 2197 also made changes to Occupations Code, Chapter 2001, limiting the statutorily defined categories of convictions for which the Commission shall absolutely prohibit licensing or listing as a bingo registry worker.

In addition, the rule refers to application fees that the commission may set and charge an individual seeking listing as a bingo registry worker, which are authorized under §32 of H.B. 2197. The Commission currently sets a bingo worker registration application fee under 16 TAC §402.404(m). For clarity, the Commission is moving references to that fee from §402.404(m) to §402.404(l), in a separate and simultaneously made rule adoption. To clarify a bingo registry worker's obligation to pay a registration application fee, the commission also changes referencing to the fee in §402.402(c), (g), and (h). Thus, overall, this adoption attempts to harmonize various statutory changes to provide a comprehensive description of the process for the examination and listing of bingo registry workers.

A public comment hearing was held on Wednesday, October 16, 2013, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. Several members of the public provided both specific and general comments at this hearing and were against the proposed amendments to this section, as well as proposed amendments to §402.420, and proposed new rule §402.702, and numerous other sections governing fee changes. Attending and commenting members of the public were recorded as follows: a representative of Littlefield Corporation, a representative of Bingo Interest Group, a representative of Texas Charity Advocates, representatives of the Department of Texas Veterans of Foreign War and Multimedia Games, and a representative of Family Eldercare, Project Normalization, ARC of the Capitol Area, the North Austin Foundation, the B'nai B'rith Hillel Fund of UT, and Texas Gaming International. The Commission did not receive any specific written comments on this section during the public comment period. Because many of the commenters provided comments that generally addressed all of the rules, the Commission has attempted to separate out those comments germane to this adoption and

respond to those herein. With regard to general comments objecting to the Commission's proposed section implementing fee changes and a new procedure for applying new statutory language regarding Chapter 53, Occupations Code, those comments will be addressed separately, and with the adoption that specifically addresses that topic.

COMMENT SUMMARY: One commenter objected to the language addressing payment for the employment of a provisional employee as outlined in subsection (a)(8) of this section as an authorized bingo expense, because payment for a nonregistered worker is not an authorized bingo expense. The commenter stated it seems a little unclear and difficult to administer, and stated it would be better to see the difference between a provisional and nonregistered worker clarified in this section.

COMMISSION RESPONSE: This comment addresses language in the section that was not amended pursuant to the proposal before the Commission to be adopted. The Commission disagrees with the comment to the extent that the language is difficult to administer, because it has been a part of this rule for an extended period of time without substantial controversy. The Commission, however, will consider this comment, and later determine if it should need to address the issue with further rulemaking.

COMMENT SUMMARY: Members of the public expressed concern that implementing this rule in its current form would be an administrative nightmare and strain the limited resources of the Bingo Division and the Enforcement Division.

COMMISSION RESPONSE: The Commission disagrees with this comment. The Commission believes these comments relate to its implementation and application of Chapter 53, Occupations Code, which is not specifically referenced in this section. The Commission will address this separately in conjunction with §402.702.

COMMENT SUMMARY: Several members of the public provided written and verbal comments in opposition to proposed amendments to §402.402 and §402.420 and to proposed new §402.702. The gist of these comments is that the public is concerned that the rules, when read together, are written so broadly that affected persons don't have fair and reasonable notice of what offense is a disqualifying offense.

COMMISSION RESPONSE: The Commission sees these as comments relating to its implementation and application of Chapter 53, Occupations Code, which is not specifically referenced in this section. The Commission will address this separately in conjunction with §402.702. The Commission disagrees that this section is unclear or overbroad.

The amendments are adopted under §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction. The amendments are also adopted pursuant to new §2001.0541, which requires the Commission to adopt rules to comply with Occupations Code, Chapter 53, when using criminal history information to issue or renew a bingo license or to list or renew a bingo registry worker.

The adopted amendments implement Chapter 2001 of the Texas Occupations Code. The following statutes are affected by this adoption: §2001.0541 and §2001.313.

§402.402. Registry of Bingo Workers.

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

(1) Bingo Chairperson--an individual named in accordance with Texas Occupations Code §2001.002(4-a) and §2001.102(b)(6).

(2) Bookkeeper--an individual ultimately responsible for the preparation of any financial records for information reported on the Texas Bingo Conductor's Quarterly Report or for preparation and maintenance of bingo inventory records for a licensed authorized organization.

(3) Caller--an individual who operates the bingo ball selection device and announces the balls selected.

(4) Cashier--an individual who sells and records bingo card and pull tab sales to bingo players and/or pays winners the appropriate prize.

(5) Completed Application--A registry application or renewal form prescribed by the Commission which is legible and lists at a minimum the applicant's complete legal name, address, social security number or registry number, date of birth, race, gender and signature.

(6) Manager--an individual who oversees the day-to-day operation of the bingo premises.

(7) Operator--means an active bona fide member of a licensed authorized organization that has been designated on a form prescribed by the Commission prior to acting in the capacity as the organization's operator.

(8) Provisional Employee--an individual who is employed by a licensed authorized organization as an operator, manager, cashier, usher, caller, or salesperson while awaiting the results of a background check, whether paid or not.

(9) Salesperson--an individual who monitors bingo players, sells bingo cards and pull tabs, verifies winning cards and pull-tabs and/or delivers the prize money to the winners; may be referred to as an usher, floor worker, or runner.

(10) Usher--an individual who monitors bingo players, sells bingo cards and pull tabs, verifies winning cards and pull-tabs and/or delivers the prize money to the winners; may be referred to as a salesperson, floor worker or runner.

(b) Who must be listed on the Registry of Approved Bingo Workers. Any individual who carries out or performs the functions of a caller, cashier, manager, operator, usher, salesperson, bookkeeper, or bingo chairperson as defined in subsection (a) of this section must be listed on the Registry of Approved Bingo Workers prior to being involved in the conduct of bingo.

(c) Each individual must submit a completed Texas Application for Registry of Approved Bingo Workers as prescribed by the Commission and the requisite fee set in §402.404(l) of this title (relating to License and Registry Fees) to remain on the Registry of Approved Bingo Workers.

(d) The registrant will be added to the registry as soon as possible after the Commission has determined that the individual is eligible to be involved in the conduct of bingo or act as an operator.

(e) For purposes of the Registry of Approved Bingo Workers, each operator, bookkeeper, and bingo chairperson must be designated on the licensed authorized organization's license to conduct bingo application.

(f) A licensed authorized organization must submit the name of a registered operator, bookkeeper, or bingo chairperson on a form prescribed by the Commission prior to the individual's acting in that capacity.

(g) A registered worker who fails to timely submit the prescribed form to renew listing on the registry, along with the requisite fee set in §402.404(l) of this title, may not be involved in the conduct of bingo until the individual is again added to the registry. Payment for the employment of a provisional employee as outlined in subsection (a)(8) of this section is an authorized bingo expense; however payment for non-registered workers is not an authorized bingo expense. It is the responsibility of the licensed authorized organization to review the registry to confirm that the individual's registration is current.

(h) How to be listed on the Registry of Approved Bingo Workers. For an individual to be listed on the Registry of Approved Bingo Workers, an individual must:

(1) submit a completed Texas Application for Registry of Approved Bingo Workers form as prescribed by the Commission;

(2) submit any required fee;

(3) submit a verifiable FBI or DPS fingerprint card if at the time of registration:

(A) the individual is residing outside of Texas; or

(B) the individual maintains a driver's license or registration in another state; and

(4) be determined by the Commission to not be ineligible under Texas Occupations Code, §2001.105(a)(6) or the Commission's Rules.

(i) Incomplete Applications. The Commission will notify the applicant at the address provided if the registry application or renewal form submitted is not complete and will identify what is missing. The original application will be returned to the applicant for correction and resubmission. It is the responsibility of the registry applicant to resubmit a completed application before it may be processed. Failure to submit an FBI or DPS fingerprint card, if required, is grounds for denial or removal of the registration.

(j) An individual listed on the registry must notify the Commission of any changes to information contained on the Texas Application for Registry of Approved Bingo Workers on file with the Commission within 30 days of the change in information. Such notification shall be in writing or other approved electronic means.

(k) Identification Card for Approved Bingo Worker.

(1) The Commission will issue an identification card indicating that the individual is listed in the registry. A registered worker and operator must wear his/her identification card while on duty.

(2) The identification card worn by the registered worker or operator while on duty must be visible.

(3) The identification card shall list the individual's name, unique registration number and registry expiration date as issued by the Commission. An individual may obtain the unique registration number and registry expiration date from the Registry of Approved Bingo Workers on the Commission's website or by requesting the registration number and registry expiration date from the Commission.

(4) An identification card is not transferable and may be worn only by the individual identified on the card.

(5) Upon request by a Commission employee, an individual described in subsection (a) of this section shall present personal photo identification in order to verify the identification card is that individual's card.

(l) How to Obtain Additional Approved Identification Cards.

(1) A completed identification card may be obtained from the Commission by submitting the required form.

(2) An individual who has been approved to work in charitable bingo may complete an identification card form provided by the Commission for use while on duty. Blank identification card forms may be obtained from the Commission. The individual requesting the identification card form(s) must submit any required fee and the required form for the blank identification card form.

(3) The identification card prepared by the individual may only be on a prescribed Commission card form and must be legible and include the individual's name, unique registration number, and registry expiration date.

(m) A licensed authorized organization which is reporting conduct where there is a substantial basis for believing that the conduct would constitute grounds for removal or refusal to list on the registry shall make the report in writing to: Bingo Registry, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

(n) The provisions of the Texas Occupations Code, §2001.313 related to the registry of bingo workers do not apply to an authorized organization that does not have a regular license to conduct bingo who receives a temporary license to conduct bingo.

(o) If the Commission proposes to refuse to add or proposes to remove the individual from the Registry of Approved Bingo Workers consistent with Texas Occupations Code, §2001.313, the Commission will give notice of the proposed action as provided by Government Code, Chapter 2001.

(p) An individual receiving notice that the Commission intends to refuse to add to or intends to remove the individual from the Registry of Approved Bingo Workers may request a hearing. Failure to submit a written request for a hearing within 30 calendar days of the date of the notice will result in the denial of the application or removal of the registered worker from the registry.

(q) An individual who has been denied or removed from the registry because of a conviction for an offense listed under Occupations Code, §2001.105(b), will not be eligible to reapply to be listed. An individual who has been denied or removed from the registry because of a disqualifying criminal conviction not listed under Occupations Code, §2001.105(b), may reapply to be listed no earlier than five years after the commission of the offense, or as otherwise allowed under the Commission's Rules.

(r) A provisional employee must:

(1) indicate the playing location(s) where the individual is provisionally employed on the Texas Application for Registry of Approved Bingo Workers form submitted to the Commission.

(2) immediately stop working:

(A) after 14 days if the individual is not listed on the registry and is a resident of this state.

(B) after 45 days if the individual is not listed on the registry, not a resident of this state, and submitted a fingerprint card for a background investigation. If the fingerprint cards are returned by the law enforcement agency as unclassifiable, the Commission will notify the individual, and the individual may continue to be provisionally employed by submitting a written request and new fingerprint cards within 14 days of the notification.

(C) if found to be ineligible on the basis of the background investigation.

(3) wear an identification card while on duty with the registry applicant's name, "Provisional Employment" as the unique registration number, and the submission date of the registry application as the expiration date.

(s) A licensed authorized organization who employs a provisional employee must maintain a copy of the registry applicant's completed Texas Application for Registry of Approved Bingo Workers form submitted to the Commission until the individual is listed on the registry or the licensed authorized organization is notified that the individual is not eligible to be listed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §402.403, §402.411

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.403, concerning Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises, and 16 TAC §402.411, concerning Late License Renewal, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6847). The purpose of the amendments is to implement new §2001.061 of the Texas Occupations Code, made pursuant to §19 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. The amendments are also adopted to comply with §45(a) of HB 2197, which requires the Commission to adopt all necessary rules, policies, and procedures no later than January 1, 2014.

Section 2001.061 of the Texas Occupations Code requires the Commission to adopt rules governing each part of the license renewal process for all licenses issued under the Bingo Enabling Act. The legislation also requires a licensee seeking renewal to submit to the Commission the same information that is required in the initial license application. The adopted amendments fulfill these requirements. The title of §402.411 will be changed from "Late License Renewal" to "License Renewal" in order to reflect the fact that this rule will now govern all license renewals, not just late renewals. The adopted amendments also delete §402.403(a)(3) and §402.403(a)(4).

A public comment hearing was held on Wednesday, October 16, 2013, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. A representative of the Bingo Interest Group provided comments at the hearing in opposition to the proposed amendments to §402.411. The Commission did not receive any written comments on the proposed amendments.

COMMENT SUMMARY: One commenter expressed concern that §402.411(k)(2), as proposed, is not clear. Specifically, the commenter states that those licensees seeking a renewal may be required to provide information with their renewal applications that they were not required to submit with their previous license applications. The commenter suggests that this requirement will create a trap for applicants unless the Commission exempts current licensees from this requirement.

COMMISSION RESPONSE: The Commission declines to alter the amendments in response to this comment. The amendments to §402.411 follow Texas Occupations Code §2001.061 by requiring all license holders seeking a renewal to provide any required information not previously provided to the Commission. With the recent enactment of the Commission's sunset legislation (HB 2197), there are new license eligibility standards that the Commission must enforce. In order to determine whether a particular license or renewal applicant meets those new standards, the Commission may require information to be provided by applicants that was not previously required to be submitted to the Commission. For some current licensees, this new information may reveal that they are no longer eligible for a license. The commenter is opposed to such an outcome, but the legislature established the new eligibility standards and made it clear they were to be applied to current licensees when they seek license renewal. *See* H.B. 2197, §46(e) 83rd Leg., R.S. 2013 ("The changes in law made by this Act governing the eligibility of a person for a license apply only to the issuance *or renewal* of a license by the Texas Lottery Commission under . . . Chapter 2001, Occupations Code, as amended by this Act, on or after the effective date of this Act.") (emphasis added). Therefore, the Commission must require that license and renewal applicants provide the necessary information so that the Commission can determine whether they are eligible for a license or renewal.

The amendments are adopted under: (1) §2001.061 of the Texas Occupations Code, which requires the Commission to adopt rules governing each part of the license renewal process for all licenses issued under the Bingo Enabling Act; (2) §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (3) §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted amendments implement Chapter 2001 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §402.404

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.404, concerning License and Registry Fees, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6848).

The purpose of the amendments to §402.404(a)(3)(B)(ii) is to bring that provision into compliance with §2001.158 of the Texas Occupations Code, to ensure the Commission can fairly and effectively regulate charitable bingo activities in Texas, and to comply with a requirement of state law that necessitates action by the Commission to effectuate the provisions of the 2014-2015 General Appropriations Act relating to funding for the Commission's Charitable Bingo Operations Division. Pursuant to §2001.034 of the Texas Government Code, the amendments to §402.404(a)(3)(B)(ii) were adopted by the Commission on an emergency basis at the Commission's August 14, 2013, public meeting. The Commission now adopts those amendments on a permanent basis. The purpose of the remaining amendments to §402.404 is to implement changes to Texas Occupations Code, Chapter 2001, made pursuant to §§20, 23, 26, 29, and 31 of Texas House Bill (H.B.) 2197, 83rd Leg., R.S. (2013). These amendments are also adopted to comply with §45(a) of H.B. 2197, which requires the Commission to adopt all necessary rules, policies, and procedures no later than January 1, 2014.

The adopted amendments to §402.404(d) increase the fee a bingo conductor must pay when requesting to renew a license in administrative hold, while the adopted amendments to §402.404(e)(2)(B) increase the fee a bingo conductor must pay for the second year of a two-year license that is in administrative hold. The previous fees of $100 have been raised to $132 so that they continue to match the fee for the lowest class of bingo conductor licenses. The fee for the lowest class of bingo conductor licenses was raised from $100 to $132 in a previous amendment to §402.404. The fee increase for bingo conductor licenses was recommended by the Sunset Advisory Commission, and the 83rd Legislature made certain funding for the Commission contingent on the Commission increasing fee rates. Pursuant to §6.16, Article IX, of the 2014-2015 General Appropriations Act, the Commission hereby gives notice to the payers of the fees described in §402.404(d) and (e)(2)(B) that those fee rates have been set by the Commission and not mandated by the Legislature.

A public comment hearing was held on Wednesday, October 16, 2013 at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public provided comments at the hearing on the proposed amendments. The Commission did receive written comments on §402.404, but those comments did not address any of the proposed amendments. Rather, the comments addressed amendments adopted in a previous rulemaking.

The amendments are adopted under §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted amendments implement Chapter 2001 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bob Biard
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16 TAC §402.410

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.410, concerning Amendment of a License - General Provisions, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6851). The purpose of the amendments is to implement changes to §2001.306 of the Texas Occupations Code, made pursuant to §31 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. The amendments are also adopted to comply with §45(a) of H.B. 2197, which requires the Commission to adopt all necessary rules, policies, and procedures no later than January 1, 2014.

Previously, under §2001.306 of the Texas Occupations Code, the fee to amend a license issued under the Bingo Enabling Act was set at $10. With the passage of H.B. 2197, §2001.306 of the Texas Occupations Code now requires the Commission to set the amount of a fee to amend a license issued under the Bingo Enabling Act. The adopted amendments would keep the license amendment fee at $10.

A public comment hearing was held on Wednesday, October 16, 2013, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public provided comments on the proposed amendments at the hearing, and the Commission did not receive any written comments on the proposed amendments.

The amendments are adopted under: (1) §2001.306 of the Texas Occupations Code, which requires the Commission to set the amount of a fee to amend a license issued under the Bingo Enabling Act; (2) §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (3) §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted amendments implement Chapter 2001 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bob Biard
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16 TAC §402.420

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.420, concerning Qualifications and Requirements for Conductor's License, with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6852). The purpose of the adopted amendments is to implement changes to Texas Occupations Code, Chapter 2001, made pursuant to §18 and §21 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. Section 18 of H.B. 2197 requires that the Commission adopt rules to comply with Occupations Code, Chapter 53, related to using criminal history information to issue or renew bingo licenses or to list or renew bingo registry workers. Section 21 of H.B. 2197 amended Texas Occupations Code, §2001.105, by altering the language that defines the ability of an individual, or an entity involved with the individual, to apply for a new or renewal license following a criminal conviction. Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

Specifically, the adopted amendments remove references to crimes of moral turpitude and seek to align the section with new statutory parameters governing licensure of bingo conductors following criminal conviction. The changes to the text reflect that Chapter 53, Occupations Code, will not apply to applicants for a conductor's license. These changes are made as the result of comments received from the industry and are the Commission's response thereto.

A public comment hearing was held on Wednesday, October 16, 2013, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. Several members of the public provided comments at this hearing and were against the proposed amendments to §402.402 and §402.420, as well as proposed new §402.702. Attending and commenting members of the public were recorded as follows: a representative of Bingo Interest Group, a representative of Texas Charity Advocates, and a representative of the Department of Texas Veterans of Foreign Wars. The Commission also received written comments against the proposed amendments from a representative of Multimedia Games, Inc., a representative of the Department of Texas Veterans of Foreign War, and from a representative of Texas Charity Advocates. Because many of the comments provided generally addressed all of the rules, the Commission has attempted to separate out those comments germane to this adoption and respond to those herein.

COMMENT SUMMARY: Several members of the public opposed the proposed amendments to §402.420. The comments indicated concern that the disqualifying criteria was not listed in the chart, and stated they thought these proposed amendments should dovetail with their suggested changes to the other proposed amendments and proposed new §402.702.

COMMISSION RESPONSE: The Commission agreed with this comment and made changes to the proposed version of this section to align its language with the changes made to §402.702, governing disqualifying convictions.

COMMENT SUMMARY: Members of the public expressed concern that implementing the proposed amendments would be an administrative nightmare and strain the limited resources of the Bingo Division and the Enforcement Division.

COMMISSION RESPONSE: The Commission disagrees with this comment. The Commission believes this comment relates to its implementation and application of Chapter 53, Occupations Code, which does not now apply to this section in this adopted version. The Commission believes its current process and practices will adequately accommodate the changes made in this section.

COMMENT SUMMARY: Several members of the public provided written and verbal comments in opposition to proposed amendment to §402.402, §402.420, and proposed new §402.702. The gist of these comments is that the public is concerned that the rules, when read together, are written so broadly that affected persons don't have fair and reasonable notice of what offense is a disqualifying offense.

COMMISSION RESPONSE: The Commission disagrees with this comment to the extent that it applies to §402.420. The language in this section is very specific with regard to the types of offenses that bar individuals from participating as officers, directors, and operators for applicant organizations.

COMMENT SUMMARY: Several commenters provided comments regarding the proposed language setting out eligibility requirements for the qualifications and requirements of an organization seeking to be licensed to conduct bingo. The chart referenced potential disqualification for officers and directors of conductor organizations that would include consideration of factors under Chapter 53, Occupations Code. Several commenters indicated they believe the changes to the statute limit the Commission's authority to disqualify officers, directors, shareholders, or operators of any corporate entity licensed under the Bingo Enabling Act, including conductor organizations, to offenses for criminal fraud, gambling, and gambling-related offenses. Commenters believe that the elimination of the "crimes of moral turpitude" factor for determining licensing eligibility, along with the language of Chapter 53, Occupations Code (which applies to "persons"), and the absence of specific language allowing the use of Chapter 53 factors (for officers, directors, shareholders and operators), limits the Commission's authority to the stated grounds of criminal fraud, gambling, and gambling-related convictions.

COMMENT RESPONSE: The Commission considered this comment and agreed. The adopted version of this section eliminates references to Chapter 53, Occupations Code.

The amendments are adopted under §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction. The amendments are also adopted pursuant to new §2001.0541, which requires the Commission to adopt rules to comply with Occupations Code, Chapter 53, when using criminal history information to issue or renew a bingo license or to list or renew a bingo registry worker.

The adopted amendments implement Chapter 2001, Occupations Code. The following statute is affected by this adoption: Texas Government Code §2001.105.

§402.420. Qualifications and Requirements for Conductor's License.

An applicant must provide with its application documentation demonstrating that it meets all qualifications and requirements for a license to conduct bingo based on the type of organization it is. The qualifi-

cations, requirements, and necessary documentation for different types of organizations are shown in the chart below.
Figure: 16 TAC §402.420

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §402.700

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.700, concerning Denials; Suspensions; Revocations; Hearings, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6853). The purpose of the amendments is to implement changes to §2001.355 of the Texas Occupations Code, made pursuant to §36 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. The amendments are also adopted to comply with §45(a) of H.B. 2197, which requires the Commission to adopt all necessary rules, policies, and procedures no later than January 1, 2014.

Section 2001.355 of the Texas Occupations Code authorizes the Commission to temporarily suspend a license issued under the Bingo Enabling Act for failure to comply with the Bingo Enabling Act or the Charitable Bingo Administrative Rules. Section 2001.355 also requires the Commission to adopt rules to govern the temporary suspension of a license. Current Commission rule §402.700 satisfies this statutory requirement. The rule amendments are only intended to clarify that the rule applies to temporary suspensions.

A public comment hearing was held on Wednesday, October 16, 2013 at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public provided comments on the proposed amendments at the hearing, and the Commission did not receive any written comments on the proposed amendments.

The amendments are adopted under: (1) §2001.355 of the Texas Occupations Code, which requires the Commission to adopt rules to govern the temporary suspension of a license; (2) §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (3) §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted amendments implement Chapter 2001 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §402.702

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.702, concerning Disqualifying Convictions, with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6853). The purpose of the new rule is to implement changes to Texas Occupations Code, Chapter 2001, made pursuant to §§18, 21, 22, 24, 25, 27, 28, and 38 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. Section 18 of H.B. 2197 amended Occupations Code, Chapter 2001, by adding new §2001.0541, concerning Rules on Consequences of Criminal Convictions. The remainder of the listed sections in H.B. 2197 made amendments to the Bingo Enabling Act (the "Act") that change the parameters for which applicants under the Act are automatically deemed ineligible for a license. Occupations Code, Chapter 2001, previously deemed any license applicant or potential Bingo Registry Worker ineligible if such person or entity had been convicted of a felony, gambling offense, criminal fraud, or a crime of moral turpitude if less than ten years had elapsed since the termination of punishment. The legislature amended those statutory provisions, such that the only categories of absolute prohibition for licensing or listing on the registry are individuals convicted of gambling, gambling-related offenses, or criminal fraud. Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Commission shall adopt all rules, policies, and procedures required by the changes in law made by this bill.

Specifically, the adopted new rule implements the requirements under Occupations Code, §2001.0541, which states that the Commission shall adopt rules and guidelines that comply with Occupations Code, Chapter 53, in using criminal history information to issue or renew bingo licenses, or to list or renew bingo registry workers. Also, it incorporates the changes made to the Act that limit the statutorily defined categories of convictions for which the Commission shall absolutely prohibit licensure or listing. The adopted new rule attempts to harmonize the statutory changes and provide a comprehensive process for the examination of those applicants.

Proposed §402.702(a) was modified to clarify that the Commission will not apply Chapter 53 of the Occupations Code to officers, directors, or shareholders of, or other individuals associated with, an applicant that is a non-individual business entity. This modification was made based on comments questioning the Commission's authority to apply Chapter 53 to those listed individuals. Modifications were also made to clarify that the Charitable Bingo Operations Director will be responsible for making license and registry eligibility determinations under this new rule.

Proposed §402.702(b) was modified to clarify that a conviction for gambling, gambling-related, or criminal fraud offenses, regardless of the conviction date, will act as a permanent bar to licensure or listing on the registry. The modified language also clarifies that this provision applies to actual applicants and certain individuals associated with the applicants, and that deferred adjudications and nolo contendere pleas are not considered convictions for purposes of this subsection. Section 402.702(b)(1) was altered by removing the expansive "including, but not limited to" phrase, and adding the phrase "substantially similar", so that the provision provides more definitive guidance as to what offenses the Commission deems gambling or gambling-related. Section 71.02(a)(2) of the Penal Code (Engaging in Organized Criminal Activity) was also added to the list of gambling or gambling-related offenses. For §402.702(b)(2), Chapter 33A of the Penal Code (Telecommunications Crimes) was removed from the list of criminal fraud offenses. This change was based on comments questioning whether offenses listed in Chapter 33A actually qualify as criminal fraud. Language was also added to §402.702(b)(2) to include amongst the list of criminal fraud offenses any offense involving "substantially similar conduct" as one of the enumerated offenses. Language was also added to exempt any Class C misdemeanors from the enumerated list of criminal fraud offenses.

Proposed §402.702(d) was modified to clarify that Chapter 53 will not be applied in a manner that conflicts with §402.702(a). Language was also added to clarify that a deferred adjudication for gambling, gambling-related, or criminal fraud offenses may be considered a conviction for purposes of applying Chapter 53 (but will not be considered a permanent bar to licensure or listing on the registry as specified in the BEA).

Proposed §402.702(e) was modified to clarify the Commission's role in charitable bingo, as expressed in the Bingo Enabling Act. Furthermore, the list of offenses that the Commission deems to directly relate to the duties and responsibilities of licensed and registered activities under the Bingo Enabling Act was altered to provide a more detailed list of offenses and to exclude certain offenses that, after review, the Commission did not believe were directly related to those duties and responsibilities.

Proposed §402.702(f)(5) was modified to clarify that the Commission may consider multiple convictions or serious convictions of an applicant when determining whether such conviction(s) relate to the duties and responsibilities of the licensed or registered activity.

Proposed §402.702(g) was modified to clarify that the Commission will not consider Class C misdemeanors as disqualifying offenses under this new rule, except for convictions of gambling and gambling-related offenses.

Proposed §402.702(h) was modified to allow the Commission to consider mitigating factors when applying Chapter 53 to a particular applicant. Those mitigating factors include the applicant's veterans status, the amount of time elapsed since the applicant's last conviction, a clear compliance record while licensed or on the worker registry, and any recommendations from law enforcement or other community leaders.

Section 402.702(i) was added to clarify that an applicant may provide documentation of any mitigating factors to the Commission upon receiving notice of the Commission's intent to deny the license or registry application.

Finally, §402.702(l) was added to clarify that the Charitable Bingo Operations Director will issue guidelines relating to the Commission's application of Chapter 53 of the Occupations Code and this new rule.

A public comment hearing was held on Wednesday, October 16, 2013, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. Several members of the public provided comments at this hearing and were against some or all of the new rule: a representative of Littlefield Corporation, a representative of Bingo Interest Group, a representative of Texas Charity Advocates, representatives of the Department of Texas Veterans of Foreign Wars and Multimedia Games, Inc., and a representative of Family Eldercare, Project Normalization, ARC of the Capitol Area, the North Austin Foundation, the B'nai B'rith Hillel Fund of UT, and Texas Gaming International. The Commission also received written comments against the new rule from a representative of Family Eldercare, Project Normalization, ARC of the Capitol Area, the North Austin Foundation, the B'nai B'rith Hillel Fund of UT, and Texas Gaming International, a representative of the National Association of Fundraising Ticket Manufacturers, a representative of International Gamco, Inc., a representative of Multimedia Games, Inc. and the Department of Texas Veterans of Foreign Wars, a representative of River City Bingo, and a representative of Texas Charity Advocates. Commission staff also met with several representatives of the bingo community on three separate occasions to discuss any issues or concerns with the proposed rule.

COMMENT SUMMARY: One commenter requests that an applicant who holds a professional license from another licensing agency, with its own eligibility standards, be exempt from Commission review under this rule.

COMMISSION RESPONSE: The Commission declines to modify the rule in response to this comment. The fact that an applicant for a bingo license or listing on the worker registry is also licensed by another agency is irrelevant because each licensing agency has its own eligibility standards, and those standards may or may not match those deemed important by the Bingo Enabling Act and the Commission. It is the Commission's responsibility to thoroughly review all applicants for a bingo license or listing on the worker registry. To accept the comment would be to effectively pass that responsibility on to another agency, and that is not something the Commission is prepared to do.

COMMENT SUMMARY: Some commenters argue that the Commission has no authority to apply Chapter 53 of the Occupations Code to licensed manufacturers, distributors, commercial lessors, and bingo conductors. Specifically, the commenters cite to §§2001.105, 2001.154, 2001.202, and 2001.207 of the Bingo Enabling Act, which cover certain license issuance and eligibility requirements. The commenter contends that those provisions must be amended before the Commission may apply Chapter 53 to those types of licensees.

COMMISSION RESPONSE: The Commission declines to modify the rule in response to this comment. The Commission believes the legislature's intent is clearly expressed in §2001.0541 of the Bingo Enabling Act (added by §18 of HB 2197), and that intent is for the Commission to apply Chapter 53 to all types of licenses issued under the Bingo Enabling Act. *See* Sunset Advisory Commission, *Texas Lottery Commission: Report to the 83rd Legislature* at 109 (February 2013) (discussing the application of Chapter 53). Furthermore, we must attempt to reconcile and harmonize apparently conflicting statutory provisions so that every legislative enactment is given effect. *Texas State Bd. of Chiropractic Exam'rs v. Abbott,* 391 S.W.3d 343 (Tex.

App.-Austin 2013, no pet.). To accept this comment would render §2001.0541 ineffective.

COMMENT SUMMARY: One commenter requests that language be added to the proposed rule that would clarify that the actions of a single individual involved with a potential licensee organization, but who is not related to the organization's bingo operations, will not permanently disqualify the organization from license eligibility. The commenter suggests language that would allow an applicant organization the opportunity to remove an individual whose actions could render the organization ineligible for a license before the Commission makes a final determination on the organization's license application.

COMMISSION RESPONSE: Under the Bingo Enabling Act, a conviction for any gambling, gambling-related, or criminal fraud offense is a permanent bar to licensure or placement on the bingo worker registry. This bar applies to some individuals involved with a potential licensee organization or entity, including officers, directors, and some shareholders. Therefore, as long as a person convicted of any gambling, gambling-related, or criminal fraud offense serves in a capacity such as officer or director of an organization or entity, that organization or entity may not be licensed. However, if the person convicted of the gambling, gambling-related, or criminal fraud offense is removed from his or her position with the organization or entity, the organization or entity may once again be eligible for a license. It is the Charitable Bingo Operations Division's intent to notify non-individual applicants of any known officers, directors, or shareholders with disqualifying convictions before making a final determination on their application, therefore giving the applicants the opportunity to remove the disqualified individual from his or her position. Furthermore, §402.702(i) has been added to the rule. That provision would allow an applicant, after receiving a notice of denial from the Commission, to provide documentation of mitigating factors as to why the application should be approved. In the case of a non-individual applicant, such a mitigating factor could be proof that a disqualified officer, director, or shareholder has been removed from his or her post within the organization.

COMMENT SUMMARY: Some commenters express concern that the proposed rule would allow the Commission to deny a license to a corporation or other entity if an officer, director, or shareholder of that entity was determined to have a particular criminal history. The commenters contend that Chapter 53 of the Occupations Code, which the proposed rule implements, only applies to the actual license holder or applicant. Therefore, they argue that the Commission does not have the authority to deny a license to an applicant that is a corporation or other entity based on the criminal history (other than convictions for gambling, gambling-related, or criminal fraud offenses) of officers, directors, or shareholders of that entity. One commenter expresses concern that, unless modified, the proposed rule could effectively bar publicly traded companies from the bingo industry because those companies have no control over who their shareholders are.

COMMISSION RESPONSE: The Commission accepts the comment. As previously explained in this preamble, the Commission has modified the rule to clarify that it will only apply Chapter 53 of the Occupations Code to the actual applicant and not to officers, directors, or shareholders of non-individual applicants.

COMMENT SUMMARY: Some commenters express concern that the proposed rule does not provide clear notice as to what criminal offenses the Commission considers disqualifying. Specifically, commenters argue that the proposed rule language "including, but not limited to" in proposed §402.703(b)(1) - (2) and (e) is too expansive and could possibly include every criminal offense. The commenters request the removal of that expansive language. One commenter expresses concern that, without clear notice, the proposed rule would be an "administrative nightmare" for the Commission to enforce, would strain the limited resources of the Charitable Bingo Operations and Enforcement Divisions, and could possibly delay the issuance of licenses.

COMMISSION RESPONSE: The Commission agrees with the comment requesting the removal of the expansive phrase "including, but not limited to". As previously explained in this preamble, that phrase has been removed from §402.703(b)(1) - (2) and (e), thus providing the clear notice requested by the commenters. Furthermore, pursuant to §53.025 of the Occupations Code, the Charitable Bingo Operations Director will issue guidelines relating to the application of Chapter 53. Those guidelines will provide additional notice.

COMMENT SUMMARY: One commenter notes that a particular criminal offense could disqualify someone from working in a bingo hall, but that same offense may not prevent the individual from working for a lottery retailer or contractor, or even the Commission itself.

COMMISSION RESPONSE: The Commission declines to modify the rule in response to this comment. The Commission does not dispute that, in some instances, a particular criminal offense may disqualify someone from working in a bingo hall, but not disqualify that person from working for a lottery retailer or the Commission. However, because the eligibility standards in the Bingo Enabling Act differ from those for lottery retailers, contractors, and Commission employees, such a result is not illegal or improper.

COMMENT SUMMARY: Several commenters request a blanket grandfather provision that would allow current licensees to avoid Commission scrutiny under the proposed rule for past criminal offenses (other than convictions for gambling, gambling-related, or criminal fraud offenses). In the alternative to a blanket grandfather provision, one commenter requests that current licensees not be forced to update the Commission with their criminal histories in the middle of their current licensing period in order to ease the transition from the old standards to the new standards.

COMMISSION RESPONSE: The Commission declines to modify the rule in response to these comments. The legislature established the new license eligibility standards and made it clear that they were to be applied to current licensees when they seek license renewal. *See* H.B. 2197, §46(e) 83rd Leg., R.S. 2013 ("The changes in law made by this Act governing the eligibility of a person for a license apply only to the issuance *or renewal* of a license by the Texas Lottery Commission under . . . Chapter 2001, Occupations Code, as amended by this Act, on or after the effective date of this Act.") (emphasis added). Therefore, a grandfather clause exempting current licensees from the new eligibility standards for criminal offenses committed prior to the change in law would run counter to the legislature's intent, as expressed in the bill. Furthermore, because the Commission must apply these new eligibility standards to current licensees, the Commission must have access to current licensees' criminal history record information that was not previously provided to the Commission under the previous standards. Therefore, to the extent the duty exists to provide up to date criminal histories, the Commission does not believe it prudent to absolve current licensees from that duty.

COMMENT SUMMARY: One commenter notes that the proposed rule would allow the Commission to treat certain criminal offenses as convictions even if the charges were ultimately dismissed. The Commenter requests that such offenses not be treated as convictions, or in the alternative, that only offenses committed after the adoption of the rules are eligible to be treated as such.

COMMISSION RESPONSE: The Commission declines to modify the rule in response to this comment. Under the new rule, and pursuant to the Bingo Enabling Act, legitimate convictions (but not deferred adjudications or nolo contendere pleas) for gambling, gambling-related, and criminal fraud offenses will amount to a permanent bar for licensure or placement on the registry. However, as explicitly permitted in §53.021 of the Occupations Code, the Commission may consider certain deferred adjudications and nolo contendere pleas as convictions for purposes of applying Chapter 53 of the Occupations Code.

COMMENT SUMMARY: Several commenters request language imposing a limit on the Commission's ability to consider offenses (other than gambling, gambling-related, or criminal fraud offenses) committed in the distant past. Specifically, one commenter suggests that if a particular offense directly relates to the licensing activity, the Commission should not consider the offense if it is more than ten (10) years old, and for offenses that do not directly relate to the licensing activity, the commenter contends that the Commission should not consider the offense if it is more than five (5) years old.

COMMISSION RESPONSE: The Commission declines to modify the rule in response to this comment. Prior to September 1, 2013, the Bingo Enabling Act contained provisions similar to those requested by the commenters: provisions restricting the Commission's ability to consider convictions if ten (10) or more years had passed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense. However, the 83rd Legislature recently deleted such language from the Act. By deleting that language from the Act, the Commission believes it to be the legislature's intent not to restrict the Commission's ability to review older crimes. However, in §402.702(h)(2) of the new rule, the Commission will consider the amount of time that has elapsed since an applicant's last offense when applying Chapter 53 of the Occupations Code to an applicant. The Commission believes this solution to be the most prudent course because the Commission retains its ability to consider older crimes, while at the same time recognizing that in many cases, the older a crime is, the less impact it will have on an applicant's fitness for a license.

COMMENT SUMMARY: Some commenters express concern that some of the offenses listed as examples of criminal fraud in the proposed rule are not actually criminal fraud offenses. Specifically, Penal Code Chapter 33A, Telecommunications Crimes.

COMMISSION RESPONSE: The Commission agrees with the comment. As previously explained in this preamble, the Commission has revised the list of criminal fraud offenses and removed Chapter 33A of the Penal Code from that list.

COMMENT SUMMARY: Some commenters request that convictions for Class B and C misdemeanors (other than gambling and gambling-related offenses) not be considered disqualifying under any circumstances.

COMMISSION RESPONSE: As previously explained in this preamble, the Commission will not consider Class C misdemeanors as disqualifying offenses under Chapter 53 of the Occupations Code. Furthermore, Class C misdemeanors are now excluded from the list of criminal fraud offenses. However, the Commission declines to include Class B misdemeanors as an excluded class. The Commission believes that some Class B offenses are of such a serious nature that it should not limit its discretion to consider such offenses when determining license or worker registry eligibility.

COMMENT SUMMARY: Section 402.702(e) includes a list of offenses deemed to directly relate to an applicant's "fitness" for a license or registry listing. One commenter expresses concern that the fitness of an applicant is too broad of a standard and not the proper standard to be judged under Chapter 53 of the Occupations Code. The same commenter expresses concern that the list includes any prohibited act under the State Lottery Act or the Bingo Enabling Act, which could allow the Commission to impose a lifetime ban on the applicant for any violation of those acts. Another commenter identifies other listed criminal offenses that do not appear to have any relation to an applicant's fitness for a bingo license or registry listing: Pen. Code §30.05(e) (trespass on agricultural land), §39.05 (failure to report death of a prisoner). Both commenters request that the list be modified to alleviate their concerns.

COMMISSION RESPONSE: Contrary to the commenter's assertion, an applicant's "fitness" for a license or registry listing is an appropriate standard by which to analyze an applicant under Chapter 53 of the Occupations Code. *See* Tex. Occ. Code §53.022(4) ("the licensing authority shall consider . . . the relationship of the crime to the . . . *fitness* required to perform the duties and discharge the responsibilities of the licensed occupation") (emphasis added); and §53.023(a) ("In determining the *fitness* to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider. . . .") (emphasis added). In response to the comment expressing concern about listing "any prohibited act" under the State Lottery Act or the Bingo Enabling Act as an act that directly relates to an applicant's fitness for licensure, the Commission has removed prohibited acts under the State Lottery Act from the rule. However, prohibited acts under the Bingo Enabling Act will remain listed. The commenter incorrectly states that the rule would allow the Commission to impose a lifetime ban for violating the BEA. First, under Chapter 53, the Commission will only consider violations of the BEA that lead to criminal convictions (including deferred adjudication and nolo contendere pleas); administrative violations are not disqualifying under Chapter 53 (but may be reviewed under §402.702(h)(3)). Second, the rule does not impose a lifetime ban for violating the BEA. Rather, as with all other non-gambling, gambling-related, and criminal fraud offenses, criminal convictions for violating the BEA will be considered under Chapter 53, which does not impose a lifetime ban. Finally, in response to this comment, the Commission has refined the list of offenses that directly relate to an applicant's fitness and removed Pen. Code §30.05(e) and §39.05 from the list.

COMMENT SUMMARY: Several commenters request an exception or preference that would allow military veterans that have committed certain criminal offenses to still be eligible for a license or listing on the registry.

COMMISSION RESPONSE: The Commission agrees with the comment to the extent it requests special consideration of veteran applicants. As previously explained in this preamble, the new rule has been modified so that the Commission may con-

sider an applicant's veterans status as a mitigating factor when analyzing the applicant under Chapter 53 of the Occupations Code. However, the Commission does not believe it prudent to completely limit its discretion when analyzing veteran applicants. Some veteran applicants may be involved in criminal offenses serious enough to warrant exclusion from the bingo industry in Texas under Chapter 53. In order to retain the ability to exclude such veteran applicants from the bingo industry, the Commission will not provide a blanket exception for veteran applicants.

COMMENT SUMMARY: One commenter does not agree with the Commission's statement in the preamble to the proposed rule that there will be no significant impact for state or local governments as a result of the proposed rule. The commenter claims that because the proposed rule will require the Commission to conduct extensive background checks on applicants with little guidance in the rule as to what disqualifying offenses are, the Commission will be required to hire an "incalculable" number of employees to conduct these checks and determine each applicant's eligibility.

COMMISSION RESPONSE: Based on a review of its internal capabilities, the Commission does not believe that the new rule will be a significant impact as argued by the commenter. However, as previously explained in this preamble, the Commission has modified the new rule to provide clear notice as to whom the Commission will review under Chapter 53 of the Occupations Code and what offenses may be disqualifying. Therefore, the comment has been addressed.

COMMENT SUMMARY: Some commenters do not agree with the Commission's statement in the preamble to the proposed rule that, as a result of the proposed rule: (1) there will be no adverse effect on small business, micro businesses, or local or state employment; (2) there will be no additional economic cost to persons required to comply with the proposed rule; and (3) an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses. The commenters contend that because the proposed rule does not provide guidance as to what offenses will be considered disqualifying, the various small business licensees will be required to re-examine the backgrounds of all personnel associated with the licensee. The commenters argue that this will increase the cost and burden on licensees. The commenters argue further that because many small business licensees contract out various services to independent contractors, the burden to check the backgrounds of all personnel associated with these contractors would disproportionately affect small businesses.

COMMISSION RESPONSE: As previously explained in the preamble, the Commission has modified the new rule to provide clear notice as to whom the Commission will review under Chapter 53 of the Occupations Code and what offenses may be disqualifying. Therefore, current and potential licensees will not be required to examine or re-examine the backgrounds of all personnel associated with their licenses.

COMMENT SUMMARY: Section 402.702(b)(1) of the proposed rule reads: "The Commission deems any gambling or gambling-related offense to be those offenses including but not limited to any offense listed in Penal Code, Chapter 47, Gambling." Section 402.702(b)(2) includes similar language regarding criminal fraud offenses. One commenter states that the phrase "those offenses" in the referenced sections does not properly identify what offenses they refer to.

COMMISSION RESPONSE: The Commission has modified §402.702(b)(1) and (2) by removing the phrase "those offenses" and further clarifying what offenses qualify as gambling, gambling-related, and criminal fraud offenses.

COMMENT SUMMARY: One commenter states that the phrase "based on criminal conviction" in §402.702(c) is grammatically incorrect and does not identify whose criminal conviction the rule is referring to. The commenter also states that the reference to Article 62.001 of the Code of Criminal Procedure in §402.702(c)(3) is confusing because Article 62.001 is only a definitions provision. Finally, the commenter contends that the list of offenses in §402.702(c) should not be grounds for disqualification.

COMMISSION RESPONSE: The rule has been modified to correct any grammatical issues and to clarify that the Commission will only analyze an applicant's criminal convictions under Chapter 53 of the Occupations Code. Furthermore, the reference to Article 62.001 has been clarified. However, the Commission declines to modify the new rule in response to the comment that the offenses listed in proposed §402.702(c) should not be grounds for disqualification. Chapter 53 of the Occupations Code explicitly authorizes the Commission to consider offenses that directly relate to the duties and responsibilities of the licensed or registered activity, offenses committed less than five years before the date of application, offenses under Section 3g, Article 42.12 of the Code of Criminal Procedure, and sexually violent offenses, as defined by Article 62.001 of the Code of Criminal Procedure. The Commission does not believe it prudent to further restrict the types of offenses that it may consider when reviewing a license or registry application.

COMMENT SUMMARY: One commenter contends that §402.702(d) is too vague because it would allow the Commission to apply Chapter 53 of the Occupations Code for any offense. The commenter also questions whether "other offenses" in §402.702(d) must be charged offenses, convicted offenses, or offenses adjudicated in some other manner. The commenter also questions what "persons" will be subject to scrutiny under §402.702(d).

COMMISSION RESPONSE: As previously noted, the rule has been modified to clarify that only license and registry applicants will be analyzed under Chapter 53 of the Occupations Code. Furthermore, the purpose of Chapter 53 is to grant a licensing agency, such as the Commission, the discretion to consider *any* convicted offense (other than Class C misdemeanors) committed by an applicant, provided that the agency's analysis of the offense follows the standards set in Chapter 53. When applying Chapter 53, the Commission will determine what offenses are disqualifying and which offenses are not. Therefore, the commenter's opposition to applying Chapter 53 for any offense runs counter to the purpose of that law. Finally, in response to the comment questioning whether "other offenses" must be charged offenses, convicted offenses, or offenses adjudicated in some other manner, the Commission intends to follow Chapter 53, which states that a licensing agency may take a licensing action against an applicant based on a conviction, but that certain deferred adjudications and nolo contendere pleas may be considered convictions under certain circumstances. The Commission declines to further modify the rule in response to this comment.

COMMENT SUMMARY: One commenter requests that §402.702(e) incorporate language directly from §2001.051(b), Occupations Code, regarding the Commission's role in regu-

lating bingo rather than language roughly paraphrasing that statutory provision.

COMMISSION RESPONSE: The Commission accepts this comment and has modified §402.702(e) accordingly.

COMMENT SUMMARY: One commenter questions the use of the phrase "other acts" in §402.702(e). The commenter believes that the proposed language would allow the Commission to determine whether any person committed an offense. The commenter also states that the proposed language is not limited to potential licensees or applicants, and is thus unclear as to who is subject to the rule.

COMMISSION RESPONSE: The phrase "other acts" has been removed from §402.702(e), and as previously explained, the rule has been modified to clarify that Chapter 53 will only be applied to license and registry applicants.

The new rule is adopted under: (1) §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; (2) §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction; and (3) §2001.0541, which requires the Commission to adopt rules to comply with Occupations Code, Chapter 53, when using criminal history information to issue or renew a bingo license or to list or renew a bingo registry worker.

The adopted new rule implements Chapter 2001 of the Texas Occupations Code.

§402.702. Disqualifying Convictions.

(a) The Commission shall determine, consistent with the requirements of Chapters 53 and 2001, Occupations Code, whether criminal convictions affect the eligibility of an applicant for a new or renewal license or listing in the registry of approved bingo workers under the Bingo Enabling Act (BEA). The Director of the Charitable Bingo Operations Division (Director) shall have the authority to make such determinations pursuant to this section. The Commission will not apply Chapter 53, Occupations Code, to officers, directors, or shareholders of, or other individuals associated with, an applicant that is a non-individual business entity.

(b) If any of the following persons have been convicted of a gambling or gambling-related offense, or criminal fraud, the applicant for a license or a listing in the registry of approved bingo workers will not be eligible for a new or renewal license or registry listing, as applicable: the applicant; or for an applicant for a license, any person whose conviction of any such offense would render the applicant ineligible under the eligibility standards for the particular type of license *(i.e.,* BEA §2001.105(b) for authorized organizations, BEA §2001.154(a)(5) for commercial lessors, BEA §2001.202(9) for manufacturers, and BEA §2001.207(9) for distributors). Such a conviction (which shall not include deferred adjudications and/or nolo contendere pleas) shall be a permanent bar to the applicant obtaining a license or registry listing.

(1) The Commission deems any gambling or gambling-related offense to be any offense listed in Penal Code, Chapter 47, Gambling; the offense of Penal Code, §71.02(a)(2), Engaging in Organized Criminal Activity; or any offense committed, including in another state or Federal jurisdiction, involving substantially similar conduct as an offense cited in Penal Code Chapter 47 or §71.02(a)(2).

(2) The Commission deems any offense involving criminal fraud to be any offense listed in the following Penal Code Chapters and as described below, with the exception of Class C misdemeanors:

(A) Penal Code, Chapter 32, Fraud;

(B) Penal Code, Chapter 35, Insurance Fraud;

(C) Penal Code, Chapter 35A, Medicaid Fraud; or

(D) Any offense committed, including in another state or Federal jurisdiction, involving substantially similar conduct as an applicable offense under these enumerated Penal Code, Chapters 32, 35, or 35A.

(c) For criminal convictions that do not fall under the categories addressed in subsection (b) of this section, the Commission may determine an applicant to be ineligible for a new or renewal license or a registry listing based on a criminal conviction for:

(1) An offense that directly relates to the duties and responsibilities of the licensed or registered activity;

(2) An offense committed less than five years before the date of application;

(3) An offense under §3g, Article 42.12 of the Code of Criminal Procedure; or

(4) A sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure.

(d) For offenses that do not fall under subsection (b) or (c) of this section, such as offenses for which a person pleaded nolo contendere and/or received deferred adjudication and court supervision, and except as provided in subsection (a) of this section, the Commission may apply the provisions of Chapter 53, Occupations Code, to determine whether or not the applicant is eligible for a new or renewal license, or registry listing, under the BEA. Generally, for purposes of applying Chapter 53, the Commission will consider an applicant's deferred adjudication for a gambling or gambling-related offense, or a criminal fraud offense, to be a conviction in accordance with §53.021(d), Occupations Code.

(e) Because the Commission has a duty to exercise strict control and close supervision over the conduct of Charitable Bingo to ensure that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, and, because bingo games are largely cash-based operations providing opportunities for individuals to have access to cash and/or products that may be exchanged for cash, the Commission finds that prohibited acts under the BEA and convictions for offenses that call into question an applicant's honesty, integrity, or trustworthiness in handling funds or dealing with the public, directly relate to the duties and responsibilities of licensed and registered activities under the BEA. The Commission deems convictions (including deferred adjudications and/or nolo contendere pleas) for certain misdemeanor and felony offenses to directly relate to the fitness of a new or renewal applicant for a license or registry listing under the BEA. Such offenses include the following:

(1) Penal Code, Chapter 30, Burglary and Criminal Trespass, with the exception of:

(A) Penal Code, §30.05, Criminal Trespass; and

(B) Penal Code, §30.06, Trespass by Holder of License to Carry Concealed Handgun;

(2) Penal Code, Chapter 31, Theft, with the exception of:

(A) Penal Code, §31.07, Unauthorized Use of a Vehicle;

(B) Penal Code, §31.12, Theft of or Tampering with Multichannel Video or Information Services;

(C) Penal Code, §31.13, Manufacture, Distribution, or Advertisement of Multichannel Video or Information Services Device; and

(D) Penal Code, §31.14, Sale or Lease of Multichannel Video or Information Services Device;

(3) Penal Code, Chapter 33, Computer Crimes, with the exception of:

(A) Penal Code, §33.05, Tampering With Direct Recording Electronic Voting Machine; and

(B) Penal Code, §33.07, Online Impersonation;

(4) Penal Code, Chapter 34, Money Laundering;

(5) Penal Code, Chapter 36, Bribery and Corrupt Influence, with the exception of Penal Code, §36.07, Acceptance of Honorarium;

(6) Penal Code, Chapter 37, Perjury and Other Falsification;

(7) Penal Code, Chapter 71, Organized Crime; and

(8) Any offense committed, including in another state or Federal jurisdiction involving substantially similar conduct as an offense in the applicable sections of Penal Code, Chapters 30, 31, 33, 34, 36, 37, 71, or the BEA.

(f) In determining whether a criminal conviction directly relates to the duties and responsibilities of the licensed or registered activity under the BEA, the following factors will be considered:

(1) The nature and seriousness of the crime;

(2) The relationship of the crime to the purposes for which the individual seeks to engage in the regulated conduct;

(3) The extent to which the regulated conduct might offer an opportunity to engage in further criminal activity of the same type as the previous conviction;

(4) The relationship of the conviction to the capacity required to perform the regulated conduct; and

(5) Any other factors appropriate under Chapters 53 or the BEA, including whether a history of multiple convictions or serious conviction(s) would cause an applicant to pose a threat to the safety of bingo participants or workers.

(g) Except for convictions involving gambling or gambling-related offenses, a conviction, deferred adjudication, or nolo contendere plea for a Class C misdemeanor, or traffic offenses, and similar offenses in other state or Federal jurisdictions with a similar range of punishment as a Class C misdemeanor, will not be considered to be a disqualifying offense for purposes of this section.

(h) Pursuant to Chapter 53, Occupations Code, the Commission may consider mitigating factors in addition to criminal convictions to determine whether an applicant is eligible for a new or renewal license or registry listing. Such mitigating factors include:

(1) Veteran's status, including discharge status;

(2) Remoteness in time; e.g., if more than 10 years have elapsed since the last conviction;

(3) Absence of violation history as a current bingo licensee or bingo worker registrant over an extended period of time;

(4) Recommendations from law enforcement or community leaders; and

(5) Whether an arrest resulted in a deferred adjudication rather than a conviction.

(i) Upon notification of the Commission's intent to deny a new or renewal application or registry listing, an applicant may provide documentation of mitigating factors that the applicant would like the Commission to consider regarding its application. Such documentation must be provided to the Commission no later than 20 days after the Commission provides notice to an applicant of a denial, unless the deadline is extended in writing or through e-mail by authorized Commission staff.

(j) Upon the Commission's determination that an applicant is not eligible for a new or renewal license or registry listing because of a disqualifying criminal conviction or other criminal offense, the Commission shall take action authorized by statute or Commission rule.

(k) A denial or suspension of a new or renewal application under this section may be contested by the applicant pursuant to §402.700 of this chapter.

(l) The Director shall issue guidelines relating to the practice of the Commission under Chapter 53, Occupations Code, and this section, and may issue amendments to the guidelines as the Director deems appropriate, consistent with §53.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §402.703

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.703, concerning Audit Policy, with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6855). The purpose of the new rule is to implement changes to §2001.560 of the Texas Occupations Code, made pursuant to §40 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. The new rule is also adopted to comply with §45(a) of H.B. 2197, which requires the Commission to adopt all necessary rules, policies, and procedures no later than January 1, 2014.

Section 2001.560 of the Texas Occupations Code was amended to require the Commission to develop a policy for auditing licensees under the Bingo Enabling Act. The statute requires the Commission to use audit risk analysis procedures to identify which licensees are most at risk of violating the Bingo Enabling Act or the Commission's rules. The Commission must also use the same audit risk analysis procedures to develop a plan for auditing the identified licensees. The new rule is the Commission's policy for auditing license holders. The new rule outlines the Commission's authority to initiate audits and how licensees will be identified for audit. The new rule also specifies how identified licensees will be notified of an audit, how the Commission

will conduct audit entrance and exit conferences, and how the Commission will issue audit reports.

Proposed §402.703(h) stated that the Commission could invoice a licensee for any cost related to an audit of that licensee that was incurred by the Commission. That provision was proposed pursuant to §2001.560(d) of the Texas Occupations Code, which explicitly authorizes the Commission to set and charge a fee to recover the cost of an audit. Several commenters expressed concern that the Commission would attempt to collect more money from licensees, especially since license fees were recently increased in a previous rulemaking. Other commenters expressed concern that the proposed language was not specific as to what expenses the Commission could seek to recover and what documentation was needed to prove those expenses. Based on these comments, the Commission believes it needs more time to study the implications of charging licensees to recover the costs of an audit. Therefore, the Commission will not adopt proposed §402.703(h) at this time. However, the Commission's decision not to adopt this provision in no way limits the Commission's authority under §2001.560(d).

The proposed rule included a provision, §402.703(b)(2), that listed "the number or severity of complaints made against the licensee" as a risk factor that the Commission would use to determine what licensees would be subject to an audit. Members of the public questioned whether under that proposed provision the Commission would consider any complaints made against a premises or only those complaints that were substantiated. The commenters were concerned that the language used in the proposed provision was too vague. To alleviate these concerns, the Commission believes it prudent not to adopt the proposed language listing "the number or severity of complaints" as an audit risk factor.

Proposed §402.703(d)(3) and (f)(3) stated that the Commission could require any person familiar with a licensee's operations to attend the audit entrance or exit conference. If any required attendees did not attend, those proposed provisions also authorized the Commission to impose sanctions against the licensee or absent attendee. Several members of the public questioned whether the Commission possessed the authority to require any person familiar with a licensee's operations, particularly any individuals not licensed by the Commission, to attend an audit entrance or exit conference. One commenter likened the proposed provisions to a subpoena power. Based on these comments, but without addressing the question of whether the Commission possesses the authority to adopt such a rule, the Commission will modify the proposed language so that the Commission may request, rather than require, that a particular individual attend an audit entrance or exit conference. Because the Commission will not require attendance at an audit entrance or exit conference, the proposed language authorizing the Commission to impose sanctions is obsolete and will not be adopted.

Proposed §402.703(g)(1) states that upon the completion of an audit, the Commission auditors will prepare a draft audit report and provide a copy of that report to the licensee at the audit exit conference. Several commenters requested that a copy of the draft audit report be provided to the licensee at least three business days before the exit conference so that the licensee would have time to review the report before meeting with the auditors. The Commission agrees with the commenters and has amended the proposed language to allow for a copy of the draft audit report to be provided to the licensee by e-mail or facsimile at least three business days before the exit conference.

Finally, proposed §402.703(b)(1) was amended to clarify the purpose of an audit, the word "selected" was removed from proposed §402.703(b)(2) and (d)(2) as it was redundant, and throughout the rule, apostrophes were added to transform several words into the possessive form in order to correct a *Texas Register* publishing error that omitted the apostrophes in the proposed rule.

A public comment hearing was held on Wednesday, October 16, 2013, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. Several members of the public provided comments at this hearing and were against the new rule as proposed: a representative of Bingo Interest Group, a representative of Texas Charity Advocates, and a representative of Fort Worth Bookkeeping. The Commission also received written comments against the proposed new rule from a representative of the Bingo Interest Group, a representative of River City Bingo, and a representative of Texas Charity Advocates. Commission staff also met with several representatives of the bingo community on three separate occasions to discuss any issues or concerns with the proposed rule.

COMMENT SUMMARY: Several commenters request that proposed §402.703(h) be removed, or in the alternative submitted for negotiated rulemaking, because it is not necessary and will take more money away from charities. Commenters express concern that the proposed language is unclear as to what expenses the Commission will seek reimbursement for and the documentation needed to substantiate any expenses.

COMMISSION RESPONSE: As previously explained in this preamble, the Commission will not adopt proposed §402.703(h).

COMMENT SUMMARY: Proposed §402.703(d)(2) states that there is no standard timeline by which an audit will be completed, but an audit must be completed by the fifth anniversary of the date the licensee was identified and selected for audit. Some commenters request that the five year time limit be reduced and that the rule clarify when the time limit begins to run.

COMMISSION RESPONSE: While the Commission will strive to complete audits in a timely manner, the Commission declines to reduce the five year time limit for audits because many outside factors could prevent the Commission from completing an audit in such a manner. Section 2001.560(c-1)(2)(C) of the Texas Occupations Code authorizes a five year time limit, and the Commission believes it prudent not to impose further time restrictions on its ability to conduct audits. As previously explained in this preamble, the word "selected" has been removed from this provision because it is redundant. By removing that word, the adopted rule is clear that the five year time period runs from the day the licensee is "identified" for an audit.

COMMENT SUMMARY: One commenter questions the purpose of §402.703(b)(3) and (c)(2). Another commenter believes §402.703(b)(1) and (b)(3) are redundant.

COMMISSION RESPONSE: Section 402.703(b)(2) provides a list of risk factors that the Commission will generally use to determine what licensees will be audited. However, for those licensees that do not exhibit any of the listed risk factors, the Commission believes it necessary to have a rule permitting the Commission to conduct an audit if the Commission reasonably believes the licensee may violate, or may have violated, the Bingo Enabling Act or Commission rules. Section 402.703(b)(3) outlines when the Commission may conduct an audit in such a situation and gives the public and the bingo community notice that the listed risk factors in §402.703(b)(2) do not exclusively deter-

mine what licensees will be audited. As previously explained in this preamble, §402.703(b)(1) has been amended to clarify the purpose of an audit and to correct any potential redundancies. The purpose of §402.703(c)(2) is to inform licensees that if they are identified for an audit, the written notification of the audit may include various questionnaires and forms that the licensee will be required to complete. In order to conduct a thorough audit, it is sometimes necessary for Commission auditors to gather information through questionnaires and forms. The rule is intended to provide notice of that fact to licensees and to outline the licensees' obligation to complete any questionnaires and forms.

COMMENT SUMMARY: One commenter requests that the Commission provide a licensee with any supporting documentation used by the Commission to formulate the draft audit report on that licensee.

COMMISSION RESPONSE: The Commission declines to modify the rule as requested. Many audit work papers are exempt from disclosure under the Public Information Act, §552.116 of the Texas Government Code, and the Commission does not believe it is prudent to undercut that exemption by rule. Furthermore, a licensee is permitted to obtain such work papers through discovery during a contested case before the State Office of Administrative Hearings. Finally, much of the supporting documentation would have been provided by the licensee during the course of the audit, so it is not necessary for the Commission to share information that the licensee already possesses.

The new rule is adopted under: (1) §2001.560 of the Texas Occupations Code, which requires the Commission to develop a policy for auditing licensees under the Bingo Enabling Act; (2) §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (3) §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted new rule implements Chapter 2001 of the Texas Occupations Code.

§402.703. Audit Policy.

(a) Definitions.

(1) Audit--The formal examination of a licensee's accounts, records, and/or business activities by designated employees or representatives of the Commission.

(2) Audit fieldwork--Includes, but is not limited to, the physical inspection of bingo premises, the observation of a bingo game, the inquiry of management and staff, the review of financial accounts, records or business processes, the assessment of the adequacy of any internal controls, or any other activity necessary to meet audit objectives.

(3) Licensee--Includes any individual, partnership, corporation, group, or entity licensed under the Bingo Enabling Act and any group of licensed authorized organizations operating under a unit agreement.

(b) Audit Determination.

(1) The purpose of an audit is to determine whether a licensee is, has been, and/or will remain in compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) Those licensees who are most at risk of violating the Bingo Enabling Act or the Charitable Bingo Administrative Rules will be identified for audit based on risk factors established by the Commission. Risk factors may be based on, among other things, a licensee's gross receipts, gross rentals, bingo expenses, net proceeds, and/or charitable distributions.

(3) Notwithstanding paragraph (2) of this subsection, the Commission may audit any licensee if the Commission reasonably believes the licensee may violate, or may have violated, the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

(c) Notification.

(1) If a licensee is selected for an audit pursuant to subsection (b) of this section, a Commission auditor will so notify that licensees bingo chairperson, director, business contact, officer, unit manager, or designated agent in writing. The written notification constitutes the beginning of the audit.

(2) The written notification will identify the time period to be audited and any records or other information that must be made available for Commission review. Various forms, including questionnaires and physical inventory requests, may be included with the written notification. Licensees must complete any forms in the manner, and in the time period, specified by the Commission.

(d) Entrance Conference.

(1) Within ten (10) calendar days of sending the written notification under subsection (c) of this section, an auditor will attempt to contact the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to schedule an audit entrance conference. Unless otherwise provided by the Commission, the audit entrance conference will be held within fourteen (14) calendar days from the auditors contact with the licensee. The licensee may submit a written request to the Commission to delay the audit entrance conference. The written request must include the reasons for the requested delay. After reviewing a properly submitted written request to delay, the Commission may either approve or deny the request or notify the licensee that additional information is needed before a decision is made. If the Commission and licensee are unable to agree on the date, time, and place of the audit entrance conference, or if the Commission auditor is unable to contact the licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent, the auditor shall schedule the audit entrance conference and send the licensee written notice of that fact at least ten (10) calendar days prior to the scheduled audit entrance conference.

(2) The purpose of an audit entrance conference is to allow the auditor(s) to meet with the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to collect any records or other information identified in the written notification under subsection (c) of this section, to discuss the audit process, and to answer any questions the licensee may have regarding the audit. There is no standard timeline by which an audit will be completed, but an audit must be completed by the fifth anniversary of the date the licensee was identified for audit.

(3) The Commission may request the attendance at the audit entrance conference of any person familiar with the licensee's operations. In addition to any attendees requested by the Commission, the licensee may allow any other individuals to attend the audit entrance conference.

(e) Audit Fieldwork. Any time after the conclusion of the audit entrance conference, the auditor(s) may initiate the audit fieldwork at a location designated by the auditor(s). When conducting audit fieldwork, the auditor(s), at their discretion, may use a detailed auditing procedure or a sample and projection auditing method. A sample and projection auditing method may include, but is not limited to, manual sampling techniques, computer-assisted audit techniques, analyti-

cal procedures, financial projections, and auditor recompilation from reliable independent sources.

(f) Exit Conference.

(1) Any time after the completion of the audit fieldwork, an auditor will attempt to contact the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to schedule an audit exit conference. If the auditor and licensee are unable to agree on the date, time, and place of the audit exit conference, or if the auditor is unable to contact the licensees bingo chairperson, director, business contact, officer, unit manager, or designated agent, the auditor shall schedule the audit exit conference and send the licensee written notice of that fact at least ten (10) calendar days prior to the scheduled audit exit conference.

(2) The purpose of an audit exit conference is to allow the auditor(s) to meet with the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to discuss the results of the audit and the draft audit report.

(3) The Commission may request the attendance at the audit exit conference of any person familiar with the licensee's operations. In addition to any attendees requested by the Commission, the licensee may allow any other individuals to attend the audit exit conference.

(g) Audit Report.

(1) Upon completion of the audit, the auditor(s) will prepare a draft audit report containing their findings and conclusions. A copy of the draft audit report will be provided to the licensee at the audit exit conference. At least three (3) business days before the audit exit conference, but only to the extent it is practicable, the Commission will also send a copy of the draft audit report to one e-mail address or facsimile number associated with the licensee. The licensee must notify the Commission of the designated e-mail address or facsimile number by the end of the audit entrance conference if the licensee is to receive a copy of the draft audit report prior to the audit exit conference.

(2) A licensee may, but is not required to, respond to the draft audit report by providing written comments and any supporting documentation to the auditor(s) within twenty (20) calendar days of receiving the draft audit report. Written comments should include a statement of agreement or disagreement with the draft audit report findings and, if applicable, a list of any corrective measures that will be taken to ensure compliance with the Bingo Enabling Act and Charitable Bingo Administrative Rules. Any properly submitted comments and supporting documents will be reviewed by the auditor(s) and placed in the final audit report. The auditor(s) may revise the draft audit report in response to any properly submitted comments or supporting documents.

(3) Any time after the twenty (20) calendar day deadline, the auditor(s) may issue the final audit report. A copy of the report will be provided to the licensee.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

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Bob Biard
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For further information, please call: (512) 344-5012

16 TAC §402.705

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.705, concerning Inspection of Premises, with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6857). The purpose of the new rule is to implement changes to §2001.557 of the Texas Occupations Code, made pursuant to §39 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. The new rule is also adopted to comply with §45(a) of H.B. 2197, which requires the Commission to adopt all necessary rules, policies, and procedures no later than January 1, 2014.

Section 2001.557 of the Texas Occupations Code requires the Commission by rule to develop and implement policies and procedures related to the inspection of premises where bingo is being conducted or intended to be conducted, or where equipment used or intended for use in bingo is found. The new rule satisfies this requirement by outlining the Commission's authority to inspect premises and listing some of the factors that the Commission will use to determine the priority of inspections.

The proposed rule included a provision, §402.705(a)(4), that listed "the number or severity of complaints from members of the public or governmental entities against the premises" as a risk factor that the Commission would use to prioritize inspections. Members of the public questioned whether under that proposed provision the Commission would consider any complaints made against a premises or only those complaints that were substantiated. The commenters were concerned that the language used in the proposed provision was too vague. To alleviate these concerns, the Commission believes it prudent to delete that provision from the list of risk factors used by the Commission to prioritize inspections. Additionally, proposed §402.705(a)(1) will be separated into two provisions to address any grammatical concerns with the proposed language.

A public comment hearing was held on Wednesday, October 16, 2013, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. A representative of Texas Charity Advocates provided comments against the proposed new rule at the hearing. The Commission also received written comments against the proposed new rule from a representative of Texas Charity Advocates. Commission staff also met with several representatives of the bingo community on three separate occasions to discuss any issues or concerns with the proposed rule.

COMMENT SUMMARY: One commenter questions whether proposed §402.705(a)(4) covers all complaints received by the Commission or only those complaints that are substantiated. The commenter suggests that the proposed provision is too vague and should be removed.

COMMISSION RESPONSE: As previously explained in this preamble, the Commission will not adopt proposed §402.705(a)(4).

COMMENT SUMMARY: One commenter questions whether proposed §402.705(b) is necessary as the Commission has explicit statutory authority to inspect premises.

COMMISSION RESPONSE: While the Bingo Enabling Act does give the Commission explicit authority to conduct inspections, it also requires the Commission to develop and implement policies and procedures related to inspections. This rule satisfies that requirement. Specifically, §402.705(a) provides a list of factors that the Commission will generally use to determine what premises it will inspect. However, for those premises that do not exhibit any of the listed risk factors, the Commission believes it necessary to have a rule permitting the Commission to conduct an inspection if the Commission reasonably believes a violation may occur or may have occurred at the premises. Section 402.705(b) outlines when the Commission may conduct an inspection in such a situation and gives the public and the bingo community notice that the listed risk factors in §402.705(a) do not exclusively determine what premises will be inspected.

The new rule is adopted under: (1) §2001.557 of the Texas Occupations Code, which requires the Commission by rule to develop and implement policies and procedures related to the inspection of premises; (2) §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (3) §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted new rule implements Chapter 2001 of the Texas Occupations Code.

§402.705. Inspection of Premises.

(a) The Commission may conduct inspections of premises where bingo is being conducted or is intended to be conducted, or where equipment used or intended for use in bingo is found. The Commission will prioritize premises inspections based on risk factors the Commission considers important, including the following:

(1) the amount of money derived from the conduct of bingo at the premises;

(2) the amount of money derived from the use of bingo equipment at the premises;

(3) the compliance history of the premises; and

(4) the amount of time that has elapsed since the last Commission inspection of that premises.

(b) Notwithstanding subsection (a) of this section, the Commission may inspect any premises where bingo is being conducted or is intended to be conducted, or where equipment used or intended for use in bingo is found, if the Commission reasonably believes a violation of the Bingo Enabling Act or this chapter may occur or may have occurred.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 344-5012

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CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.102

The Texas Lottery Commission (Commission) adopts new 16 TAC §403.102, concerning Items Mailed to the Commission, without changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5405). The purpose of the new rule is to establish a standard approach to determine when items are mailed to the Commission. Several statutes and Commission rules impose deadlines by which certain items must be mailed to the Commission. The Commission generally relies on postmarks or other similar indicators to determine when a particular item was mailed. Recently, however, the Commission has begun receiving an increasing number of items that lack legible postmarks or other similar indicators. For such items, the new rule will permit the Commission to assign a mailed-on-date based on when the item was actually received by the Commission. Under the new rule, if the Commission receives an item with no legible postmark date or other similar indicator, the item will be considered to have been sent seven (7) calendar days before the Commission received the item.

The Commission did not receive any comments on the proposed new rule during the public comment period.

The new rule is adopted under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of Chapter 467 and the laws under the Commission's jurisdiction.

The new rule implements Chapters 466 and 467 of the Texas Government Code and Chapter 2001 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 344-5012

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16 TAC §403.115

The Texas Lottery Commission (Commission) adopts new rule 16 TAC §403.115, concerning Negotiated Rulemaking and Alternative Dispute Resolution. The new rule is adopted without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6858). The purpose of the adoption is to implement changes to Texas Government Code, Chapter 467, made pursuant to §17 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. Specifically, §17 of H.B. 2197 amended Texas Government Code, Chapter 467, by adding new §467.109, Negotiated Rulemaking and Alternative Dispute Resolution Policy, which requires the Commission to develop

and implement a policy to encourage the use of both negotiated rulemaking and appropriate alternative dispute resolution. Adopted new §403.115, therefore, provides for a framework by which negotiated rulemaking and alternative dispute resolution may be undertaken by the Commission. Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

The Commission received no written comments from individuals during the public comment period.

The new rule is adopted under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption will implement changes to Chapter 467 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §403.600

The Texas Lottery Commission (Commission) adopts new rule §403.600, concerning Complaint Review Process. The new rule is adopted without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6859). The purpose of the adopted new rule is to implement changes to Texas Government Code, Chapter 467, made pursuant to §17 of Tex. H.B. 2197, 83rd Leg., R.S. 2013; specifically, new §467.111, which provides that the Commission shall maintain a system to promptly and efficiently act on each complaint filed with the Commission, shall by rule adopt and publish procedures governing the entire complaint process, shall analyze the complaints to identify any trends or issues, and shall prepare a report on the trends and issues identified. Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

The Commission received no written comments from individuals during the public comment period.

The new rule is adopted pursuant to §466.015 of the Texas Government Code, which authorizes the Commission to adopt rules governing the operation of the lottery, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction. The new rule is also proposed pursuant to new §467.111, which requires the Commission by rule to adopt and publish procedures governing the complaint process.

The adopted rule implements changes to Chapter 467 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 7. DISPUTE RESOLUTION

19 TAC §§89.1150, 89.1151, 89.1165, 89.1170, 89.1175, 89.1180, 89.1183, 89.1185, 89.1186, 89.1191, 89.1193, 89.1195

The Texas Education Agency (TEA) adopts amendments to §§89.1150, 89.1151, 89.1165, 89.1170, 89.1180, 89.1185, and 89.1191 and new §§89.1175, 89.1183, 89.1186, 89.1193, and 89.1195, concerning special education services. The amendments to §§89.1150, 89.1151, and 89.1191 and new §§89.1183, 89.1186, and 89.1193 are adopted without changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5822) and will not be republished. The amendments to §§89.1165, 89.1170, 89.1180, and 89.1185 and new §89.1175 and §89.1195 are adopted with changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5822). The sections address resolution of disputes between parents and school districts. The adopted amendments and new sections establish procedures for special education complaint resolution and mediation. The adopted amendments and new sections amend and add new rules associated with special education due process hearings filed pursuant to the Individuals with Disabilities Education Act (IDEA), 20 United States Code, §§1400, et seq., and make minor technical corrections and clarifications. The adopted amendments and new sections also incorporate provisions required by Senate Bill 709, 83rd Texas Legislature, Regular Session, 2013, relating to non-attorney representation.

The IDEA and its implementing regulations provide that when disputes arise regarding the identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education (FAPE), the parties to the dispute may engage in dispute resolution. The IDEA requires the TEA, as the state education agency, to investigate state

complaints, conduct due process hearings, make mediation available, and have procedural safeguards in effect to ensure that each public agency in the state meets the requirements of the IDEA. Accordingly, in 2001, the commissioner exercised rulemaking authority to adopt 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services, Division 7, Resolution of Disputes Between Parents and School Districts.

The adopted revisions to 19 TAC Chapter 89, Subchapter AA, Division 7, include amendments and new rules to provide clarity and to comply with the requirements of the IDEA, as follows.

The IDEA and its implementing regulations provide that when disputes arise regarding the identification, evaluation, or educational placement of a child with a disability or the provision of a FAPE, the parties to the dispute may engage in dispute resolution. The IDEA requires the TEA, as the state educational agency, to investigate state complaints, conduct due process hearings, make mediation available, and have procedural safeguards in effect to ensure that each public agency in the state meets the requirements of the IDEA. Accordingly, in 2001, the commissioner exercised rulemaking authority to adopt 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services, Division 7, Resolution of Disputes Between Parents and School Districts.

The adopted revisions to 19 TAC Chapter 89, Subchapter AA, Division 7, include amendments and new rules to provide clarity and to comply with the requirements of the IDEA, as follows.

Section 89.1150, General Provisions, is amended to clarify the TEA's policies regarding dispute resolution and available dispute resolution options by making minor technical changes. No changes were made to the rule since published as proposed.

Section 89.1151, Due Process Hearings, is amended to make minor technical changes, including updates to references to federal legislation. In addition, the title is changed to "Special Education Due Process Hearings" for clarity. No changes were made to the rule since published as proposed.

Section 89.1165, Request for Hearing, is amended to clarify the date upon which hearing timelines commence. Language addressing the TEA-model due process request form that may be used by both parents and public education agencies is moved into a new subsection. Minor technical changes are made throughout the rule. In addition, the title is changed to "Request for Special Education Due Process Hearing" for clarity. In response to public comment, subsection (b) was modified at adoption to retain the language from current rule.

Section 89.1170, Impartial Hearing Officer, is amended to explain the process by which hearings are assigned to hearing officers and to align the rule with federal law regarding the qualifications of hearing officers. New language is also added to explain the process by which a hearing officer may be recused from presiding over a hearing. In response to public comment, new subsection (b) was added at adoption to explain that a hearing officer who also provides special education mediation services will not be assigned as the hearing officer if he or she is the mediator in a pending mediation involving the same student who is the subject of the hearing or was the mediator in a previous mediation involving the student who is the subject of the hearing. Subsequent subsections were re-lettered accordingly.

New §89.1175, Representation in Special Education Due Process Hearings, is added to establish who may represent parties at due process hearings, as well as the procedures and qualifications to be used in cases of non-attorney representation. The new section adopts in rule, as Figure: 19 TAC §89.1175(c), the form to be used for authorization of a non-attorney representative. In response to public comment, subsection (b) was modified at adoption to clarify when written authorization must be filed when a party is represented by a non-attorney.

Section 89.1180, Prehearing Procedures, is amended to make minor technical changes. In response to public comment, subsection (f) was modified at adoption to clarify that copies of all pleadings shall be sent to a party's non-attorney representative once the hearing officer has determined the non-attorney to be qualified to represent the party. Also in response to public comment, language relating to a request for dismissal or nonsuit of a due process hearing that was proposed for removal is reinstated as subsection (i) at adoption.

New §89.1183, Resolution Process, is added to provide the requirements established by federal law regarding the resolution period. No changes were made to the rule since published as proposed.

Section 89.1185, Hearing, is amended to clarify redaction requirements, to include references to the resolution process in new §89.1183, to clarify the hearing timelines as set forth in federal regulation, and to clarify that decisions must be mailed to the parties on the date of issuance. Language regarding extensions of time is deleted since these provisions are addressed in new §89.1186.The section is also amended to clarify the requirements following adverse decisions. New language is added to align with federal law and to clarify the recourse available to a parent who alleges that the hearing officer's decision was not implemented. Minor technical changes are also made throughout the rule. In addition, the title is changed to "Hearing Procedures" for clarity. In response to public comment, proposed subsection (p) was deleted at adoption and subsection (o) was modified at adoption to reinstate language relating to the implementation of decisions pending judicial proceedings and to clarify that a hearing officer's order must be implemented within the timeframe prescribed by the hearing officer. The subsequent subsection was re-lettered accordingly.

New §89.1186, Extensions of Time, is added to clarify the federal requirements regarding requests for extension of time and to establish the grounds upon which such requests may be granted. No changes were made to the rule since published as proposed.

Section §89.1191, Special Rule for Expedited Due Process Hearings, is amended to make minor technical changes. No changes were made to the rule since published as proposed.

New §89.1193, Special Education Mediation, is added to establish detailed mediation procedures for parents and public education agencies who are in dispute regarding matters arising under IDEA, Part B. No changes were made to the rule since published as proposed.

New §89.1195, Special Education Complaint Resolution, is added to establish the detailed complaint resolution process for the investigation and issuance of findings regarding alleged violations of IDEA, Part B.

In response to public comment, the following changes were made to §89.1195 at adoption. Subsection (b)(6) was mod-

ified by changing "address an action" to "allege a violation" so that it tracks the language in 34 Code of Federal Regulations, §300.153(c), which states that a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. New subsection (d) was added to clarify that the TEA will notify the complainant of any deficiencies in the complaint. Subsequent subsections were re-lettered accordingly. Proposed subsection (d)(4), adopted as subsection (e)(4), was modified to add language to clarify that, in accordance with TEC, §29.010(e), the TEA will expedite a complaint alleging that a school district has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution.

In addition, language in proposed subsection (d)(5)(F), adopted as subsection (e)(5)(F), relating to a complaint filed by a parent's attorney, was removed at adoption on the basis that the Family Educational Rights and Privacy Act (FERPA) requires the TEA to receive written parental consent in order to provide a copy of a complaint report to any individual other than the child's parent.

The division title is changed to "Dispute Resolution" to more accurately reflect the scope and nature of the rules in Division 7.

The adopted amendments and new sections have no new procedural and reporting requirements for school districts. The adopted new form to be used for authorization of a non-attorney representative will be filed with the hearing officer by the party who wishes to be represented by an individual who is not an attorney. The adopted amendments and new sections have no new locally maintained paperwork requirements.

The TEA determined there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began September 6, 2013, and ended October 7, 2013. Following is a summary of the public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services, Division 7, Resolution of Disputes Between Parents and School Districts.

Comment: Disability Rights Texas (DRTx) and The Arc of Texas (The Arc) recommended that the agency add individualized education program (IEP) facilitation to the list of options in proposed §89.1150(b).

Agency Response: The agency disagrees with adding the recommendation at this time. The agency anticipates proposing rules relating to IEP facilitation in the near future and will seek public comment regarding those rules.

Comment: DRTx and The Arc recommended that the agency add language to proposed §89.1151(a) stating that an adult student may initiate a due process hearing if the rights accorded to the parents under the IDEA have transferred to that adult student.

Agency Response: The agency disagrees. Additional language is not necessary; 19 TAC §89.1049 (relating to Parental Rights Regarding Adult Students) and 34 Code of Federal Regulations (CFR), §300.520, are clear that all rights accorded to parents under the IDEA transfer to the student upon reaching the age of majority, except where the student is placed under the guardianship of another individual.

Comment: The Texas Association of School Boards (TASB) and The Texas Council of Administrators of Special Education, Inc. (TCASE) commented that the commencement of the timeline in proposed §89.1165(b) is unclear. TASB requested that the agency clarify when the timeline begins while TCASE recommended that the agency maintain the current rule. An individual asked why this change is being proposed.

Agency Response: The agency agrees in part and has modified §89.1165(b), retaining the majority of the proposed new language but changing the phrase "unless the hearing officer makes a finding to the contrary" to "unless rebutted." In response to the inquiry of why the change was proposed, it was necessary to clarify when the party filing the request must forward a copy of the request to the non-filing party and to clarify the date upon which hearing timelines commence.

Comment: With regard to §89.1170(a), an attorney recommended that hearing officer assignments be made on a random basis because assigning hearing officers based on an alphabetical rotation is subject to forum shopping as parties may be able to determine which hearing officer was last assigned a case.

Agency Response: In the absence of any data to substantiate the concern, the agency disagrees with the recommendation. However, in response to another comment, the agency has added new §89.1170(b) to clarify that a hearing officer who previously served as a mediator in a mediation involving a student may not be assigned as the hearing officer in a due process hearing involving that student.

Comment: An attorney supported the proposal in §89.1170(a) to assign hearing officers to cases involving siblings and stated that the practice will provide judicial economy and consistency.

Agency Response: The agency agrees.

Comment: An attorney commented that proposed §89.1170(f) has no timeline for requesting a recusal. To avoid unnecessary delays, the commenter recommended that the rule include a deadline that is early in the hearing process and that it permit a party to request only one recusal.

Agency Response: In the absence of information indicating problems with the recusal procedures, the agency disagrees with the comment and recommendation.

Comment: TASB commented that the provision in proposed §89.1175(b) requiring that a party who wishes to be represented by a non-attorney must file a written authorization at the commencement of the hearing will likely delay the due process hearing timelines and recommended that the rule be revised to state that the written authorization must be filed upon retaining the services of the non-attorney representative. TASB also requested that language be added stating that the length of time necessary for the hearing officer to review the written authorization and make a decision as to whether the individual is qualified to represent the party will not otherwise affect the timelines applicable to the due process hearing.

Agency Response: The agency agrees with providing clarification about when written authorization must be filed when a party is represented by a non-attorney. The language "at the commencement of the hearing" refers to the time of filing the request for a due process hearing or shortly thereafter, not to the 45-day hearing timeline that begins after the resolution period ends. The agency has modified §89.1175(b) to clarify this. With regard to the recommendation to clarify that a party's filing of a written authorization to be represented by a non-attorney does not alter the

hearing timelines, the agency disagrees that additional language is necessary. The events that result in adjusting the resolution period are clearly outlined in 34 CFR, §300.510, and seeking the representation of a non-attorney is not one of the circumstances that alters the resolution period or the decision deadline in 34 CFR, §300.515.

Comment: TCASE commented that school districts need full and complete information regarding non-attorney representatives and requested that proposed §89.1175(d) add a requirement that a party's written authorization identify the law firm with which the non-attorney is affiliated, if applicable.

Agency Response: The agency disagrees. It is not necessary to require a party to identify a law firm with which a non-attorney representative is associated.

Comment: TCASE commented that the "warnings to parents" in proposed §89.1175(d) are appropriate and asked that the agency consider more explanation to parents of what those warnings mean.

Agency Response: The agency disagrees that additional explanation of the statements should be included. The requirement that a party acknowledge certain statements is intended to ensure that the party has an understanding of the implications of using a non-attorney representative but is not intended to dissuade a party from using a non-attorney representative.

Comment: An attorney thanked the agency for recognizing and addressing within the proposed rules the fact that communications between non-attorney representatives and parents will not be protected by the attorney-client privilege.

Agency Response: The agency agrees.

Comment: DRTx and The Arc recommended that the agency strike the language in proposed §89.1175(e)(4) and in the written authorization form in Figure 19 TAC §89.1175(c) requiring that a party represented by a non-attorney acknowledge that communications between the party and the non-attorney representative may be subject to disclosure during the hearing proceeding. The commenters asserted that the communications must be confidential to ensure fundamental due process and contended that the commissioner is exceeding his rulemaking authority by including the language.

Agency Response: The agency disagrees. The agency has determined that it is important for a party represented by a non-attorney to understand that the attorney-client privilege does not extend to communications with a non-attorney representative.

Comment: Two attorneys suggested that proposed §89.1175(f) be revised to require that a non-attorney representative also sign and date a written authorization.

Agency Response: The agency disagrees. The agency has determined that only the party who is authorizing the non-attorney to act as his or her representative should sign the written authorization.

Comment: TASB and three attorneys objected to the language in proposed §89.1175(g) that limits a school district's objections to a non-attorney representative to those objections that are based on the non-attorney's prior employment with the school district. TASB requested that subsection (g) be modified to allow a party to submit any other objections to the hearing officer. One of the attorneys recommended that the language "No other objections to a party's representation by a non-attorney are permitted under this section," be deleted. TASB and one of the attorneys suggested that the rule be revised to allow the hearing officer to consider challenges to the qualifications of the non-attorney representative.

Agency Response: The agency disagrees. The recommendations would be inconsistent with the intent of Texas Education Code (TEC), §29.0162, which only prohibits an individual from serving as a party's non-attorney representative if the individual has prior employment experience with the district involved in the hearing and the district raises an objection to the individual on the basis of the individual's previous employment with the district.

Comment: Two attorneys suggested that proposed §89.1175(g) be revised to prohibit an individual with prior experience as a school board member of the school district involved in the hearing from serving as a party's non-attorney representative if the school district raises an objection based on the individual's prior experience as a board member.

Agency Response: In the absence of any indication that TEC, §29.0162, was intended to limit representation by an individual with prior experience as a school board member of the school district involved in the hearing, the agency disagrees with the recommended revision.

Comment: An attorney asked whether the term "school district" as used in proposed §89.1175(g) is generally understood to include charter schools and suggested that this be clarified in the rule.

Agency Response: The agency disagrees. Because charter schools are subject to the special education program requirements in TEC, Subchapter A, Chapter 29, the agency interprets the provision in TEC, §29.0162(b)(1), as also applying to an individual with employment experience with a charter school. Therefore, the term "school district" for purposes of the rule includes both traditional school districts and charter schools. The terms "school district" and "district" as used in this subchapter generally refer to both traditional school districts and charter schools.

Comment: An attorney commented that proposed §89.1175 does not require a hearing officer to verify the information regarding the non-attorney's qualifications in the written authorization. The commenter further commented that the rule does not require that the hearing officer's written notice include the basis for his or her determination as to whether the non-attorney is qualified to represent the party in the hearing.

Agency Response: The agency disagrees. It is not necessary for the rule to impose specific requirements for verifying the information in a party's written authorization. A hearing officer is in the best position to evaluate the written authorization and determine whether additional information is needed. It is also not necessary to require that a hearing officer explain the basis for his or her determination regarding whether the non-attorney is qualified to represent a party given that the hearing officer's determination is final and not subject to review or appeal.

Comment: An attorney commented that proposed §89.1175 does not appear to authorize a hearing officer to limit the non-attorney's representation in any manner and stated that this raises the question of whether a hearing officer may grant a motion to limit a qualified representative's authority to engage in specific activities for which the non-attorney's knowledge is clearly lacking.

Agency Response: The agency disagrees. Adding language stating that a hearing officer is authorized to limit a non-attorney's representation would be inconsistent with TEC, §29.0162.

Comment: TASB, TCASE, and an attorney commented that the term "promptly" in proposed §89.1175(h) is subjective. TASB recommended that the agency specify a timeline within which a hearing officer must determine whether a non-attorney is qualified to represent a party in the hearing, while TCASE suggested adding a timeline of "within two business days."

Agency Response: The agency disagrees. It is not necessary to set a specific timeline for a hearing officer's determination as to whether a non-attorney is qualified to represent a party. The agency notes that there are other rules that require that a hearing officer perform an action "promptly," and the agency is not aware of problems with the timing of the performance of those actions.

Comment: TASB, TCASE, an individual, and an attorney commented that proposed §89.1175 does not adequately establish additional qualification for non-attorney representatives. TASB requested that the agency list consistent standards or minimum qualifications that must be applied by hearing officers. TCASE requested that the agency consider adding minimum qualifications such as: a bachelor's degree with certification in special education; a certain number of hours of training in dispute resolution, rules relevant to special education due process hearings, and federal and state special education laws; and annual continuing professional education. An individual commented that the qualifications of a non-attorney representative are vague and arbitrary.

Agency Response: The agency disagrees. Imposing minimum qualifications such as a college degree, special education certification, and a certain number of hours of formal training may exclude many parent advocates from serving as a non-attorney representative. The intent of TEC, §29.0162, can best be accomplished by having a hearing officer review the information regarding the non-attorney's qualifications and determine, on a case-by-case basis, whether that non-attorney is qualified to represent the party in the hearing.

Comment: TASB and an attorney commented that proposed §89.1175 does not address the standards of conduct necessary for non-attorney representatives and does not authorize a hearing officer to disqualify a non-attorney if the non-attorney exhibits unethical behavior. TASB recommended that the rule require that a non-attorney adhere to the Texas Disciplinary Rules of Conduct applicable to licensed attorneys and authorize a hearing officer to revoke the authorization of a non-attorney to represent a party if the non-attorney is found to have violated the standards of conduct.

Agency Response: The agency disagrees. Proposed §89.1170(d), adopted as §89.1170(e), provides that a hearing officer has the authority to "maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process." Additional language is not necessary to address the expectations of conduct during the hearing process or a hearing officer's authority to address unethical conduct.

Comment: An attorney commented that proposed §89.1175(j) regarding campus visits is supported and appreciated.

Agency Response: The agency appreciates the comment.

Comment: An attorney recommended that proposed §89.1180(b) be changed to specify that the prehearing conference should not occur before the expiration of the resolution period described in 34 CFR, §300.510(b).

Agency Response: The agency disagrees and maintains that a hearing officer should have the discretion to schedule a prehearing conference at a time reasonably convenient to the parties to the hearing.

Comment: DRTx and The Arc recommended that the agency add language to proposed §89.1180(f) stating that a non-attorney representative must receive copies of all filed pleadings. The commenters asserted that once qualified, a non-attorney representative must be aware of all filings to effectively represent parents and adult students. In addition, the commenters noted that the written authorization form in Figure 19 TAC §89.1175(c) requires that the party acknowledge that documents served on the non-attorney representative are deemed as served on the party.

Agency Response: The agency agrees and has modified §89.1180(f) to clarify that copies of all pleadings shall be sent to a party's non-attorney representative once the hearing officer has determined the non-attorney to be qualified to represent the party.

Comment: Three attorneys opposed the elimination of current §89.1180(i), which provides that if a party requests a dismissal of a due process hearing after the disclosure deadline has passed and requests a subsequent hearing within one year involving the same or substantially similar issues as those alleged in the first hearing, then, absent good cause or unless the parties agree otherwise, the disclosure deadline for the second hearing shall be the same date as was established for the first hearing. The commenters noted that the rule was adopted to address an abusive practice whereby parties would "nonsuit" hearings because they failed to comply with the five-day disclosure deadline and would then refile the same matter to create a new disclosure deadline. The commenters asserted that eliminating the rule will open up the process for abuse.

Agency Response: The agency agrees and has reinstated the language in subsection (i) with minor revisions for clarity.

Comment: Regarding proposed §89.1183, an individual commented that "requiring 30 days for a parent to determine if the resolution is agreeable seems arbitrary and not based in federal law or regulation" and requested that the provision be stricken from the proposed rule.

Agency Response: The agency disagrees. The requirement in §89.1183(f) that if the public education agency "has not resolved the hearing issues to the satisfaction of the parent within 30 calendar days of the receipt of the request for a hearing, the hearing may occur" comes directly from 34 CFR, §300.510(b).

Comment: Based on the fact that non-attorneys are now permitted to represent parties in due process hearings, TASB commented that careful consideration is necessary of proposed §89.1183(a) and (d). TASB proposed three options for revising the rule. The first option is to revise subsection (a) to state that a resolution meeting may not include an attorney of the public education agency unless the parent is accompanied by an attorney or a non-attorney representative. The second option is to revise subsection (d) to reflect a process by which the public education agency or parent could seek assistance if they cannot agree to the relevant members of the admission, review, and dismissal (ARD) committee who should attend the

resolution meeting. The final option is to clarify in the rule that a special education advocate is not typically an ARD committee member for purposes of a resolution meeting and state that the public education agency and the parent must agree to an advocate's presence at the meeting unless the public education agency's attorney is present at the meeting as well. TCASE recommended that subsection (a) be revised to permit the presence of a local educational agency's (LEA's) attorney at a resolution meeting if a non-attorney authorized to represent the parent in a due process hearing will participate in the meeting.

Agency Response: The agency disagrees. The recommendations would be inconsistent with the federal regulations and guidance. The U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) recently issued guidance advising that the attendance of an LEA's attorney at a resolution meeting is expressly limited in 34 CFR, §300.510(a)(1), to instances where the parent brings an attorney, not a non-attorney representative. *See Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)* (OSERS, July 23, 2013)(Answers to Questions D-8 and D-9). The agency further notes that OSERS has declined to establish a process to resolve disputes about who should attend resolution meetings in the absence of specific problems in the process. *See* 71 Fed. Reg. 46701 (August 14, 2006).

Comment: An attorney commented that clarification is needed in proposed §89.1183(d) regarding how the parent and the public education agency determine the relevant members of the ARD committee who should participate in a resolution meeting.

Agency Response: TEA disagrees with establishing a process in rule for determining who will attend a resolution meeting. 34 CFR, §300.510(a), requires that the LEA convene a meeting with the parent and the relevant members of the ARD committee "who have specific knowledge of the facts identified in the due process complaint." The regulation further provides that a representative of the public education agency who has decision-making authority on behalf of the agency should participate in the meeting and that the LEA's attorney may not participate unless the parent is accompanied by an attorney. OSERS has advised as follows that the parent and the LEA should make the determination regarding who participates in the meeting together: "We urge LEAs and parents to act cooperatively in determining who will attend the resolution meeting, as a resolution meeting is unlikely to result in any resolution of the dispute if the parties cannot even agree on who should attend. The parties should keep in mind that the resolution process offers a valuable chance to resolve disputes before expending what can be considerable time and money in due process hearings" 71 Fed. Reg. 46701 (August 14, 2006). Comment: DRTx and The Arc recommended that the agency add additional language to proposed §89.1183(l) to clarify that a party may file a written complaint with the agency in accordance with 34 CFR, §300.153, if the party has a complaint that there is a failure to implement a written resolution agreement resulting in a violation of the IDEA or Texas special education statutes and regulations.

Agency Response: The agency disagrees. The language in the proposed rule is derived directly from 34 CFR, §300.510(d).

Comment: DRTx, The Arc, and four attorneys opposed proposed §89.1185(p), which states that a hearing officer's order is held in abeyance during the pendency of any judicial appeal, except in those cases where the hearing officer agrees with the child's parent that a change of placement is appropriate. DRTx, The Arc, and an attorney commented that the proposed rule is contrary to the spirit and requirements of IDEA. Three of the attorneys stated that the proposed rule will give school districts an incentive to appeal adverse hearing officer decisions so that they can delay providing the relief ordered. The commenters noted that judicial appeals can be lengthy and asserted that delaying the relief granted by a hearing officer will be harmful to the student. DRTx, The Arc, and an attorney asserted that proposed subsection (p) contradicts proposed subsection (o), which requires public education agencies to implement adverse special education hearing officer decisions in a timely manner within 10 school days of the decision. These commenters also stated that proposed subsection (p) contravenes 34 CFR, §300.518(d). Finally, an attorney commented that the attempt in the language of subsection (p) "to distinguish between a hearing officer's 'placement' decisions and decisions affecting other aspects of IDEA will, in practice, be a distinction without a difference, since 'placement' decisions are often inextricably intertwined with decisions relating to the provision of a [free appropriate public education] in general."

Agency Response: The agency agrees that additional clarification is needed. The current subsection (p), proposed as subsection (o), required revision to clarify the requirements for implementing all hearing officer decisions, not just those that implicate 34 CFR, §300.518(d). For this reason, the citation to 34 CFR, §300.518(d), was deleted in the first sentence of the proposed subsection (o). Proposed subsection (p) was intended to clarify the requirements for implementing a hearing officer decision during a judicial appeal and incorporate language from 34 CFR, §300.518(d), including the term "change of placement." Based on the public comment, the agency has deleted proposed subsection (p) and modified proposed subsection (o) to reinstate language from current rule relating to the implementation of decisions pending judicial proceedings. The agency also added language in subsection (o) to clarify that a hearing officer's order must be implemented within the timeframe prescribed by the hearing officer. The subsequent subsection was re-lettered accordingly.

Comment: An attorney supported proposed §89.1185(p) and recommended that the language be strengthened to include changes of placement, specifically any private placement.

Agency Response: The agency disagrees. The recommendation would be inconsistent with pendency (or "stay put") placement provisions in IDEA and its implementing regulations. These provisions ensure consistency in a student's educational programming during a dispute and prevent the school district from unilaterally changing the student's placement. Regulation 34 CFR, §300.518(a), tracks the language of 20 United States Code, §1415(j), and states "Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement." Regulation 34 CFR, §300.518(c), interprets the meaning of the statutory phrase, "unless the State or local educational agency and the parents otherwise agree," as follows: "If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section." In other words, if a state hearing officer

agrees with the parents that a change of placement, including a private placement, is appropriate, that placement becomes the student's placement and must be maintained by the school district while the proceedings are pending. In response to other comments, the agency has deleted proposed subsection (p).

Comment: An individual commented that proposed §89.1186 seems to be unnecessarily dismissive of the possible needs of hearing officers and suggested that the rule be revised to be more flexible.

Agency Response: The agency disagrees. Regulation 34 CFR, §300.515(c), merely authorizes a hearing officer to grant extensions of time at the request of a party to the hearing. Furthermore, OSERS has recently advised that "[a] hearing officer may not unilaterally extend the 45-day due process hearing timeline." *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)* (OSERS, July 23, 2013)(Answer to Question C-22).

Comment: An individual commented that proposed §89.1186 does not address the "extension of the hearing decision date" and suggested that this be clarified since common sense would dictate that by granting an extension of a hearing date, the hearing decision date would also be extended.

Agency Response: The agency disagrees. The proposed rule references proposed §89.1185(l), which describes the deadline for issuing a final decision. Accordingly, additional clarification is not necessary.

Comment: An attorney commented that proposed §89.1186(b)(3) should also include consideration of any adverse financial or other detrimental consequences likely to be suffered by a party in the event of a failure to grant the extension and recommended that the language "or failure to grant the extension" be added to the rule.

Agency Response: Absent information indicating that the failure to grant an extension commonly results in adverse financial or other detrimental consequences for a party, the agency disagrees that the recommended language is necessary.

Comment: An attorney supported the language in proposed subsection §89.1186(b)(3) and commented that too often cases are delayed for reasons that do not constitute good cause, and petitioners do not mitigate their damages.

Agency Response: The agency appreciates the comment.

Comment: With regard to proposed §89.1193(g), an individual commented that having mediators who also serve as hearing officers seems to raise a conflict of interest and undermines the mediation process. The commenter stated that the same individual may serve one day as a mediator and the next week be assigned as a hearing officer in a matter involving the same school district. The commenter recommended that individuals not be permitted to serve in both roles.

Agency Response: The agency provides the following clarification. Section 89.1193(g) prohibits a hearing officer in a pending or previous due process hearing involving the student from serving as a mediator in mediation involving that student. Likewise, an individual who previously served as a mediator in a mediation involving a student cannot be assigned to serve as a hearing officer in a due process hearing involving the student. In response to the comment, however, the agency added new §89.1170(b) to clarify this. Regarding the recommendation that the agency adopt a rule prohibiting an individual from serving as a hearing officer and mediator, the agency disagrees. Neither IDEA nor state law prohibit an individual from serving in both roles.

Comment: DRTx and The Arc recommended that the agency add language to proposed §89.1195(b) to clarify that an authorized attorney who is licensed in Texas may file a written complaint on behalf of an individual.

Agency Response: The agency disagrees. It is not necessary to modify the proposed rule in the manner recommended. The language in the proposed rule is consistent with that in 34 CFR, §300.153, which states that an organization or individual may file a complaint.

Comment: DRTx and The Arc recommended adding language to proposed subsection §89.1195(b)(3) stating that a complaint "may also be filed that alleges a violation of a Texas statute or administrative rule that involves the identification, evaluation, or educational placement of, or provision of a [free appropriate public education] to children with disabilities." The commenters stated that there may be a state statute or regulation that is not labeled as "special education" but nonetheless involves meeting the needs of children with disabilities under Part B of IDEA.

Agency Response: The agency disagrees. The language in the proposed rule appropriately describes the types of allegations that may be resolved through the special education complaint resolution process.

Comment: DRTx and The Arc recommended modifying proposed subsection §89.1195(b)(6) so that it states that a complaint must "address an action or inaction that occurred or should have occurred within one calendar year of the date of receipt of the complaint." The commenters also commented that the phrasing of the timeframe for submitting a complaint in the proposed rule is confusing.

Agency Response: The agency partially agrees and has modified the language in subsection (b)(6) so that it tracks the language in 34 CFR, §300.153(c), which states that a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

Comment: DRTx and The Arc recommend modifying proposed §89.1195(d) to clarify that if the agency receives a complaint that does not meet all of the requirements specified in subsection (b), the agency will notify the complainant of the deficiencies in the complaint.

Agency Response: The agency agrees and has added the recommended language as new §89.1195(d) and re-lettered subsequent subsections accordingly.

Comment: DRTx and The Arc recommended modifying proposed §89.1195(d)(1)(B) so that it requires that, in addition to providing the parent with a copy of its written response to the complaint, the public education agency provide the parent a copy of any documentation and information submitted to the agency as part of the complaint investigation. Alternatively, the commenters recommended that the rule require that the public education agency provide an index of documents and information to the parent or adult student.

Agency Response: The agency disagrees. The proposed rule balances the interests of the parent and the public education agency. While the agency is not modifying the rule to mandate that public education agencies provide parents with a copy of the information submitted to the agency, public education agencies are encouraged to provide the information to the extent that

doing so is not unduly burdensome. The agency notes that parents have access rights under IDEA, the FERPA, and the Texas Public Information Act and may request information under those laws.

Comment: An individual commented that the requirement in proposed §89.1195(d)(1)(B) that a public education agency send the parent a copy of its response to a complaint is unduly burdensome and not required by federal law or regulation and stated that the requirement should be eliminated.

Agency Response: The agency disagrees. While IDEA does not expressly require that a public education agency provide a parent with a copy of its response to the complaint, such a requirement is not inconsistent with IDEA or unduly burdensome for the public education agency. Furthermore, the requirement promotes efficiency and equity in the process.

Comment: An attorney commented that proposed §89.1195(d)(1)(B) should prohibit the agency from requesting documentation from a public education agency that the public education agency is not explicitly required to create or maintain under state or federal law. For example, the commenter stated that the agency should not request that a public education agency provide documentation proving that it implemented a student's IEP with respect to every class assignment or implemented a student's behavioral intervention plan with every disciplinary referral.

Agency Response: The agency disagrees. Regulation 34 CFR, §300.152, requires that a state educational agency review "all relevant information" and make an independent determination regarding whether a violation of Part B of IDEA has occurred. To carry out its responsibilities, the agency must request the information that it deems relevant. Furthermore, public education agencies are required to maintain records to show compliance with IDEA program requirements, pursuant to 34 CFR, §76.731, of the Education Department General Administrative Regulations (EDGAR). Accordingly, a local educational agency must have documentation that includes sufficient written detail to demonstrate compliance.

Comment: DRTx and The Arc recommended that the agency add a provision to proposed §89.1195(d) providing for expedited complaint investigation in accordance with TEC, §29.010(e).

Agency Response: The agency agrees with the recommendation and has added language to proposed subsection (d)(4), adopted as subsection (e)(4), to clarify that, in accordance with TEC, §29.010(e), the agency will expedite a complaint alleging that a school district has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution.

Comment: An attorney recommended that language be added to proposed §89.1195(d)(5) to ensure that the agency shall not find a local educational agency in noncompliance based on the local educational agency's failure to submit documentation that it is not required by state or federal law to maintain.

Agency Response: The agency disagrees. As stated in responses to previous comments, the agency is authorized to review all relevant information when investigating a special education complaint. Furthermore, public education agencies are required to maintain records to show compliance with IDEA program requirements, pursuant to 34 CFR, §76.731, of the EDGAR.

Comment: With regard to proposed §89.1195(e), an attorney commented that the agency should provide an internal appeal process for special education complaint decisions or explicitly authorize an appeal to state or federal district court.

Agency Response: The agency disagrees. IDEA does not require the establishment of procedures to appeal a complaint decision. The reconsideration process outlined in the proposed rule provides an efficient means for seeking correction of any alleged errors in a decision. Furthermore, in the absence of any statutory authority granting judicial review of complaint decisions, the agency lacks the authority to adopt a rule creating such a cause of action.

The amendments and new sections are adopted under 34 Code of Federal Regulations (CFR), Part 300, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities (34 CFR, §300.100), to ensure that children with disabilities and their parents are afforded procedural safeguards (34 CFR, §300.121), and to adopt written state complaint procedures (34 CFR, §300.151); Texas Education Code, §29.001, which authorizes the commissioner of education to develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21; and Texas Education Code, §29.0162, as added by Senate Bill (SB) 709, 83rd Texas Legislature, Regular Session, 2013, which authorizes the commissioner to adopt rules relating to non-attorney representation in a special education due process hearing.

The amendments and new section implement 34 CFR, §§300.100, 300.121, and 300.151; and Texas Education Code, §29.001 and §29.0162, as added by SB 709, 83rd Texas Legislature, Regular Session, 2013.

§89.1165. Request for Special Education Due Process Hearing.

(a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education Agency (TEA). The request may be filed by mail, hand-delivery, or facsimile.

(b) The party filing a request for a hearing must forward a copy of the request to the non-filing party at the same time that the request is filed with the TEA. The timelines applicable to hearings shall commence the calendar day after the non-filing party receives the request. Unless rebutted, it will be presumed that the non-filing party received the request on the date it is sent to the parties by the TEA.

(c) The request for a hearing must include:

(1) the name of the child;

(2) the address of the residence of the child;

(3) the name of the school the child is attending;

(4) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 United States Code §11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) a proposed resolution of the problem to the extent known and available to the party at the time.

(d) A party may not have a hearing until the party files a request for a hearing that meets the requirements of subsection (c) of this section.

(e) The TEA has developed a model form that may be used by parents and public education agencies to request a hearing. The form is available on request from the TEA and on the TEA website.

§89.1170. Impartial Hearing Officer.

(a) Each due process hearing shall be conducted by an impartial hearing officer selected by the Texas Education Agency (TEA) based on an alphabetical rotation. An exception to this process is when the same student was involved in another hearing that was filed within the last 12 months. In this situation, the TEA will assign the same hearing officer who presided over the previous hearing. In addition, the same hearing officer may be assigned to hearings involving siblings that are filed within 12 months of each other.

(b) If a hearing officer is also a mediator under §89.1193 of this title (relating to Special Education Mediation), that individual will not be assigned as hearing officer if he or she is the mediator in a pending mediation involving the same student who is the subject of the hearing or was the mediator in a previous mediation involving the student who is the subject of the hearing.

(c) A hearing officer shall possess the knowledge and abilities described in 34 Code of Federal Regulations, §300.511(c), and must not be:

(1) an employee of the TEA or the public agency that is involved in the education or care of the child who is the subject of the hearing; or

(2) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

(d) A hearing officer is not an employee of the TEA solely because the individual is paid by the TEA to serve as a hearing officer.

(e) A hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process.

(f) If a hearing officer is removed, dies, becomes disabled, or withdraws from a hearing before the completion of duties, the TEA may designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.

(g) A party to a hearing who has grounds to believe that the assigned hearing officer cannot afford the party a fair and impartial hearing due to bias, prejudice, or a conflict of interest may file a written request with the assigned hearing officer asking that the hearing officer recuse himself or herself from presiding over the hearing. Any such written request shall state the grounds for the request and the facts upon which the request is based. Upon receipt of a request, the assigned hearing officer shall review the request and determine the sufficiency of the grounds stated in the request. The hearing officer then shall prepare a written order concerning the request and serve the order on the parties to the hearing. If the hearing officer finds that the grounds for recusal are insufficient, the TEA will assign a second hearing officer to review the request. If the second hearing officer also determines that the grounds for recusal are insufficient, the assigned hearing officer shall continue to preside over the hearing. If either the assigned hearing officer or the second hearing officer finds that the grounds for recusal are sufficient, the TEA shall assign another hearing officer to preside over the remainder of the proceedings in accordance with the procedures in subsection (a) of this section.

§89.1175. Representation in Special Education Due Process Hearings.

(a) A party to a due process hearing may represent himself or herself or be represented by:

(1) an attorney who is licensed in the State of Texas; or

(2) an individual who is not an attorney licensed in the State of Texas but who has special knowledge or training with respect to problems of children with disabilities and who satisfies the qualifications of this section.

(b) A party who wishes to be represented by an individual who is not an attorney licensed in the State of Texas must file a written authorization with the hearing officer promptly after filing the request for a due process hearing or promptly after retaining the services of the non-attorney representative. The party must forward a copy of the written authorization to the opposing party at the same time that the written authorization is filed with the hearing officer.

(c) The written authorization shall be on the form provided in this subsection.
Figure: 19 TAC §89.1175(c)

(d) The written authorization must include the non-attorney representative's name and contact information and a description of the non-attorney representative's:

(1) special knowledge or training with respect to problems of children with disabilities;

(2) knowledge of the rules and procedures that apply to due process hearings, including those in 34 Code of Federal Regulations, §§300.507-300.515 and 300.532, if applicable, and this division;

(3) knowledge of federal and state special education laws, regulations, and rules; and

(4) educational background.

(e) The written authorization must state the party's acknowledgment of the following:

(1) the non-attorney representative has been given full authority to act on the party's behalf with respect to the hearing;

(2) the actions or omissions by the non-attorney representative are binding on the party, as if the party had taken or omitted those actions directly;

(3) documents are deemed to be served on the party if served on the non-attorney representative;

(4) communications between the party and a non-attorney representative are not generally protected by the attorney-client privilege and may be subject to disclosure during the hearing proceeding;

(5) neither federal nor state special education laws provide for the recovery of fees for the services of a non-attorney representative; and

(6) it is the party's responsibility to notify the hearing officer and the opposing party of any change in the status of the authorization and that the provisions of the authorization shall remain in effect until the party notifies the hearing officer and the opposing party of the party's revocation of the authorization.

(f) The written authorization must be signed and dated by the party.

(g) An individual is prohibited from being a party's representative under subsection (a)(2) of this section if the individual has prior employment experience with the school district and the school district raises an objection to the individual serving as a representative based on the individual's prior employment experience. No other objections to a party's representation by a non-attorney are permitted under this section.

(h) Upon receipt of a written authorization filed under this section, the hearing officer shall promptly determine whether the non-attorney representative is qualified to represent the party in the hearing and shall notify the parties in writing of the determination. A hearing officer's determination is final and not subject to review or appeal.

(i) A non-attorney representative may not file pleadings or other documents on behalf of a party, present statements and arguments on behalf of a party, examine and cross-examine witnesses, offer and introduce evidence, object to the introduction of evidence and testimony, or engage in other activities in a representative capacity unless the hearing officer has reviewed a written authorization filed under this section and determined that the non-attorney representative is qualified to represent the party in the hearing.

(j) In accordance with the Texas Education Code, §38.022, a school district may require an attorney or a non-attorney representative who enters a school campus to display his or her driver's license or another form of government-issued identification. A school district may also verify whether the representative is a registered sex offender and may apply a policy adopted by its board of trustees regarding the action to be taken when a visitor to a school campus is identified as a sex offender.

§89.1180. Prehearing Procedures.

(a) Promptly upon being assigned to a due process hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable:

(1) Response to Request for a Due Process Hearing (34 Code of Federal Regulations (CFR), §300.508(f));

(2) Resolution Meeting (34 CFR, §300.510(a));

(3) Contesting Sufficiency of the Complaint (34 CFR, §300.508(d));

(4) Resolution Period (34 CFR, §300.510(b));

(5) Five-Business Day Disclosure (34 CFR, §300.512(a)(3)); and

(6) the date by which the final decision of the hearing officer shall be issued (34 CFR, §300.515 and §300.532(c)(2)).

(b) The hearing officer shall schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the hearing officer determines that circumstances require an in-person conference.

(c) The prehearing conference shall be recorded and transcribed by a court reporter, who shall promptly prepare a transcript of the prehearing conference for the hearing officer with copies to each of the parties.

(d) The purpose of the prehearing conference shall be to consider any of the following:

(1) specifying issues as set forth in the due process complaint;

(2) admitting certain assertions of fact or stipulations;

(3) establishing any limitations on the number of witnesses and the time allotted for presenting each party's case; and/or

(4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

(e) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties a written prehearing order which confirms and/or identifies:

(1) the time, place, and date of the hearing;

(2) the issues to be adjudicated at the hearing;

(3) the relief being sought at the hearing;

(4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");

(5) the date by which the final decision of the hearing officer shall be issued; and

(6) other information determined to be relevant by the hearing officer.

(f) No pleadings, other than the request for hearing, and Response to Complaint, if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a hearing shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney or a non-attorney determined by the hearing officer to be qualified to represent the party, all copies shall be sent to the attorney of record or non-attorney representative, as applicable. Facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this subsection.

(g) Discovery methods shall be limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions shall be issued in the name of the Texas Education Agency.

(h) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) that the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) that the party anticipates calling to testify at the hearing.

(i) A party may request a dismissal or nonsuit of a hearing to the same extent that a plaintiff may dismiss or nonsuit a case under the Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent hearing involving the same or substantially similar issues as

those alleged in the original hearing, then, absent good cause or unless the parties agree otherwise, only evidence disclosed and witnesses identified by the Disclosure Deadline in the original hearing may be introduced at the subsequent hearing.

§89.1185. Hearing Procedures.

(a) The hearing officer shall afford the parties an opportunity for hearing within the timelines set forth in 34 Code of Federal Regulations (CFR), §300.515 and §300.532, as applicable, unless the hearing officer, at the request of either party, grants an extension of time, except that the timelines for expedited hearings cannot be extended.

(b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument shall be made to the hearing officer alone.

(d) Except as modified or limited by the provisions of 34 CFR, §§300.507-300.514 or 300.532, or this division, the Texas Rules of Civil Procedure shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.

(e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information concerning any student who is not the subject of the hearing must be redacted from the exhibit.

(f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.

(g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(h) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.

(i) Hearings conducted under this division shall be closed to the public, unless the parent requests that the hearing be open.

(j) The hearing shall be recorded and transcribed by a court reporter, who shall promptly prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties.

(k) Filing of post-hearing briefs shall be permitted only upon order of the hearing officer.

(l) The hearing officer shall issue a final decision, signed and dated, no later than 45 calendar days after the expiration of the 30-day resolution period under 34 CFR, §300.510(b), and §89.1183 of this title (relating to Resolution Process) or the adjusted time periods described in 34 CFR, §300.510(c), and §89.1183 of this title after a request for a due process hearing is received by the Texas Education Agency (TEA), unless the deadline for a final decision has been extended by the hearing officer as provided in §89.1186 of this title (relating to Extensions of Time). A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision shall be mailed to each party by the hearing officer on the day that the decision is issued. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:

(1) whether the parent or the public education agency unreasonably protracted the final resolution of the issues in controversy in the hearing; and

(2) if the parent was represented by an attorney, whether the parent's attorney provided the public education agency the appropriate information in the request for a hearing in accordance with 34 CFR, §300.508(b).

(n) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 34 CFR, §300.516.

(o) A public education agency shall implement any decision of the hearing officer that is, at least in part, adverse to the public education agency within the timeframe prescribed by the hearing officer or, if there is no timeframe prescribed by the hearing officer, within ten school days after the date the decision was rendered. In accordance with 34 CFR, §300.518(d), a public education agency must implement a hearing officer's decision during the pendency of an appeal, except that the public education agency may withhold reimbursement for past expenses ordered by the hearing officer.

(p) In accordance with 34 CFR, §300.152(c)(3), a parent may file a complaint with the TEA alleging that a public education agency has failed to implement a hearing officer's decision.

§89.1195. Special Education Complaint Resolution.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA) has established a complaint resolution process that provides for the investigation and issuance of findings regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA).

(b) A complaint may be filed with the TEA by any individual or organization and shall:

(1) be in writing;

(2) include the signature and contact information for the complainant;

(3) contain a statement that a public education agency has violated Part B of the IDEA; 34 CFR, §300.1 et seq.; or a state special education statute or administrative rule;

(4) include the facts upon which the complaint is based;

(5) if alleging violations with respect to a specific child, include:

(A) the name and address of the residence of the child;

(B) the name of the school the child is attending;

(C) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 United States Code, §11434a(2)), available contact information for the child and the name of the school the child is attending;

(D) a description of the nature of the problem of the child, including facts relating to the problem; and

(E) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;

(6) allege a violation that occurred not more than one calendar year prior to the date the complaint is received; and

(7) be forwarded to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA.

(c) A complaint must be filed with the TEA by mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website.

(d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA shall notify the complainant of the deficiencies in the complaint.

(e) Upon receipt of a complaint that meets the requirements of this section, the TEA shall initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.

(1) The TEA shall send written notification to the parties acknowledging receipt of a complaint.

(A) The notification shall include:

(i) the alleged violations that will be investigated;

(ii) alternative procedures available to address allegations in the complaint that are outside of the scope of Part B of the IDEA; 34 CFR, §300.1, et seq.; or a state special education statute or administrative rule;

(iii) a statement that the public education agency may, at its discretion, investigate the alleged violations and propose a resolution of the complaint;

(iv) a statement that the parties have the opportunity to resolve the complaint through mediation in accordance with the procedures in §89.1193 of this title (relating to Special Education Mediation);

(v) a timeline for the public education agency to submit:

(I) documentation demonstrating that the complaint has been resolved; or

(II) a written response to the complaint and all documentation and information requested by the TEA;

(vi) a statement that the complainant may submit additional information about the allegations in the complaint, either orally or in writing within a timeline specified by the TEA, and may provide a copy of any additional information to the public education agency to assist the parties in resolving the dispute at the local level; and

(vii) a statement that the TEA may grant extensions of the timeline for a party to submit information under clause (v) or (vi) of this subparagraph at the request of either party.

(B) The public education agency shall provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency shall forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the child's parent or the parent's attorney, the public education agency shall forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.

(2) If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the TEA shall:

(A) set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(B) resolve any issue in the complaint that is not a part of the due process hearing.

(3) If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the TEA shall inform the complainant that the due process hearing decision is binding.

(4) The TEA has 60 calendar days after a valid written complaint is received to carry out the investigation and to resolve the complaint. The TEA may extend the time limit beyond 60 calendar days if exceptional circumstances, as determined by the TEA, exist with respect to a particular complaint. The parties will be notified in writing by the TEA of the exceptional circumstances, if applicable, and the extended time limit. The time limit may also be extended if the parties agree to extend it in order to engage in mediation pursuant to §89.1193 of this title or other alternative means of dispute resolution. In accordance with the TEC, §29.010(e), the TEA shall expedite a complaint alleging that a public education agency has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution, as determined by the TEA.

(5) During the course of the investigation, the TEA shall:

(A) conduct an investigation of the complaint that shall include a complete review of all relevant documentation and that may include interviews with appropriate individuals and an independent on-site investigation, if necessary;

(B) consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards;

(C) make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and issue a written report of findings of fact and conclusions, including reasons for the decision, and any corrective actions that are required, including the time period within which each action must be taken;

(D) review any evidence that the public education agency has corrected noncompliance on its own initiative;

(E) ensure that the TEA's final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance; and

(F) in the case of a complaint filed by an individual other than the child's parent, provide a copy of the written report only if written parental consent has been provided to the TEA.

(6) In resolving a complaint in which a failure to provide appropriate services is found, the TEA shall address:

(A) the failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and

(B) appropriate future provision of services for all children with disabilities.

(7) In accordance with 34 CFR, §300.600(e), the public education agency must complete all required corrective actions as soon

as possible, and in no case later than one year after the TEA's identification of the noncompliance. A public education agency's failure to correct the identified noncompliance within the one-year timeline will result in an additional finding of noncompliance under 34 CFR, §300.600(e), and may result in sanctions against the public education agency in accordance with §89.1076 of this title (relating to Interventions and Sanctions).

(f) If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a written request for reconsideration to the TEA within 15 calendar days of the date of the report. The party's reconsideration request shall identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request shall not delay a public education agency's implementation of any corrective actions required by the TEA.

(g) In accordance with 34 CFR, §300.151, the TEA's complaint resolution procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2013.

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

CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS
SUBCHAPTER C. HIGH SCHOOL
19 TAC §126.37

The State Board of Education (SBOE) adopts an amendment to §126.37, concerning Texas essential knowledge and skills (TEKS) for technology applications. The amendment is adopted without changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7254) and will not be republished. Section 126.37 establishes technology applications TEKS for Discrete Mathematics. The adoption amends the section title to distinguish the course from another Discrete Mathematics course in 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics.

The 81st Texas Legislature, 2009, passed House Bill (HB) 3, amending the Texas Education Code, §28.025, to increase flexibility in graduation requirements for students. In January 2010, the SBOE adopted amendments to 19 TAC Chapter 74, Subchapter F, to incorporate changes to high school graduation programs in light of the graduation requirements from HB 3. The amendments also allowed three career and technical education (CTE) courses to count for the fourth mathematics credit for the Recommended High School Program and two CTE courses to count for the fourth mathematics credit under the Distinguished Achievement Program. The SBOE approved changes allowing five new CTE courses to count for the fourth science credit under the Recommended High School Program and Distinguished Achievement Program. Additionally, changes were adopted allowing the Professional Communications course to satisfy the speech graduation requirement and the Principles and Elements of Floral Design course to satisfy the fine arts graduation credit.

The amendments to 19 TAC Chapter 74, Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013, adopted by the SBOE in January 2012, included changes to update the graduation requirements to align with legislation passed by the 82nd Texas Legislature, 2011; allowed additional courses to satisfy certain graduation requirements; and provided additional clarification regarding requirements.

A discussion item regarding revisions to the high school graduation requirements and additional course options that might satisfy the fourth mathematics and the fourth science credit requirements under the Recommended High School Program and the Distinguished Achievement Program was presented to the Committee of the Full Board during its January 2013 meeting. The SBOE directed staff to prepare proposed revisions to 19 TAC Chapter 126, Subchapter C. The proposed revisions, approved for first reading and filing authorization at the April 2013 meeting, included the repeal of 19 TAC §126.37 and an amendment to 19 TAC §126.40. The SBOE also approved for first reading and filing authorization the addition of the innovative course, Discrete Mathematics, to the mathematics TEKS.

At the July 2013 meeting, the SBOE approved for second reading and final adoption proposed amendments to 19 TAC Chapter 74, Subchapters F and G, and proposed amendment to 19 TAC §126.40 to allow the technology applications Robotics Programming and Design course to satisfy mathematics credit requirements for graduation. The board postponed final approval of the repeal of 19 TAC §126.37, Discrete Mathematics (One-Half to One Credit), Beginning with School Year 2012-2013, and the addition of proposed new 19 TAC §111.46, Discrete Mathematics, Adopted 2013 (One-Half to One Credit), to a subsequent meeting.

At the September 2013 meeting, the SBOE approved the substitution of the repeal of the Discrete Mathematics course with an amendment to the course title to read "Discrete Mathematics for Computer Science" in order to distinguish the course from the Discrete Mathematics for Problem Solving course, which was approved to be added to 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics.

The SBOE took action to approve the proposed amendment to 19 TAC §126.37 for second reading and final adoption during its November 22, 2013, meeting.

The adopted amendment has no new procedural and reporting implications. The adopted amendment has no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusi-

nesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

No public comments were received on the proposal.

The amendment is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, as added by House Bill 5 and House Bill 2201, 83rd Texas Legislature, Regular Session, 2013, which requires the SBOE to ensure that certain courses are approved to satisfy a fourth credit in mathematics; and §28.025, as that section existed before amendment by House Bill 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025, as that section existed before amendment by House Bill 5.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance. The amendment is adopted without changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7256) and will not be republished. The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The amendment adopts by reference the *2013-2014 Student Attendance Accounting Handbook.*

Legal counsel with the TEA has recommended that the procedures contained in each annual student attendance accounting handbook be adopted as part of the Texas Administrative Code (TAC). This decision was made in 2000 as a result of a court decision challenging state agency decision making via administrative letters and publications. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory authority for the commissioner of education to adopt by reference the student attendance accounting handbook, staff proceeded with formal adoption of rules in this area. The intention is to annually update the rule to refer to the most recently published student attendance accounting handbook. Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website each July or August. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to 19 TAC §129.1025 adopts by reference the student attendance accounting handbook for the 2013-2014 school year.

Significant changes to the *2013-2014 Student Attendance Accounting Handbook* from the *2012-2013 Student Attendance Accounting Handbook* include the following.

Section 3

A statement that, in the Public Education Information Management System (PEIMS) fall data submission, a school district must report the transfer status of each student who transfers into the district has been added.

To reflect a recent statutory change, students who are required to pay tuition to obtain or hold a student visa have been added to the list of those students who must be coded as ineligible for average daily attendance (ADA).

To reflect a recent statutory change, the "Eligible" column of the age eligibility table in Subsection 3.2.3 has been updated to include students who are at least 19 years of age and under 26 years of age on September 1 of the school year and are enrolled in an adult high school diploma and industry certification charter school pilot program.

An additional item has been added to the list of acceptable documentation of age and identity for enrollment purposes.

Information on additional requirements related to documentation of identity and age for students less than 11 years of age has been added.

A list of three questions that districts may ask for purposes of determining a student's immigrant indicator code has been added.

Information on residency requirements and students in foster care has been updated to reflect a recent statutory change.

Information on homeless students has been clarified.

A student's Texas Unique Student ID has been added to the list of information that must be sent through the Texas Records Exchange system when a student moves from one district to another.

A statement that a district that uses an attendance accounting system that meets the requirements for a secure paperless system is not required to generate weekly attendance records has been added.

Information on recording of attendance has been revised to state that documentation from an electronic, radio-frequency, "smart card," or similar tracking system that indicates only whether a student monitoring device was on campus at a particular time is not acceptable documentation of attendance unless supported with documentation that the student was with a campus official.

To reflect recent statutory changes, the following absences have been added to the list of those for which a student may be considered present for FSP funding purposes: certain absences of students in Department of Family and Protective Services conservatorship, an absence to serve as an early voting clerk, a temporary absence to attend the health care appointment of a student's child, and certain absences related to military deployments. "Excused" absences to serve as an election clerk or early voting election clerk have been limited to two days per school year, per a statutory change.

The statement that, during the period of confinement, a student receiving general education homebound services must receive instruction in all courses in which the student is enrolled has been changed to state that the student must receive instruction in all *core academic subject area courses.*

Information specific to charter school calendars has been added to the subsection on calendars.

Section 4

Information on reporting speech therapy services through the PEIMS has been corrected to reflect that a student who is receiving both speech therapy and instructional services through another instructional arrangement/setting should be reported with two instructional arrangement/setting codes on the PEIMS 405 record.

Section 5

A note that the United States Department of Education defunded Tech-Prep grants in 2011 has been added.

A statement that a training plan is not required for a student participating in an unpaid practicum for which the teacher of record provides all the training has been added.

Section 6

The subsection on required curriculum has been removed, as the subsection's information is unrelated to attendance accounting.

A statement that a district must obtain parental approval for a student's exit from the bilingual or English as a second language (ESL) education program has been added.

The chart containing exit criteria for the bilingual and ESL education programs has been updated.

A statement that a student receiving bilingual or ESL education program services without written parent or guardian approval is not eligible for bilingual or ESL funding has been added.

Documentation of parental notification and approval of a student's exit from the bilingual or ESL education program has been added to the list of required documentation.

Section 7

A clarification that a five-year-old student enrolled in a prekindergarten (PK) program must be reported with a grade level of PK has been added.

An additional item has been added to the list of acceptable documentation of a student's eligibility for free PK on the basis of a parent's military service.

An additional item has been added to the list of acceptable documentation of age and identity for purposes of PK program enrollment.

Information on students who are eligible for services through the preschool program for children with disabilities and are served in a PK classroom has been placed in a single subsection and clarified.

Section 9

The statement that, during the period of confinement, a regular education student receiving compensatory education home instruction must receive instruction in all courses in which the student is enrolled has been changed to state that the student must receive instruction in all *core academic subject area courses.*

Section 10

The erroneous statement that a student with a disability who has been removed for discipline reasons and is provided fewer than two hours of instruction each day should automatically have an instructional arrangement/setting code of 00 has been deleted.

Section 11

The title of Subsection 11.3 has been changed from "Dual Credit (High School and College/University)" to "College Credit Programs," as the subsection covers dual credit as well as other college credit options.

Information on the Interstate Compact on Educational Opportunity for Military Children related to student absences has been updated to reflect a recent statutory change.

Section 12

All information on self-paced computer courses, online courses, Texas Virtual School Network (TxVSN) courses and programs, and remote instruction has been moved from Sections 3 and 11 and placed in new Section 12.

In the subsection on the TxVSN, the definition of "provider" has been revised to reflect a recent statutory change. Information on reporting of TxVSN attendance has been updated to reflect that the TEA (rather than districts) is responsible for adjusting the ADA eligibility of a student who does not successfully complete a TxVSN course. Also, a statement that no more than three yearlong TxVSN course catalog courses may be counted in determining a student's ADA eligibility has been added to reflect a recent statutory change.

Section 13

Former Section 12, an appendix providing information on the calculation of ADA and weighted funding, has been renumbered as Section 13. Information related to the calculation of flexible attendance and the calculation of weighted funding for special education and career and technical education has been added to the appendix.

Section 14

Former Section 13, a glossary, has been renumbered as Section 14.

The adopted amendment places the specific procedures contained in the *2013-2014 Student Attendance Accounting Handbook* in the TAC. The TEA distributes FSP funds according to

the procedures specified in each annual student attendance accounting handbook. Data reporting requirements are addressed through the PEIMS.

The handbook has long stated that school districts and open-enrollment charter schools must keep all student attendance documentation for five years from the end of the school year. Any new student attendance documentation required to be kept corresponds with the student attendance accounting requirement changes described previously.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began October 18, 2013, and ended November 18, 2013. No public comments were received.

The amendment is adopted under the Texas Education Code (TEC), §30A.153, as amended by House Bill (HB) 1926, 83rd Texas Legislature, Regular Session, 2013, which requires the commissioner to adopt rules for the implementation of Foundation School Program funding for the state virtual school network, including rules regarding attendance accounting; and the TEC, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the TEC, §30A.153, as amended by HB 1926, 83rd Texas Legislature, Regular Session, 2013; and §42.004.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2013.

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

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER D. NEWBORN SCREENING PROGRAM

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§37.51 - 37.54 and 37.57 - 37.64, the repeal of §37.55, 37.56, and §37.65, and new §37.55 and §37.56, concerning the Newborn Screening Program. The amendments to §§37.51 - 37.53, 37.60 - 37.64, and new §37.55, are adopted with changes to the proposed text as published in the July 5, 2013, issue of the *Texas Register* (38 TexReg 4280). The amendments to §§37.54, 37.57 - 37.59, new §37.56, and the repeal of §§37.55, 37.56, and 37.65 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

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

The amendments adopted here are necessary to: (1) reflect House Bill (HB) 411, 82nd Legislature, Regular Session, 2011, which amended Health and Safety Code, Chapter 33; (2) reflect portions of HB 740, 83rd Legislature, Regular Session, 2013, which amended Health and Safety Code, Chapter 33; (3) update, clarify, and restructure sections to improve readability and user-friendliness, while also better reflecting the underlying statutory authority; and (4) repeal §73.21 of this title, related to laboratory specimen submission for newborn screening, and concurrently bring that content over to the new §37.55 with changes, so that program information regarding department blood spot-based screening can be located within one chapter instead of two chapters; and (5) comply with the four-year review of agency rules required by Government Code, §2001.039.

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

A small number of changes, both substantive and clerical, have been made from the proposed version of the rules, and those changes are identified accordingly in the Section-By-Section Summary of this preamble.

SECTION-BY-SECTION SUMMARY

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

improve clarity and readability. The department has amended the language from the proposed preamble in the "Purpose" section at §37.51(a) to clarify that this subchapter is applicable to blood spot-based newborn screening with two exceptions related to Critical Congenital Heart Disease (CCHD) necessitated by the passage of HB 740: the Newborn Screening Advisory Committee; and Newborn Screening Program benefits. Also, added from the proposed preamble is language to clarify that point-of-care newborn screening tests are organized to be incorporated in separate rule subchapters under this chapter, and for the purposes of Chapter 37, Subchapter D (Newborn Screening Program), references to the "Newborn Screening Program" mean newborn screening that is blood spot-based. The section is amended to identify the Department of State Health Services as the "department" as referenced throughout the rules, to identify the statutory authority for various elements of the Newborn Screening Program, and to identify the Newborn Screening Program as the "program" throughout the rules for consistency of terminology. Also, changed from the proposed preamble, this section excludes the screening for CCHD from this subchapter (with the two referenced exceptions), and states that CCHD will be incorporated in a separate subchapter under this chapter. Language is added to clarify that the screening of newborns in Texas involves two blood draws collected on separate days, and better reflects the underlying statutory authority regarding what is included in the screening tests under the Texas program. The amendments delete the abbreviation of "PKU" and leave the term "phenylketonuria," and also modify the section to use the term "disorders" throughout the rules for consistency. Certain summary information regarding specimen collection kits from §73.21 of this title is included in §37.51 as part of the repeal of §73.21. Amendments specify that specimen collection kits are obtained from the department, and new language clarifies that screening results are reported by the department as required by law. Amendments emphasize that newborn screening results are not diagnostic, and that the department strongly recommends that newborns be placed under the care of a licensed physician who has the appropriate expertise for diagnosis and treatment. Clarifying language regarding Newborn Screening Program benefits potentially available to individuals who have an abnormal screen result or are pending the confirmation of a diagnosis has been added, along with a cross-reference to §37.61 where the details for available benefits are located.

Amendments to §37.52 represent an update of the subchapter's definitions section, and also include new terminology used in other rule sections for amendment in this rulemaking action. Existing paragraphs (1) - (3), (8), (9), (12), (15), and (20) are deleted because the conditions are not individually named in the rules as amended. Paragraphs (7), (11), (17), (18), (19), and (21) include deleted definitions that are no longer necessary given other changes in this rulemaking action to other sections. New paragraph (1) adds a definition for the term "abnormal screening results" which aligns with common, current medical terminology. New paragraph (3) adds a definition for the term "charity care newborn" to specify circumstances when a no-cost specimen collection kit can be used as stated in §37.55(b)(1)(A). New paragraph (4) adds a definition for the term "CHIP-eligible newborn" by cross-referencing the applicable statutory language and by specifying circumstances when a no-cost specimen collection kit can be used as stated in §37.55(b)(1)(A). Paragraph (6) is revised from the proposed preamble, and the new language adds the definition of CCHD with a clarification that comprehensive rules for CCHD will be established under a separate subchapter under this chapter. Revisions to renumbered paragraph (7) better reflect underlying statutory authority. Revisions to renumbered paragraph (8), the definition of "Health care practitioner", more fully cite the underlying, updated statutory authority, reflect current titles used in the profession, and, with these changes, eliminate the need for a "provider" definition in this section. New paragraph (9) adds a definition for the term "Medicaid-eligible newborn" by cross-referencing the applicable statutory language and specifying circumstances when a no-cost specimen collection kit can be used as stated in §37.55(b)(1)(A). The definition for "Newborn Screen" in paragraph (14) is deleted and placed in renumbered paragraph (11) with the updated term "Newborn screening," which better reflects the underlying statutory authority. Revisions to renumbered paragraph (12) cross-reference the underlying statutory authority and the proper legal authority regarding the practice of medicine in Texas. A definition is added for the term "Specimen" in renumbered paragraph (13), because it is used often throughout the subchapter as revised, and also to specify that, in the context of this program, capillary blood is used and collected on the specialized filter paper that is a part of the specimen collection kit. Revisions are made to renumbered paragraph (14) to reflect statutory changes to Health and Safety Code, Chapter 33, made by HB 411, as well as to provide clarity regarding the specimen collection kits currently being used by the department. The paragraphs are renumbered throughout, as appropriate.

Amendments to §37.53 provide clarification regarding the disorders which are screened for in the Texas Program at any given time, with changes to the section title to better reflect the actual section content. The current nationally-recognized recommended newborn screening panel is the federal Health and Human Services' Recommended Uniform Screening Panel, which contains conditions identified via tests on blood specimens, as well as conditions identified via point-of-care testing, such as hearing screening. Rules established by §§37.51 - 37.65 apply only to those conditions identified via tests on blood specimens, except for the two exceptions identified in this preamble (i.e., benefits; scope of advisory committee). House Bill 790, 79th Legislature, Regular Session, 2005, required expansion of newborn screening in Texas to the American College of Medical Genetics recommended core panel of disorders (currently known as the Health and Human Services Recommended Uniform Screening Panel), as funding allows. Because of this fluidity based on changing availability of funding, and because disorders can be added or removed from the Recommended Uniform Screening Panel over time, the rule change provides a link to the Program's website, which will contain a list of the specific disorders included in the department's screening program at any given time. This change allows the department to always have an up-to-date list available to stakeholders, without having that list possibly contradict a separate list found in department rules. The department has removed language from the proposed rule which titled the weblink "General Information on Newborn Screening" in order to more accurately match the department's webpage.

Amendments to §37.54 (including the section title) better align the rule section with the underlying statutory authority regarding the newborn screening exemption. A parent, managing conservator, or legal guardian may only object to newborn screening on the grounds that the tests conflict with religious tenets or practices of an organized church of which they are adherents. The new language also reflects the requirement, found at Health and Safety Code, §33.012(b), that the physician (or other person attending a newborn, if no physician is present) must enter that

objection into the medical record of the child, and that the objection must be signed by the parent, managing conservator or legal guardian.

Existing §37.55 is the new §37.56, with changes, while new §37.55 includes information that currently resides in repealed §73.21, related to laboratory specimen submission for newborn screening. This reorganization establishes Program rules regarding blood spot-based testing within one rule subchapter instead of spread across two chapters. As part of this reorganization, existing language in §37.56 is repealed (see next paragraph for full discussion).

New §37.55 covers the procedures for obtaining, and then submitting, specimen collection kits. The language reflects HB 411 amendments to Health and Safety Code, (e.g., §33.0111). The statute contains very proscriptive requirements regarding the design of the specimen collection kits. These kits have to be ordered by the department many months in advance, balancing projected need in Texas for the coming year against agency budgetary constraints. Complicating agency budgeting efforts in this area is the fact that, while some kits are purchased from the department, some are provided to hospitals, etc. free of charge for use with Medicaid-eligible, CHIP-eligible and charity care-eligible newborns. For all these reasons, it is essential that users of the kits: only order those that they will actually need over the time period in question; make reasonable efforts to project needs as divided between purchase kits and free kits; and pay their invoices in a timely manner. Amendments at subsection (b)(1) state that the department requires a written estimate when submitting an order for kits, based on previous usage. The language also differentiates between the free kits (described previously) and those which must be purchased (a rule cross-reference to §73.54 is added for the department fee schedule), and makes clear that free kits can only be used in certain specified situations. New language at subsection (b)(2) states that the department reserves the right to adjust quantities ordered to ensure the availability of kits statewide for all submitters based on kit availability. This language is necessary because there is a lag time of several months between the department ordering of new kits and the delivery of those kits. Therefore, if a shortage occurs due to increased demand, the department does not have the option of quickly obtaining more kits to fulfill all orders. It is crucial that the department take measures to make sure that kits are available for the immediate needs of persons attending to a birth in Texas. Language pertaining to payment for specimen collection kits, now at subsection (b)(3), reflects a change to 90 days from the current 120 days. This change is intended to reflect a more appropriate time period, which the department believes is a reasonable step to take to improve the efficiency of laboratory operations, particularly given current resource constraints on the department. Amendments at subsection (b)(4) make clear that only department-approved specimen collection kits are accepted for the submission of specimens. This is to ensure that collection kits are of adequate quality for specimen collection, so that specimens can be accurately tested in an appropriate period of time. Kits obtained from the department also comport with the requirements of Health and Safety Code, Chapter 33, which any other kit is not likely to do. Amendments at subsection (b)(5) describe the requirements (each time newborn screening samples are collected from a child) of a physician (or other person attending a newborn, if no physician is present) to provide the parent, managing conservator, or legal guardian with the Texas Newborn Screening Parent Information form, and the Parental Decision for Storage and Use of Newborn Screening Blood Spot Cards form. This language is pursuant to the HB 411 statutory amendments. Also, pursuant to those amendments, the new language states that the physician (or other person attending a newborn, if no physician is present) must submit the signed parental decision form back to the department if the completed form is given to the physician (or other person attending a newborn, if no physician is present) by the parent, legal guardian, or managing conservator of the child. As required by HB 411, the amendments at subsection (b)(5) allow for parents, managing conservators or legal guardians in the state to decide on the disposition of residual dried blood spots of their child, pursuant to Health and Safety Code, §33.0112, which specifies that, unless a parent, managing conservator, or guardian consents to further storage and use as limited by the statute, the department will destroy the genetic material no later than the second anniversary of receipt (and may only use the specimens during that time period for the more-limited purposes provided in the statute). New language at subsection (b)(5) also reflects the statutory requirement that the physician (or other person attending a newborn, if no physician is present) must verify that the department form has been given to the parent/managing conservator/legal guardian, and must make this verification as directed by the department. Language has been added since the proposed version of these rules to reflect the HB 740 changes to the statute which allow physicians to delegate the responsibilities in this section to any qualified and properly trained person acting under the physician's supervision. Amendments at subsection (b)(6) provide instructions for the handling of a specimen collection kit which is thought to be defective by the person/entity that received it. If the department verifies the defect, a credit toward future kit purchases will be given (if the defective kit was, in fact, purchased).

Existing language at §37.56 is deleted and replaced by language currently found at §37.55, with changes. The reorganization and other revisions improve the clarity, readability and user-friendliness of these sections, as well as updating them to reflect current laboratory operations. The title of the section reflects the various revisions discussed in this paragraph. The new language in the section reflects statutory changes made by HB 411, including those changes related to the responsibilities of persons attending to a birth in Texas. Specific changes in instructions regarding the specified use of a proper specimen collection kit are reflected in revisions to subsections (a) and (b). In subsection (a), the collection of capillary blood by either a physician (or other person attending a newborn, if no physician is present) is clarified to better match the underlying statutory authority and to provide an appropriate cross-reference, given the reorganization of the subchapter. The word "specialized" as it pertains to the type of filter paper used to capture capillary blood, is added to clarify the requirement in subsection (b). Timeframes for collection of the first and second newborn screen are fully described in subsection (c). The general discretion (as allowed by statute in Health and Safety Code, Chapter 33) that the department commissioner has to move the Texas program to a single-screen model, if he finds that such a change would be appropriate, is summarized at (c)(1), while new subsection (c)(2) details how stakeholders would be notified of such a change. New subsection (d) covers situations where the department requires a new specimen to be submitted for a child in order to better ensure accurate test results. New subsection (e) details how specimen collection should be timed when transfusions are involved, to help ensure accurate test results. The word "strictly" is added to renumbered subsection at (f), in order to emphasize the importance of following all directions regarding the drying of blood specimens to avoid cross-contamination and other conditions which

might invalidate the sample. Language regarding provider responsibilities at subsection (g) is updated to: (1) reflect HB 411 amendments to the statute; (2) use more accurate and updated terminology regarding impacted health care workers; (3) better reflect the underlying statutory authority regarding persons affected; (4) detail responsibilities regarding a physician (or other person attending a newborn, if no physician is present) verifying that the statutorily-required forms have been given to the parents; (5) require the physician (or other person attending a newborn, if no physician is present) to promptly send to the department the completed forms if so requested by the parent/legal guardian/managing conservator, as required under the statute; and (6) improve readability and user-friendliness.

Amendments to §37.57 concerning blood specimen screening procedures provided clarity and a rule cross-reference necessitated by the reorganization of the subchapter, and improved readability. Existing language found at paragraph (2) is deleted as no longer necessary because it is outdated and no longer applicable. Existing paragraph (3) is renumbered as paragraph (2), with changes which update the screening procedures referenced and improve readability.

Amendments to §37.58 include updating the section title by adding "Reporting" and "Screening Results and Confirmed Cases" to more accurately describe the contents of the section and to achieve consistency of terminology given other new changes in this rulemaking action. Changes to subsection (a) add an appropriate statutory cross-reference regarding notification of abnormal screening results, and improve readability and include a statement that the department will provide recommendations on clinical confirmation following abnormal screen results. Various changes to subsection (b) better reflect the actual entities involved and the process by which the department requests case follow-up, along with changes to better reflect the limitations of the department's role as specified in the underlying statutory authority. Amendments to subsection (c) better reflect the underlying statutory authority, and improve readability. Amendments to subsection (d) improve readability, achieve consistency of terminology, and generally clarify how the department will identify newborn screening specialists who may assist a physician and other health care practitioners with newborns that have abnormal screening results. Amendments to subsection (e) better reflect the underlying statutory authority, improve readability, and provide the appropriate rule cross-reference. Revisions to this subsection also specify the deadline for the required reporting. Thirty days was chosen for that deadline because reporting to the department within this timeframe allows the department to evaluate screening protocols for effectiveness and ensure that appropriate follow-up care has been provided for these very time-sensitive cases. Revisions to subsection (f) clarify what the department does with the referenced data, as well as more accurately state the sources of that data. Revisions to this subsection also provide an appropriate rule cross-reference related to the disorders that are screened. Minor changes to grammar and consistency of terms are added to subsection (g), and cross-references are added in subsection (h) to both the department rule where conditions screened for are listed and to the underlying statutory authority for the registry, found at Health and Safety Code, §33.015(c), of children born in Texas who have been diagnosed as having one of the disorders referenced in §37.53.

Amendments to §37.59, including the section title, update the program name referenced, achieve consistency of terminology given other changes in this rulemaking action, include the appropriate rule cross-reference, and improve readability.

Amendments to §37.60 update the section title to clarify that the referenced benefits are a component of the Program, and improve readability throughout. The changes also clarify that funding limitations for the referenced benefits are dependent on how funds are allocated in the agency budget, as opposed to in the overall legislative appropriation for agency operations, and that the department has discretion (consistent with the eligibility requirements found in §37.61) regarding the types of benefits provided, as well as how provision of the limited funds are prioritized. Language has been added since the proposed preamble to reflect HB 740, which now allows for benefits for CCHD once the department has established rules covering that subject matter in a separate rule subchapter under this chapter. The existing reference to a percentage of the federal poverty income guideline is to be deleted here and moved to §37.61 because that is the section pertaining to eligibility criteria. The changes also include the addition of low-protein foods and confirmatory testing as examples of benefits which may be obtained, with the latter benefit more fully explained than in existing language. Changes also achieve consistency of terminology, given other changes to the subchapter in this rulemaking action, and would add appropriate cross-references. The wording of paragraph (6) is to be amended to improve clarity and readability.

Amendments to §37.61 include updated references to the benefits component of the program in the section title for greater clarity. Changes to subsection (a) add a rule cross-reference to §37.60 to reflect the new organizational structure. Changes in subsection (a)(1) add a rule cross-reference, and make it clear that an abnormal screening result or a pending confirmation of a diagnosis of a disorder is required for benefits eligibility. In addition, language has been added since the proposed preamble to reflect HB 740, which now includes CCHD as an eligible disorder once the department establishes rules covering that subject matter in a separate rule subchapter under this chapter. As discussed in the preceding paragraph, the reference to the percentage of the federal poverty income level moved from §37.60 to §37.61(a)(3) where eligibility requirements are more appropriately placed. Amendments to (a)(5) make it clear that those seeking benefits under this section must provide information requested by the department, which the department in its discretion believes it needs to evaluate the request, and do so in a timely manner. The term "legal" is added to "guardian" in subsection (a)(6) to use more appropriate legal terminology. Amendments to subsection (b) provide an appropriate cross-reference, adjust terminology to better capture the legal intent of the language, update program names, and improve readability. Also, language regarding reference to "no cost or reduced cost" is removed in subsection (b) because it is redundant (already referenced in §37.60).

Amendments to §37.62 include an updated reference to the benefits component of the program in the section title for greater clarity. Amendments to subsection (a) include a rule cross-reference, changes designed to improve readability, updated agency contact information and added a comma after P.O. Box 149347, and clarification that complete applications for program benefits must be filed in accordance with deadlines provided by the department. The insertion of the terms "legal" and "seeking services" are added to subsection (b)(2) and (3) respectively, to better capture the legal intent of the provisions and to improve clarity and readability. Amendments to subsection (d) include deletion of the phrase "for newborn screening benefits" as redundant and

no longer necessary. Amendments in subsection (d)(2) improve readability, clarity, and provide a more appropriate name for the referenced policy. Language added in subsection (d)(3) reiterates that a complete application for Program benefits must include additional information that is requested by the department. Changes to subsection (e) reflect that the list is an "and/or" type of list. Changes to subsection (f) improve readability, clarity, and would better capture the legal intent of the provision. Changes at subsection (f)(2) achieve consistency of terminology within the subchapter. The change at subsection (f)(3) clarifies that department staff will not declare all criteria met if it, in its judgment, believes that there is a deficiency(ies). Changes at subsection (g) improve readability and eliminate the vague and inappropriate term "substantially" as a modifier to "complete." That latter change is needed because an application needs to be complete to be evaluated, not something less than complete, and handling applications in this way would achieve better consistency and predictability in department practices.

Amendments to §37.63 include grammatical changes and an updated reference to the benefits component of the program in the section title for greater clarity. The organization of the section improves clarity and readability. Rule cross-references are added in subsections (a), new (a)(1), and (b). The cross-reference in (a)(1) has been changed since the proposed preamble, and the language now references §37.61(a)(1) which was expanded to include CCHD as a benefits-eligible disorder once the department establishes rules covering that subject matter in a separate rule chapter under this title (per HB 740). Existing subsection (a)(1) and (a)(2) are revised to delete redundant and unnecessary language. Non-substantive wording changes revise subsection (a)(1) to improve clarity and readability. Renumbered subsection (a)(3) is simplified to improve readability and clarity, provides examples of information which might be requested, and includes elimination of the word "periodic" so as to avoid an implication that department requests for further information are guaranteed to occur at regular intervals. Non-substantive grammatical changes for renumbered paragraph (4) improve readability, and renumbered paragraph (5) clarifies that the program must remain within budgetary limitations. References in subsection (b) to adjustments in "poverty income guidelines" are deleted because overall budgetary limitations, rather than the specific limitations of the federal poverty income guidelines as applied, form the subject matter of this subsection. A rule cross-reference to §37.60 (related to Newborn Screening Program Benefits) is also added to this subsection, along with addition of the word "regarding," to improve readability. Non-substantive grammatical changes are made for renumbered subsections (c) and (d) to improve readability. New renumbered subsection (d) also includes a statement obligating the department to state its reasons for the action it takes as described in the provision, to ensure clarity and transparency in the process. New language in subsections (e) - (g) provides greater clarity regarding the hearing rights of the person affected by the department action under this section. These hearing provisions are consistent with other department hearings in comparable situations, already in department regulations at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures). This language replaces existing language at subsection (b)(3), and provides clear instructions for the person who may wish to seek a hearing.

Amendments to §37.64 reflect the establishment, since the current rules were written, of a Newborn Screening Advisory Committee at Health and Safety Code, §33.017. The title is modified to reflect the underlying statutory authority regarding this particular advisory committee, and all remaining existing language in the section is deleted and replaced with new language derived from those statutory provisions. New paragraphs (1) - (4) define the scope of matters on which the Newborn Screening Advisory Committee may legally submit recommendations to the department. Language has been added since the proposed preamble to reflect HB 740 regarding the Newborn Screening Advisory Committee scope.

Section 37.65 is repealed in its entirety since new statutory language regarding confidentiality of the information in question was contained in HB 411, which created Health and Safety Code, §33.018 (Confidentiality). The department does not believe that any regulation is needed on the subject, as the language in the statute is sufficient.

FISCAL NOTE

Margaret Bruch, Interim Director, Specialized Heath Services Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections, other than greater efficiencies resulting from improved organization, clarity, readability and user-friendliness.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bruch has also determined that there should be no adverse economic impact on small businesses or micro-businesses required to comply with the sections as changed since the proposal preamble. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices, beyond what is already required by statute, in order to comply.

REGULATORY FLEXIBILITY ANALYSIS

Government Code, Chapter 2006, was amended by the HB 3430, 80th Legislature, Regular Session, 2007, to require, as part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rules. There is an exception to this requirement, however. An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses, would not be protective of the "health, safety and environmental and economic welfare of the state." When the amended rules are an implementation of legislative directives because of statutory changes, that rule language becomes *per se* consistent with the health, safety, or environmental and economic welfare of the state, and therefore the department need not consider alternative methodologies as part of the preamble small business impact analysis.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL GOVERNMENT

There are no anticipated costs to persons who are required to comply with the sections as changed since the proposal preamble, and there is no fiscal impact to local employment.

PUBLIC BENEFIT

Margaret Bruch has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections as changed since the proposal preamble. The public benefit anticipated as a result of enforcing or administering the sections is to improve how the state newborn screening program screens all Texas babies for certain heritable and other disorders and provides follow-up clinical

care coordination services to those identified with an abnormal (out-of-range) screening result, by ensuring that confirmatory test(s) and treatment are received, if needed. These rule amendments will increase the efficiency of department operations, and will increase the user-friendliness of the rules for stakeholders because of improved organization, clarity and readability. The new rules provide for greater agency transparency in its processes, and make agency actions more predicable for stakeholders. All of this constitutes a public benefit.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the changes made since the proposal preamble do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

COMMENTS

The proposed rules were published in the July 5, 2013, issue of the *Texas Register.*

The department received comments from Texas Hospital Association (THA), March of Dimes (MOD), and combined comments from Texas Pediatric Society (TPS) and Texas Medical Association (TMA) during the 30-day public comment period. The commenters were not against the rules in their entirety; however, the commenters' concerns and recommended changes are described as follows. The comments addressed six identified areas of concern. In response to the comments, the department revised portions of the language.

COMMENT #1. All of the commenters had concerns that the timing of these rule amendments addressing changes from the 82nd Legislature, Regular Session, 2011, are occurring in the wake of legislation recently approved by the 83rd Legislature, Regular Session, 2013. A specific concern regarding §37.51(a) and §37.53 is that the rule is limited to screening for disorders detected through blood spots only, with the comment suggesting not limiting the scope to disorders detected by blood spots (specifically stating that the department should include CCHD in this rulemaking action).

RESPONSE. The department acknowledges that newborn screening in general is comprised of two disparate screening approaches: (1) blood spot-based screening, and (2) point-of-care screenings, and has added language to this rule to that effect. However, the department asserts that each of these two general approaches has unique aspects that support addressing them in separate subchapters of the department's rules. The subchapter at issue here is almost entirely about how blood-spot based screening works under the Texas program. Additionally, the department does not want to further delay the promulgation of rules to implement HB 411, given that full inclusion of CCHD into this rulemaking action would require essentially starting the process over (i.e., informal stakeholder input, proposal of new rule language, additional 30-day official comment period, etc.). At the same time, the department acknowledges that HB 740 has gone into effect since the proposed version of these rules was published in the *Texas Register.* Accordingly, the department has amended language in §37.51(a) and elsewhere to clarify that the proposed revisions in this subchapter are applicable to blood spot-based newborn screening with two exceptions: the Newborn Screening Advisory Committee, and Newborn Screening Program benefits. This was done because one of the effects of HB 740 was to bring CCHD within the scope of both the advisory committee and the department benefits program. Because those two areas are addressed in this subchapter, the changes now adopted contain additional language to reflect the HB 740 impact in those areas. Nothing in HB 740, however, changes the fact that point-of-service screening is fundamentally different from blood-spot based screening done by the department Laboratory Services Section. The department acknowledges a comment by TMA/TPS regarding the use of future rulemaking to write comprehensive CCHD regulations, and that new rulemaking effort is currently underway. Department staff is working now to develop that new CCHD rule subchapter, and will soon be contacting stakeholders to solicit informal input so that the proposed new rule language can expeditiously be taken through the rulemaking process. In that rulemaking process, stakeholders will have full opportunity to provide input and comment on the rules as they are developed.

COMMENT #2. THA commented that the definition for Newborn Screening (§37.52) ties to "One or more laboratory test(s) that identify an increased risk for phenylketonuria, other heritable diseases, hypothyroidism, and certain other disorders." THA recommends that the department not narrow the definition to laboratory tests since HB 740 has recognized a disorder CCHD that is outside this parameter. As previously stated, Chapter 37, Subchapter D (Newborn Screening Program) references blood spot-based screening, with the exceptions noted in COMMENT #1.

RESPONSE. For this reason, the department disagrees that the definition should be changed in this subchapter. The department will create comprehensive rules related to CCHD, as directed in HB 740, in a separate rulemaking (already underway) which will create a new subchapter under this chapter. However, a definition of CCHD was included in the subject rulemaking action, since provisions in this subchapter related to benefits and to the advisory committee were changed since the Proposal Preamble to address CCHD, consistent with the effects of HB 740 in those areas.

COMMENT #3. THA commented that a similar argument to COMMENT #2 can be made for defining a specimen (§37.52) as a "laboratory sample used for testing." The specimen used for newborn screening is "capillary blood dried on specialized filter paper." THA states that providing a prescriptive definition for "specimen" that ties newborn screening to laboratory testing fails to acknowledge the technology required for screening for CCHD and other disorders detectable through point-of-care screening that might eventually be recognized by the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children, and consequently, the Texas Legislature, and the department.

RESPONSE. The department disagrees that point-of-care screening produces a specimen for testing, and as previously stated, this subchapter references blood spot-based screening,

with the exceptions noted in COMMENT #1. It is the intent of the department to write new rule subchapters for any new point-of-service screening programs mandated by the Texas Legislature for inclusion in the Texas Newborn Screening Program. For these reasons the department declines to make the change referenced in the comment.

COMMENT #4. TMA/TPS had a concern regarding §37.55(b)(5) in that requiring only a "physician (or other person attending a newborn, if no physician is present)" to provide disclosure and verification may be too restrictive and precludes another health care professional from providing the disclosure and verification under the physician's appropriate delegation and supervision.

RESPONSE. Since these rules were proposed, HB 740 amended the statute (Health and Safety Code, §33.011) by adding language to allow delegation by a physician attending the newborn. Consequently, the department added this language to §37.55(b)(5) as follows: "The physician attending a newborn child may delegate the responsibilities in this section to any qualified and properly trained person acting under the physician's supervision."

COMMENT #5. TMA/TPS commented regarding §§37.60, 37.61(a)(1), and 37.63(a)(1) that limiting the program benefits to blood spot-based screening conditions excludes families seeking services for children with CCHD.

RESPONSE. Because HB 740 has gone into effect since the Proposal Preamble was published for these rules (as discussed previously), the department added language in §§37.60, 37.61(a)(1), and 37.63(a)(1) to include CCHD once the department has established rules and implements point-of-care newborn screening for CCHD in a separate rule subchapter under this chapter. Additionally, a definition of CCHD has been added to the definitions section, for the reasons stated previously.

COMMENT #6. All of the commenters had concerns regarding language in §37.64 as proposed which stated that the Newborn Screening Advisory Committee may only make recommendations on those tests that are, or would be, performed by the department's laboratory.

RESPONSE. Because HB 740 has gone into effect since the proposal preamble was published, the department has amended rule language to expand the committee's charge accordingly.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§37.51 - 37.64

STATUTORY AUTHORITY

The amendments and new rules are authorized by Health and Safety Code, §33.002, which requires the department to adopt rules necessary to carry out the program, and by Chapter 33 in general; and Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§37.51. Purpose.

(a) Newborn screening is composed of screening performed on blood specimens ("blood spot-based newborn screening") as well as that performed at the point-of-care ("point-of-care newborn screening"). This subchapter covers blood spot-based newborn screening, with two exceptions:

(1) program benefits (§37.60 of this title relating to Newborn Screening Program Benefits); §37.61(a)(1) of this title (relating to Eligibility Requirements for the Newborn Screening Program Benefits); §37.63(a)(1) of this title (relating to Denial of Application, and Modification, Suspension, or Termination of Newborn Screening Program Benefits); and

(2) Newborn Screening Advisory Committee (§37.64 of this title (relating to Newborn Screening Advisory Committee)). Point-of-care newborn screening tests are structured to be covered in a separate rule subchapter under this chapter. For purposes of this subchapter, references to the "Newborn Screening Program" (program) means newborn screening that is blood spot-based. This subchapter implements Texas Health and Safety Code, Chapter 33, administered by the Texas Department of State Health Services (department), except for the requirements associated with conducting Critical Congenital Heart Disease (CCHD) screening, which will be implemented in a separate subchapter. Each newborn delivered in the state must be screened, which involves two blood draws collected on separate days, as described in this subchapter, followed by department laboratory screening tests on those blood specimens for phenylketonuria, other heritable diseases, hypothyroidism, and certain other disorders as detailed in §37.53 of this title (relating to Disorders for Which Blood Specimen Screening is Performed).

(b) This subchapter also details legal requirements applicable to physicians (or other persons attending a newborn, if no physician is present).

(c) Specimen collection kits are obtained from the department as referenced in this subchapter. Screening results are reported by the department as provided by law. A screen may produce false positive or false negative results, and should not be relied upon as diagnostic. For this reason, the department strongly recommends that the child be placed under the care of a licensed physician with appropriate expertise for diagnosis and treatment.

(d) This subchapter also details follow-up, reporting, and record keeping on abnormal screening results and confirmed cases.

(e) This subchapter also identifies program services which are available to individuals who have an abnormal screening result (pending confirmation of diagnosis), or a confirmed diagnosis of a disorder referenced in this subchapter. Additionally, this subchapter establishes eligibility criteria, financial participation requirements and procedures for the orderly provision of the identified services to eligible individuals, subject to §37.61 of this title (relating to Eligibility Requirements for the Newborn Screening Program Benefits).

§37.52. Definitions.

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

(1) Abnormal screening result(s)--An out-of-range laboratory test result.

(2) Bona fide resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to Texas from another country for the purpose of obtaining medical care, with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent, managing conservator, or legal guardian is a bona fide resident;

(ii) is a person residing in Texas who is the legally dependent spouse of a bona fide resident; or

(iii) is an adult residing in Texas, including an adult whose parent, managing conservator, or legal guardian is a bona fide resident or who is his/her own legal guardian.

(3) Charity care newborn--A patient who is not insured or self-pay, and is not covered or eligible to be covered for newborn screening services by Medicaid, Children's Health Insurance Program (CHIP), or any other government program.

(4) CHIP-eligible newborn--A patient who is eligible for CHIP coverage in accordance with Texas Health and Safety Code, Chapter 62.

(5) Commissioner--The commissioner of the Department of State Health Services.

(6) Critical Congenital Heart Disease--CCHD is an abnormality in the structure or function of the heart that exists at birth, that causes severe, life-threatening symptoms, and requires medical intervention within the first few hours, days, or months of life. CCHD is detected by point-of-care screening. Comprehensive rules for CCHD will be established under a separate subchapter under this chapter.

(7) Department--The Department of State Health Services or its successor.

(8) Health care practitioner--One of the following individuals who is currently licensed and in good standing as indicated:

(A) an advanced practice registered nurse licensed by the Texas Board of Nursing pursuant to Texas Occupations Code, Chapter 301;

(B) a physician assistant licensed by the Texas Physician Assistant Board pursuant to Texas Occupations Code, Chapter 204; or

(C) a midwife licensed by the Texas Midwifery Board pursuant to Texas Occupations Code, Chapter 203.

(9) Medicaid-eligible newborn--A patient whose mother is a Medicaid recipient or who is otherwise eligible for Medicaid coverage for the newborn-related services in accordance with Texas Human Resources Code, Chapter 32.

(10) Newborn--A child through 30 days of age.

(11) Newborn Screening--One or more laboratory test(s) that identify an increased risk for phenylketonuria, other heritable diseases, hypothyroidism, and certain other disorders.

(12) Physician--A person licensed to practice medicine by the Texas Medical Board pursuant to Texas Occupations Code, Chapter 151.

(13) Specimen--A laboratory sample used for testing. The specimen used for newborn screening is capillary blood dried on specialized filter paper.

(14) Specimen collection kit--A department-approved, bar-coded, newborn screening specimen collection kit obtained from the department and consists of a parental information sheet; Parental Decision for Storage and Use of Newborn Screening Blood Spot Cards form; customized specimen collection device; demographic information sheet; and specimen collection directions applicable to the collection and submission of a newborn's blood specimen for the first, second, or repeat newborn screening test.

§37.53. Disorders for Which Blood Specimen Screening is Performed.

Newborn screening in Texas includes the disorders found on the national Recommended Uniform Screening Panel for which funds are available and allocated for the screening. For a complete list of the disorders the State of Texas screens for at any given time, go to http://www.dshs.state.tx.us/newborn.

§37.55. Newborn Screening Specimen Collection Kits.

(a) Purpose. This section establishes procedures for the obtaining, and subsequent submission of, newborn screening specimen collection kits provided by the department.

(b) Specimen collection kits.

(1) The requestor will estimate and submit to the department a written order, using forms designated by the department, for newborn screening specimen collection kits. The estimate should be based on the requestor's previous usage. A requestor shall provide further information to the department, upon request, to verify the appropriateness of the number of specimen collection kits ordered.

(A) The department will provide specimen collection kits for Medicaid-eligible, CHIP-eligible, or charity care newborns at no cost. The no-cost specimen collection kit should only be used for a Medicaid-eligible, CHIP-eligible or charity care newborn, and the submitter must affirm this on the specimen collection kit request form.

(B) The department will provide specimen collection kits for all other newborns at a fee described in §73.54(a)(1)(A)(i) of this title (relating to Fee Schedule for Clinical Testing and Newborn Screening).

(2) The department reserves the right to adjust the quantity of kits provided for an order based on factors such as the requestor's past orders, submission rates, and the availability of kits.

(3) The department will bill the requestor for specimen collection kits. Payment is due within 90 days from the statement date.

(4) The department will accept only its approved specimen collection kits for submission of specimens.

(5) Each time newborn screening samples are collected from the child, the physician (or other person attending a newborn, if no physician is present) shall ensure that the parent, managing conservator, or legal guardian is given the department's information on newborn screening, including the Texas Newborn Screening Parent Information form, and the Parental Decision for Storage and Use of Newborn Screening Blood Spot Cards form. The physician (or other person attending a newborn, if no physician is present) shall verify the information was distributed to the parent, managing conservator, or legal guardian by checking the appropriate box on the demographic information sheet, which must be included with the blood specimen when the kit is submitted to the department for testing. The physician (or other person attending a newborn, if no physician is present) must also include the signed Parental Decision for Storage and Use of Newborn Screening Blood Spot Cards form, if the parent signs the form at that time. If the signed form is presented to the physician (or other person attending a newborn, if no physician is present) at any

other time, it must be submitted to the department at that time. The physician attending a newborn child may delegate the responsibilities in this section to any qualified and properly trained person acting under the physician's supervision.

(6) Returned specimen collection kits: if the purchaser believes a kit(s) is defective, purchaser should immediately contact the department's laboratory in Austin. Kit(s) which are verified to be defective by the department can be returned for credit for future kit orders, as directed by the department.

§37.60. Newborn Screening Program Benefits.

In cooperation with the individual's physician or other health care practitioner and within the limits of funds budgeted by the department for this purpose, the program will provide benefits such as dietary supplements, medications, vitamins, low-protein foods, and follow-up care at no cost or reduced cost to individuals approved for program benefits who have a disorder detected through the program, and confirmed with appropriate diagnostic tests, that have been interpreted by a physician recognized by the department as a specialist in the applicable disorder(s) as referenced in §37.53 of this title (relating to Disorders for Which Blood Specimen Screening is Performed), and/or CCHD, once the department has established rules covering that subject matter in a separate subchapter under this chapter. Program benefits also include coverage for confirmatory testing of individuals who have a presumptive disorder, from the list of disorders referenced in §37.53 of this title. These program benefits will be prioritized among eligible individuals in the following order:

(1) children 0-2 years of age;

(2) children 3-5 years of age;

(3) children 6-21 years of age;

(4) pregnant women;

(5) women of child bearing age; and

(6) other adults.

§37.61. Eligibility Requirements for the Newborn Screening Program Benefits.

(a) Except as otherwise provided for in this subchapter, to be eligible to receive the benefits from the program referenced in §37.60 of this title (relating to Newborn Screening Program Benefits), an individual must:

(1) have an abnormal screening result (pending confirmation of diagnosis), or a confirmed diagnosis of a disorder screened by the program as referenced in §37.53 of this title (relating to Disorders for Which Blood Specimen Screening is Performed) and/or CCHD, once the department has established rules covering that subject matter in a separate subchapter under this chapter;

(2) be a bona fide resident of the state;

(2) be a bona fide resident of the state;

(3) have a family income that is at or below 350% of the federal poverty income guidelines;

(4) if required, make financial participation payments in a timely manner;

(5) as directed by the program, provide current medical, financial, and residency information and/or documentation in a timely manner; and

(6) have a parent, managing conservator, or legal guardian agree to abide by the requirements in this subchapter if the individual is a minor.

(b) An individual is not eligible to receive the benefits described in §37.60 of this title if the individual or the parent, managing conservator, or legal guardian is eligible for some other benefit, such as Medicaid, CSHCN Services Program, CHIP, or private insurance, that would pay for all or part of the services in question.

§37.62. Application Process for the Newborn Screening Program Benefits.

(a) To be considered for program benefits described in §37.60 of this title (relating to Newborn Screening Program Benefits), a complete application must be filed annually (according to the deadlines provided by the department) with the program by mailing to the following address: Newborn Screening Unit, Mail Code 1918, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347.

(b) The application must be signed by one of the following as appropriate:

(1) an adult individual seeking services;

(2) the parent, managing conservator, or legal guardian of a minor seeking services; or

(3) the legal guardian of an adult seeking services under a temporary, limited or general guardianship.

(c) An application signed with a mark must be attested to before a notary public.

(d) A complete application shall consist of the following:

(1) a properly completed and signed application form;

(2) a statement from the individual or, if the individual is a minor, from the individual's parent, managing conservator, or legal guardian that the individual is a bona fide resident of the state. If requested by the program, the applicant must also submit documentation of residency status, and proof of income as established in the department's program benefits policy; and

(3) information, as requested by the department, on any other benefit to which the applicant, recipient, or person with a legal obligation to support the applicant or recipient may be entitled.

(e) An application shall be deemed incomplete for any one of the following reasons:

(1) failure to provide all information requested in the application form;

(2) lack of supporting documents;

(3) failure to provide documentary evidence requested by the program, including documentation to verify residency or financial data; and/or

(4) lack of, or improper, signatures.

(f) Following review, an application will be:

(1) denied if eligibility requirements are not met;

(2) returned, if incomplete, with the deficiencies noted to the individual, or if the individual is a minor or a ward, to the individual's parent, managing conservator, or legal guardian as is appropriate, for completion and resubmission; or

(3) approved if all criteria are met to the department's satisfaction.

(g) An individual's eligibility date is the date on which the program determines that the application is complete.

§37.63. Denial of Application, and Modification, Suspension, or Termination of Newborn Screening Program Benefits.

(a) An individual applying for or receiving benefits described in §37.60 of this title (relating to Newborn Screening Program Benefits) may have his/her application denied or his/her benefits modified, suspended, or terminated for any of the following reasons:

(1) the individual does not have a confirmed diagnosis of a disorder screened by the program for which benefits are available (including confirmatory testing), as referenced in §37.61(a)(1) of this title (relating to Eligibility Requirements for the Newborn Screening Program Benefits);

(2) the individual is not a bona fide resident of the state;

(3) the individual fails or refuses to provide the information requested by the program (e.g., regarding residency, financial status, eligibility for other benefits);

(4) the individual submits an application form, or any document required in support of the application or continued participation in the program, which contains an intentional misstatement of fact which is material to the program's determination that the individual is eligible for program benefits; or

(5) exhaustion of budgeted program funds, prioritized as required under §37.60 of this title.

(b) An individual applying for or receiving benefits under §37.60 of this title may not appeal or request an administrative hearing concerning adjustments made by the program regarding the type and amount of program benefits available when such adjustments are necessary to conform to budgetary limitations.

(c) An individual applying for benefits will be notified in writing if the individual's application is denied. The notification will state the reasons for denial.

(d) An individual receiving benefits will be notified by certified mail to the most recent address known to the program if the benefits are to be modified, suspended, or terminated. The program will state the reasons for the proposed action.

(e) Prior to making a final decision adverse to an affected individual, the program shall give the affected individual written notice of an opportunity for a hearing on the proposed action. The notice shall contain:

(1) a statement of the action the department intends to take;

(2) an explanation of the reasons for the action the department intends to take;

(3) a reference to the statutory and regulatory authority supporting the intended action;

(4) an explanation of the affected person's right to request a hearing; and

(5) the procedure by which an affected person may request a hearing.

(f) The affected individual has 20 days after receiving the notice to request a hearing on the proposed action. It is a rebuttable presumption that a notice is received five days after the date of the notice. Unless the notice letter specifies an alternative method, a request for a hearing shall be made in writing, and mailed or hand-delivered to the program at the following address: Newborn Screening Unit, Mail Code 1918, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347. If an individual who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the individual is deemed to have waived the hearing and the action may be taken.

(g) Appeals and administrative hearings will be conducted in accordance with the department's fair hearing rules at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

§37.64. Newborn Screening Advisory Committee.

The scope of matters on which the Newborn Screening Advisory Committee may legally submit recommendations to the department is as follows:

(1) potential additional newborn screening tests under Texas Health and Safety Code, §33.011(a-1) for other disorders or conditions listed under the Recommended Uniform Newborn Screening Panel, or another report determined by the department to provide more stringent newborn screening guidelines to protect the health and welfare of this state's newborns;

(2) matters regarding strategic planning, policy, rules, and services related to newborn screening and additional newborn screening tests;

(3) review the necessity of requiring additional screening tests, including an assessment of the test implementation costs to the department, birthing facilities, and other health care providers; and

(4) the scope of the Newborn Screening Advisory Committee is limited under Texas Health and Safety Code, §33.017(c), to advising the department regarding strategic planning, policy, rules, and services related to newborn screening tests for each disorder that are included in the list described by Texas Health and Safety Code, §33.011(a-1).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2013.

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: July 5, 2013
For further information, please call: (512) 776-6972

25 TAC §§37.55, 37.56, 37.65

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §33.002, which requires the department to adopt rules necessary to carry out the program, and by Chapter 33 in general; and Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 73. LABORATORIES

25 TAC §73.21

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §73.21, concerning the Newborn Screening Program, without changes to the proposed text as published in the July 5, 2013, issue of the *Texas Register* (38 TexReg 4291), and the section will not be republished.

BACKGROUND AND PURPOSE

The department administers the Newborn Screening Program, which is designed to screen all newborns in the state for certain genetic or heritable disorders. If identified and treated early, serious problems such as developmental delays, intellectual disability, illness, or death can be prevented or ameliorated. The program is structured into two major components. The department's laboratory receives the blood specimens collected from newborns, performs the blood-based testing, and reports the results to submitters of the specimens. If the results for one of the laboratory tests are out of the expected range, the results are also sent to department clinical care coordination staff in the Newborn Screening Program for prompt follow up and intervention. Some testing for other conditions is done at the point-of-care (i.e., by health care professionals caring for the infant, as opposed to department staff). Limited benefits through the department are potentially available to eligible individuals. Benefits include confirmatory testing, medications, vitamins, and dietary supplements (metabolic foods, low-protein foods). The amendments to 25 TAC Chapter 37, which are adopted in this issue of the *Texas Register,* apply to the operations of both of these two main components of the Newborn Screening Program.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Section 73.21 has been reviewed and the department has determined that §73.21 should be repealed and moved into 25 TAC Chapter 37.

SECTION-BY-SECTION SUMMARY

Section 73.21, related to laboratory specimen submission for newborn screening, is repealed and the content placed in new 25 TAC §37.55 to accommodate the placement of information concerning newborn screening in one chapter of the rules. Certain summary information regarding specimen collection kits from §73.21 of this title has also been included in 25 TAC §37.51 and would specify that specimen collection kits are obtained from the department, and proposed new language would clarify that screening results are reported by the department as required by law.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §33.002, which requires the department to adopt rules necessary to carry out the program, and by Chapter 33 in general; and Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the section implements Government Code, §2001.039.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 139. ABORTION FACILITY REPORTING AND LICENSING

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (Department) adopts amendments to §§139.1, 139.2, 139.4, 139.32, 139.53, 139.56, and 139.57 and new §139.9 and §139.40, concerning the regulation of abortion facilities. The sections are adopted without changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6536) and, therefore, the sections will not be republished.

BACKGROUND AND JUSTIFICATION

Health and Safety Code, Chapter 245, Texas Abortion Facility Reporting and Licensing Act, requires certain abortion facilities to be licensed by the Department. Health and Safety Code, Chapter 171, the Woman's Right to Know Act, details information to be given to a patient seeking an abortion. The Abortion Facility Reporting and Licensing Rules in 25 Texas Administrative Code (TAC) Chapter 139, implement Health and Safety Code, Chapters 171 and 245.

House Bill (HB) 2, 83rd Legislature, Second Called Session, 2013, effective October 29, 2013, amended Health and

Safety Code, Chapter 171 by adding Health and Safety Code, §171.0031, which specifies requirements of admitting privileges of physicians who perform or induce abortions and requires specific information to be provided to the patient. Health and Safety Code, §245.011 mandates annual reporting to the department on each abortion that is performed in an abortion facility; HB 2 amended the data required to be reported. HB 2 also amended Health and Safety Code, §245.010(a), to require the minimum standards of abortion facilities to be equivalent to the minimum standards of ambulatory surgery centers.

In developing these rules, the department was guided by expressions of legislative intent that accompanied the enactment of HB 2, input of stakeholders, and public comments offered at the meeting of the State Health Services Advisory Council on August 28 and 29, 2013. In particular, the department was guided by the following legislative findings:

(1) substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization;

(2) the state has a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that these children are capable of feeling pain;

(3) the compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other. . . .

Act of July 15, 2013, 83rd Leg., 2nd C. S., ch. ___, §1(a)(1)-(3).

The department also was guided by its understanding that the statutory changes enacted in HB 2 were intended by the Legislature to improve the safety of women who seek services from a licensed abortion facility, but particularly women who receive surgical services at a licensed abortion facility. The department also understands that the Legislature determined that patient safety would be improved, in part, by ensuring that a patient of a licensed abortion facility is assured that (1) the physician who treats her or any patient at the facility is capable of attending to her care if she requires hospital care during or after receiving a service at the facility, and (2) the facility is prepared and qualified to meet potential complications resulting from a surgical procedure.

The department understands that the Legislature determined these objectives would principally be accomplished in three ways. First, the Legislature determined that each physician who provides care at a licensed abortion facility must maintain active admitting privileges at a hospital that is within 30 miles of the facility and provides obstetrical or gynecological services. Second, the Legislature concluded that a licensed abortion facility must be qualified to provide care that is "equivalent to" a licensed ambulatory surgical center. Third, the Legislature determined that these objectives would be better assured by submitting licensed abortion facilities to equivalent regulatory oversight.

HB 2's legislative history reveals the Legislature's purposes. Among other things, the Legislature found that:

--Women who choose to have an abortion should receive the same standard of care, including adequate facilities in which their procedures are performed, any other individual in Texas receives, regardless of the procedure performed. HB 2 seeks to improve the health and safety of a woman who chooses to have an abortion by requiring a physician performing or inducing an abortion to have admitting privileges at a hospital and to provide certain information to the woman.

--In 1992, the Supreme Court ruled in *Casey v. Planned Parenthood* [sic] that states have the right to regulate abortion clinics. In 1997, Texas enforced increased regulations; however, today 30 licensed abortion facilities still operate at a second, lower standard for the most common surgical procedure in Texas performed solely on women. Six Texas abortion facilities meet the standard as ambulatory surgical facilities. In medical practice, Medicare is the national standard for insurance reimbursement. Abortion is an all cash (or limited credit card) business, so abortion facilities have not been subject to the same oversight as other surgical facilities.

--HB 2 requires that the minimum standards for an abortion facility, on and after September 1, 2014, be equivalent to the minimum standards adopted under §243.010 (Minimum Standards) for ambulatory surgical centers. Moving abortion clinics under the guidelines for ambulatory surgical centers will provide Texas women choosing abortion the higher accepted standard of health care. Texas allows no other kind of facilities or practitioners to opt out of the accepted standard of care.

The department derives two principal understandings from the legislative history. First, the department understands that the Legislature was aware of the department's regulation of ambulatory surgical centers, including the operating standards, fire protection and safety requirements, and construction and physical plant standards adopted by the department in Chapter 135. Second, the department understands that the Legislature specifically determined that application of these standards would create the least burdensome set of minimum standards sufficient to improve the safety of patients at a licensed abortion facility.

With these goals in mind, the Legislature passed HB 2 and thereby amended Health and Safety Code, §245,010(a), to require the minimum standards of licensed abortion facilities to be "equivalent to" the minimum standards of ambulatory surgical centers. The phrase "equivalent to" is not defined by HB 2. However, in its common and ordinary meaning, the word "equivalent" is defined to mean, among other things, "equal, as in value, force, or meaning . . . having similar or identical effects" or [b]eing essentially equal, all things considered." *The American Heritage Dictionary of the English Language,* 4th ed., (2006) at 604. Accordingly, the department concludes that the Legislature intended that the minimum standards for licensed abortion facilities be at least equal to the standards applicable to a licensed ambulatory surgical center, in content and effect, and that any exceptions would result in a lesser standard of care for a patient of a licensed abortion facility and thus should not be granted.

SEVERABILITY

The department also understands that the Legislature intended that the separate requirements of HB 2 remain in effect, even if one or more of the provisions, or application of those provisions, is determined to be invalid or unenforceable:

- [I]t is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act, are severable from each other. If any application of any provision in this Act to any

person, group of persons, or circumstances is found by a court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone.

. . . .

- If any provision of this Act is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

Act of July 15, 2013, 83rd Leg., 2nd C.S., ch. ___, §10(b), (d).

Accordingly, the department adopts the proposed language to ensure the severability of the requirements of these rules consistent with such intent.

SECTION BY SECTION SUMMARY

The amendment to §139.1 is adopted to clarify the purpose of the rules to include implementation of Woman's Right to Know Act, Health and Safety Code, Chapter 171.

The amendment to §139.2 omits the definition of "ambulatory surgical center" (§139.2(8)) to clarify that the rules adopted by reference in Chapter 139 apply to licensed abortion facilities, and requires renumbering of the remaining definitions.

The amendment to §139.4 is adopted to reflect a change in data required by HB 2 to be reported annually to the department by abortion facilities.

Section 139.9 is adopted to ensure that the severability of the requirements of these rules is consistent with the intent of the Legislature and language of HB 2.

Amendments to §139.32 are adopted to clarify the authority of the department to refuse, suspend or revoke a license for an abortion facility and adds the finding of noncompliance with Health and Safety Code, Chapter 171 as grounds for license probation, suspension or revocation.

New §139.40 is adopted to comply with HB 2, which establishes that the minimum standards for an abortion facility must be equivalent to the minimum standards of an ambulatory surgical center, by adopting by reference with certain changes for clarification the relevant rules for ambulatory surgical centers from Chapter 135. The department adopts by reference specific current ambulatory surgical center rules in order to ensure that the minimum standards governing licensed abortion facilities are equivalent to those of ambulatory surgical centers. The department finds that adopting the minimum standards for ambulatory surgical centers to licensed abortion facilities ensures compliance with HB 2 and provides the maximum guidance and consistency in the rules for licensed abortion facilities.

Chapter 135, relating to ambulatory surgical centers is set out below, along with a statement for each rule as to whether it was adopted or not, and the reasoning for its adoption or non-adoption.

25 TAC Chapter 135, Ambulatory Surgical Centers Rules.

Subchapter A. Operating Requirements for ASCs.

§135.1. Scope and Purpose. This rule was not adopted because a sufficient scope and purpose rule already exists in Chapter 139.

§135.2. Definitions. The following definitions were not adopted by reference for the reasons stated:

(1) "Act," which referred to the Ambulatory Surgical Center Licensing Act, and not to the Texas Abortion Facility Licensing and Reporting Act.

(3) "Administrator" is defined in more detail that requires higher qualifications in §139.2(4) and §139.46(2). Furthermore, ambulatory surgical center rules that are adopted require a governing body (§135.4), and §135.6 describes in adequate detail the required administrative functions.

(4) "Advanced practice registered nurse," because Chapter 139 contains a definition of the same term which is more consistent with the Board of Nursing's (which licenses APRNs) definition of the term "advanced practice nurse" which also requires the nurse to have achieved approval by the Board of Nursing based on completion of an advanced higher education program, a standard not yet incorporated in Chapter 135.

(5) "Ambulatory Surgical Center (ASC)," which is a term defined but not used in Chapter 139, and whose inclusion among adopted rules would have caused confusion. The definition also included portions limiting the length of patients stays within the facility that were felt to be inapplicable to licensed abortion facilities.

(8) "Certified registered nurse anesthetist" is defined in exactly the same way in Chapter 139.

(9) "Change of ownership" is defined the same in Chapter 139, with the exception that a requirement for the tax identification number to change in order to qualify as a change in ownership is not present in Chapter 139. This requirement does not create a minimum standard for the protection of the health and safety of patients.

(11) "Department" is defined in exactly the same way in Chapter 139.

(15) "Licensed vocational nurse" is defined in exactly the same way in Chapter 139.

(17) "Person" is defined in exactly the same way in Chapter 139.

(18) "Physician" is defined in exactly the same way in Chapter 139.

(19) "Premises" is defined as a building where a patient receives outpatient surgical services. This was thought to be a source of potential confusion because medical abortions are not surgical procedures.

(20) "Registered nurse" is defined in exactly the same way in Chapter 139.

The following definitions are adopted by reference because they are terms that are used or are anticipated to be used in connection with the ambulatory surgical center rules that are to be adopted, and are not terms whose meaning, without a definition, is clear to stakeholders. Thus, the following definitions are necessary for compliance with HB 2.

(2) "Action plan"--A written document that includes specific measures to correct identified problems or areas of concern; identifies strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of sys-

tem improvements in reducing, controlling or eliminating identified problem areas.

(6) "Autologous blood units"--Units of blood or blood products derived from the recipient.

(7) "Available"--Able to be physically present in the facility to assume responsibility for the delivery of patient care services within five minutes.

(10) "Dentist"--A person who is currently licensed under the laws of this state to practice dentistry.

(12) "Disposal"--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharge into any waters, including ground waters.

(13) "Extended observation"--The period of time that a patient remains in the facility following recovery from anesthesia and discharge from the postanesthesia care unit, during which additional comfort measures or observation may be provided.

(14) "Health care practitioners (qualified medical personnel)"--Individuals currently licensed under the laws of this state who are authorized to provide services in an ASC.

(16) "Medicare-approved reference laboratory"--A facility that has been certified and found eligible for Medicare reimbursement, and includes hospital laboratories which may be Joint Commission or American Osteopathic Association accredited or nonaccredited Medicare approved hospitals, and Medicare certified independent laboratories.

(21) "Surgical technologist"--A person who practices surgical technology as defined in Health and Safety Code, Chapter 259.

(22) "Title XVIII"--Title XVIII of the United States Social Security Act, 42 United States Code (USC), §§1395 et seq.

The requirements of the following rules from Chapter 135, relating to ambulatory surgical centers, were either adopted or not adopted for the reasons set out below.

Section 135.3, Fees. The requirements of this section were not adopted because HB 2 does not require the adoption of rules relating to licensure fees for licensed abortion facilities.

Section 135.4, Ambulatory Surgical Center (ASC) Operation. The requirements of this section were adopted because Chapter 139 has no identical provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required each licensed abortion facility to be capable of providing a minimum standard of policies and a governing body to set and implement policies and to assume legal responsibility for operation of the facility.

Section 135.5, Patient Rights. The requirements of this section were adopted because Chapter 139 has no identical provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to provide information, privacy, and the opportunity to participate in health care decisions.

Section 135.6, Administration. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. This section complements §135.4 by describing in greater detail the manner in which the governing body of a facility is to function and by indicating some areas on which it is to focus (patient satisfaction, for example).

Section 135.7, Quality of Care. Chapter 139 contains no directly comparable rule, and the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing minimum standard quality of care to their patients.

The requirements of this section supplement the rules in Chapter 139 that address corresponding subject matter (§139.46 and §139.53). Section 135.7 provides additional protection for the patient that is not found in either §139.46 or §139.53, such as requirements that "[p]atient care responsibilities shall be delineated in accordance with recognized standards of practice" and that "[r]eferral to another health care practitioner shall be clearly outlined to the patient and arranged with the accepting health care practitioner prior to transfer."

Section 135.8, Quality Assurance. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing a minimum level of quality assurance to provide for the health and safety of their patients.

The requirements of this section supplement and enhance §139.8 (Quality Assurance), the parallel rule in Chapter 139. Section 135.8 addresses quality assurance issues more extensively and in more detail than §139.8. For example, §135.8 specifically requires that "[a]ssessment techniques shall examine the structure, process, or outcome of care, and shall be assessed prospectively, concurrently, or retrospectively." The department believes that these requirements advance the legislative objective of improving the quality of care provided to patients and making the standards for licensed abortion facilities equivalent to the ASC minimum standards.

Section 135.9, Medical Records. The requirements of this section were adopted because Chapter 139 has no identical provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing a minimum level of medical recordkeeping. This section supplements §139.55 (Clinical Records), the parallel rule in Chapter 139.

While §139.55 is more detailed, it does not contain, for instance, a requirement found in §135.9 that a "single person be designated to be in charge of medical records." The department believes that the requirements of §135.9 enhance the accountability of licensed abortion facilities and the accuracy and complete-

ness of patient records and therefore improve the health and safety of patients.

Section 135.10, Facilities and Environment. The requirements of this section were adopted because Chapter 139 has no identical provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. These requirements supplement §139.48 (Physical and Environmental Requirements) For example, §135.10 contains more detailed provisions concerning hazardous materials and emergency preparedness than §139.48. Section 135.10 primarily focuses on procedures and basic orderliness, such as eliminating hazards that might cause accidents, conducting fire drills, providing for safe evacuation of patients, and the like. Thus, adopting §135.10 makes the minimum standards for licensed abortion facilities equivalent to those for ASCs.

Section 135.11, Anesthesia and Surgical Services. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature intended to require licensed abortion facilities to be implement anesthesia and surgical services using standards equivalent to an ambulatory surgical center. One of the requirements of §135.11(b)(19)--i.e., that a licensed ASC either have a written transfer agreement with a hospital or have all physicians on staff at the ASC maintain admitting privileges at a local hospital--was not adopted because Health and Safety Code, §171.0031 (added by HB 2), provides a more specific standard concerning a physician's responsibility to maintain admitting privileges. The ASC rule, §135.11, offers an ASC the alternative of either requiring all physicians to maintain admitting privileges at a local hospital or maintaining a written transfer agreement. Section 171.0031 allows no such alternative. Instead, it requires a physician who performs an abortion to have admitting privileges at a hospital not further that 30 miles from the location where the abortion is performed or induced.

Section 135.12, Pharmaceuticals Services. The requirements of this section were adopted because Chapter 139 has no identical provision (§139.60(a) only requires a facility to comply with federal and state laws pertaining to the handling of drugs) and because the Legislature determined that provide pharmaceutical services using standards equivalent to an ambulatory surgical center's. These requirements add a significant resource for physician and patient alike and make the licensed abortion facility equivalent to an ASC.

Section 135.13, Pathology and Medical Laboratory Services. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing minimum level of service adequate to meet the needs of the patients and to support an ambulatory surgical center's clinical capabilities.

Section 135.14, Radiology Services. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing minimum level of service adequate to meet the needs of the patients and to support an ambulatory surgical center's clinical capabilities.

Section 135.15, Facility Staffing and Training. The requirements of this section were adopted because Chapter 139 has no identical provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing a minimum level of qualified staff adequate to meet the needs of the patients and to support an ambulatory surgical center's clinical capabilities.

The requirements of this section supplement §139.46 (Licensed Abortion Facility Staffing Requirements and Qualifications), and make the rules for licensed abortion facilities "equivalent to" those of ASCs as required by HB 2.

Section 135.16, Teaching and Publication. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to provide policies concerning teaching and publication services capable of providing a minimum level of service adequate to serve the needs of patients and the community.

Section 135.17, Research Activities. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing minimum level of research activities.

Section 135.18, Unlicensed Ambulatory Surgical Center, was not adopted because §139.3 has adequate provisions for dealing with unlicensed abortion facilities that are not exempted from licensure by Health and Safety Code, Chapter 245.

Section 135.19, Exemptions, was not adopted because the exemptions from licensure as an abortion facility are set forth in Health and Safety Code, §245.004.

Section 135.20, Initial Application and Issuance of License, was not adopted because §§139.21 - 139.25 cover application and issuance of licenses for licensed abortion facilities.

Section 135.21, Inspections, was not adopted because it only required inspections of licensed facilities every three years, whereas present §139.31 requires annual inspections of licensed abortion facilities. Section 139.31 provides greater protection by requiring more frequent (annual) inspections than the three-year minimum intervals prescribed by §135.21, consistent with the department's understanding of HB 2, that its intent is to move licensed abortion facilities under ASC rules where they will provide equivalent standards to those of ASCs, but not to repeal enforcement provisions that apply to licensed abortion facilities.

Section 135.22, Renewal of License, was not adopted because §§139.21 - 139.25, especially §139.23, adequately address re-

newal of licenses for licensed abortion facilities, consistently with the department's understanding of HB 2, that its intent is to move licensed abortion facilities under ASC rules where they will provide equivalent standards to those of ASCs, but not to repeal enforcement provisions that apply to licensed abortion facilities.

Section 135.23, Conditions of Licensure, was not adopted because §§139.21 - 139.25 adequately address conditions of licensure for licensed abortion facilities, consistently with the department's understanding of HB 2, that its intent is to move licensed abortion facilities under ASC rules where they will provide equivalent standards to those of ASCs, but not to repeal enforcement provisions that apply to licensed abortion facilities.

Section 135.24, Enforcement, was not adopted because §§139.31 - 139.33 adequately address enforcement issues, consistently with the department's understanding of HB 2, that its intent is to move licensed abortion facilities under ASC rules where they will provide equivalent standards to those of ASCs, but not to repeal enforcement provisions that apply to licensed abortion facilities.

Section 135.25, Complaints, was not adopted because §139.31(c) adequately addresses complaints, consistently with the department's understanding of HB 2, that its intent is to move licensed abortion facilities under ASC rules so that patients of licensed abortion facilities will benefit from equivalent standards to those of ASCs, but not to repeal enforcement provisions that apply to licensed abortion facilities.

Section 135.26, Reporting Requirements. The requirements of this section were adopted because Chapter 139 has no identical provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing a minimum level of incident reporting to enhance the safety of every facility's patients by allowing by providing accurate and timely input for statistical analysis of adverse incidents and monitoring the frequency of their occurrence.

Section 135.26 adds additional requirements that protect the health and safety of patients, such as the obligation of the facility to report the transfer of a patient to a hospital and to report the development by a patient within 24 hours of discharge of a complication if the complication results in a patient's admission to a hospital. In contrast, the only similar section that applies to licensed abortion facilities, §139.58, requires only the reporting of a woman's death from complications of an abortion.

Section 135.27, Patient Safety Program. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of determining the root cause of adverse events that occur at the facility. Section 135.27 was adopted because it requires the facilities to directly address patient safety by developing and implementing a patient safety program, and by a root cause analysis of adverse events, issues to which no rule in Chapter 139 is entirely dedicated. For example, §135.27 requires facility management to coordinate all patient safety activities, while Chapter 139 does not.

Section 135.28, Confidentiality, was not adopted because more confidentiality is provided to abortion patients and licensed abortion facilities by existing rules in Chapter 139 than by this rule.

Section 135.29, Time Periods for Processing and Issuing a License, was not adopted because §§139.21 - 139.25 adequately address licensure of licensed abortion facilities. Both Chapters 135 and 139 provide a two-year interval for re-application and renewal of licenses.

Subchapter B. Fire Prevention and Safety Requirements.

Section 135.41, Fire Prevention and Safety Requirements. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing a minimum level of fire prevention and safety measures.

Except for some brief and general references in §139.48, Chapter 139 does not address fire prevention, does not require the appointment of a safety officer who is familiar with safety practices in healthcare facilities, and does not forbid the use of extension cords for permanent wiring. Section 135.41 provides for all three and has other safety requirements not found in Chapter 139.

Section 135.42, General Safety. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing minimum level of safety requirements adequate to protect the safety of patients.

Section 135.43, Handling and Storage of Gases, Anesthetics, and Flammable Liquids. The requirements of this section were adopted because Chapter 139 has no identical provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be capable of providing minimum level of safety regimen to ensure the health and safety of its patients.

Subchapter C. Physical Plant and Construction Requirements.

Section 135.51, Construction Requirements for an Existing Ambulatory Surgical Center. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be regulated by the construction standards that provide a minimum level of safety and utility equivalent to that of an ambulatory surgical center.

Chapter 139 presently contains only one section that addresses "Physical and Environmental Requirements," §139.48. That section has approximately one page of general requirements, such as "A facility shall have a safe and sanitary environment, properly constructed, equipped, and maintained to protect the

health and safety of patients and staff at all times." Section 139.48 does not specify what constitutes proper construction for an existing licensed abortion facility, as does adopted §§135.51 - 135.56.

The adopted rules do not incorporate by reference the provisions of §135.51(a)(1) and (2) that exempt certain ambulatory surgical centers from compliance with the construction standards:

(1) A licensed ambulatory surgical center (ASC) which is licensed prior to the effective date of these rules is considered to be an existing licensed ASC and shall continue, at a minimum, to meet the licensing requirements under which it was originally licensed.

(2) In lieu of meeting the requirements in paragraph (1) of this subsection, an existing licensed ASC may, instead, comply with National Fire Protection Association (NFPA) 101, Life Safety Code 2003 Edition (NFPA 101), Chapter 21, Existing Ambulatory Health Care Occupancies. All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101 or (800) 344-3555.

The department declined to incorporate these provisions for three reasons. First, the plain language of the exemption applies only to an entity that was licensed as an ambulatory surgical center before June 18, 2009, the effective date of the §135.51. Unless a licensed abortion facility was also licensed as an ambulatory surgical center on that date, it would not be eligible for the exemption. Prior to the adoption of HB 2 a licensed abortion facility was permitted to become a licensed ambulatory surgical center, and was thus allowed to utilize any exemptions set out in §135.51. After the adoption of HB 2, all licensed abortion facilities are required to comply with the provisions of that law and Chapter 139. Therefore, the more specific provisions of HB 2, which provides no grandfathering provision, and applies to every licensed abortion facility is the more specific statute with which all licensed abortion facilities must now comply. (The specific statute is thus regarded as an exception to, or a qualification of, any previously enacted general statute on the same subject, which must yield in its scope and effect to the specific provisions of a later statute *Sam Bassett Lumber Co. v. City of Houston,* 145 Tex. 492 (Tex.1947)).

Second, the enactment of HB 2 evidenced the Legislature's intention to place licensed abortion facilities under minimum standards that are equivalent to licensed ambulatory surgical centers. To employ the limited exemption of §135.51 out of context to abortion facilities that were licensed on or before June 18, 2009, would be contrary to the Legislature's specific intent to improve the safety of licensed abortion facilities and contradict the Legislature's unequivocal decision to place licensed abortion facilities under enhanced regulation.

Third, it is well established that where the Legislature has unequivocally expressed its intent, a state agency is not at liberty to craft exceptions where the Legislature did not see fit to supply any. Accordingly, the department determined that it is not authorized to exempt currently licensed abortion facilities from the minimum standards applicable to licensed ambulatory surgical centers through the incorporation of the limited exceptions prescribed by §135.51(a)(1) and (2).

Section 135.52, Construction Requirements for a New Ambulatory Surgical Center. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be regulated by the construction standards that provide a minimum level of safety and utility equivalent to that of an ambulatory surgical center.

Section 135.53, Elevators, Escalator, and Conveyors. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be regulated by the construction standards that provide a minimum level of safety and utility equivalent to that of an ambulatory surgical center.

Chapter 139 presently contains only one section that addresses "Physical and Environmental Requirements," §139.48. That section does not contain requirements for elevators, escalators, or conveyors, as does adopted §135.53.

Section 135.54, Preparation, Submittal, Review and Approval of Plans, and Retention of Records. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be regulated by the construction standards that provide a minimum level of safety and utility equivalent to that of an ambulatory surgical center.

Section 135.55, Construction, Inspections, and Approval of Project. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be regulated by the construction standards that provide a minimum level of safety and utility equivalent to that of an ambulatory surgical center.

Chapter 139 presently contains only one section that addresses "Physical and Environmental Requirements," §139.48. That section has approximately one page of general requirements, such as "A facility shall have a safe and sanitary environment, properly constructed, equipped, and maintained to protect the health and safety of patients and staff at all times." Chapter 139 contains no requirements for inspection and approval of construction projects, as does adopted §135.55.

Section 135.56, Construction Tables. The requirements of this section were adopted because Chapter 139 has no similar provision and because the Legislature determined that the minimum standards for a licensed abortion facility must be equivalent to the minimum standards for a licensed ambulatory surgical center. For purposes of this rule, the department concludes that the Legislature required licensed abortion facilities to be regulated by the construction standards that provide a minimum level of safety and utility equivalent to that of an ambulatory surgical center.

Chapter 139 does not contain tables or drawings of any kind that specify proper construction requirements, so it is not equivalent to rules for ambulatory surgical centers.

Amendments to §139.53 and §139.56 are adopted to specify the admitting privilege requirements of physicians who perform or induce abortions as required by HB 2.

Additional amendments to §139.56 and amendments to §139.57 are adopted to specify the information required by HB 2 to be given to the patient and the requirement for the facility to make available the physician or a staff person with access to the patient's medical records to respond to patient phone calls 24 hours daily as required by Health and Safety Code, §171.0031(a)(2)(A) as amended by HB 2.

COMMENTS

The department has reviewed and prepared responses to comments regarding the proposed rules that were submitted during the comment period and at the State Health Services Council Meetings held on August 28 and 29, 2013.

The department received a total of 19,799 public comments. A total of 5,466 comments, representing approximately 27.6 percent of all comments, contained information that indicates the comments were filed by individuals who reside outside the State of Texas or the United States.

The Texas Alliance for Life, Texas Right to Life, and the Texas Medical Association filed comments in support of the rules. The first two organizations noted that the rules would promote the health and safety of women who seek an abortion in Texas by requiring licensed abortion facilities to comply with the construction and physical plant standards that are now required of ASCs, and by requiring physicians who perform abortions to have admitting privileges at a hospital within 30 miles of the place where the abortions are performed.

The Texas Alliance for Life proposed two changes: (1) that the department amend §139.53 to provide that a physician must be physically present at the abortion facility during the administration of an abortion-inducing drug, and (2) that the rules prohibit a physician from delegating this responsibility.

The Texas Medical Association endorsed the department's "measured approach" in drafting the rules and urged the continued use of "gestational age" as the criterion to estimate the length of a pregnancy. However, if using "gestational age" is not possible, the Texas Medical Association encouraged the department to adopt a rule that defines "probable post-fertilization age."

Response: The department appreciates the comments. The department is working to ensure that the rules will be adopted in time to go into effect January 1, 2014, although, in the case of the changes to make certain standards for ambulatory surgical centers equivalent to those for abortion facilities, abortion facilities are not required to comply with the adopted rules until September 1, 2014.

Regarding the proposed amendment to §139.53, the department notes that the proposed rule addresses matters that are within the practice of medicine and relate to the administration of drugs that are intended to terminate a pregnancy. Proposed §139.53 was intended to implement Section 2 of HB 2, which adds Subchapter D to Health and Safety Code, Chapter 171. This subchapter regulates the distribution, dispensing, and administration of abortion-inducing drugs.

The Texas Medical Board is delegated the authority to regulate the practice of medicine. Occupations Code, §151.003(2). Consistent with this regulatory scheme, Health and Safety Code, §171.062 expressly requires the Texas Medical Board to enforce Subchapter D. In light of this express delegation of authority, and because the Texas Medical Board is delegated principal authority to regulate the practice of medicine in Texas, the department believes that it is not within the department's authority to adopt rules on that subject. The department therefore declines to change the adopted rule to reflect the Texas Alliance for Life's recommendation.

Regarding the Texas Medical Association's recommendation that the department adopt a rule to define the statutory phrase "probable post-fertilization age," the department appreciates the comment but declines to adopt the recommendation for two reasons. First, the department observes that Health and Safety Code, §171.042 (as added by HB 2) employs a common scientific definition of "fertilization" to define the term "post-fertilization age." The department does not believe that the addition of the adjective "probable" creates an ambiguity that requires clarification in the rules.

Second, in the absence of a statutory definition, words and phrases in a statute must be read in context and construed according to the rules of grammar and common usage. Government Code, §311.011(a). In the context of Health and Safety Code, Chapter 171, and in the absence of a statutory definition of the word "probable," the department believes that the Legislature intended the public and the regulated community to resort to the common and ordinary meaning of the word in examining a physician's conduct or a patient's reasonable expectations. See, e.g., The American Heritage Dictionary of the English Language, 4th Ed. at 1397 (2006) ("probable" means, inter alia, "Likely to happen or to be true.... Likely but uncertain; plausible").

The department received comments from the American Civil Liberties Union, the American Congress of Obstetricians and Gynecologists, the Center for Reproductive Rights (Texas District), the League of Women Voters of Texas, the National Abortion Foundation, the National Organization for Women, Planned Parenthood of Greater Texas and other Planned Parenthood Entities commenting as one group, 34 Million Friends of the United Nations Population Fund, Rise Up Texas, and Texas Democratic Women. These commenters generally opposed the adoption of some or all of the adopted rules. The department acknowledges these comments and responds below, separately according to the various issues raised by the entire set of commenters.

Numerous comments also were received from interested individuals. The department received comments on topics concerning the substance of the rules, and other comments relating to legal issues and issues concerning the preamble to the proposed rules. The responses to the comments appear by topic. Some comments received included matters that were outside the scope of the proposed rules, including vituperative language and political statements. These comments do not affect the substance or scope of the rule.

The comments related to 14 general categories: (1) a woman's constitutional right to terminate a pregnancy; (2) access to abortion services; (3) the physician's admitting privileges requirement; (4) adoption of ASC construction and physical plant rules; (5) medical necessity for adoption of ASC and admitting privileges requirements; (6) grandfathering licensed abortion facilities regarding ASC rules; (7) exempting facilities where only

medical abortions are performed and waiving the statute for such facilities; (8) abortion facility rules assertedly not "equivalent to" those for ASCs; (9) challenges to statements in the preamble to the proposed rules; (10) retention of annual inspections for licensed abortion facilities; (11) Comments Relating to Disproportionate Impact on Low-Income Women and Women Who Live in Rural Areas; (12) Comments Relating to Assertions That the Department Is Singling Out Abortion Facilities For Punitive Regulation; (13) Comments Relating to Rules Requiring Facilities to Be Prepared to Respond Indefinitely to Abortion Patient Calls; and (14) Comments Relating to Request for Definition of "Admitting Privileges" in Connection with §139.53 and §139.56.

1. Comments Relating to the Right of Women to End a Pregnancy.

Comment: At least one commenter stated that the proposed rules do not show that the department considered women's constitutional right to end a pregnancy.

Response: The department respectfully disagrees. The preamble to the proposed rules quotes in detail the Bill Analysis for HB 2. (38 TexReg 6536) (September 27, 2013, issue); House Comm. on State Affairs, Bill Analysis, Tex. HB 2, 83rd Leg., 2nd C.S. (2013)). The bill analysis refers to the United States Supreme Court case, *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833 (1992), which recognizes women's right to an abortion, but nevertheless holds that states may regulate abortion clinics.

Various commenters alleged, in very general terms, that the proposed rule would impose various burdens on unidentified clinics, and that the proposed rule could cause some unspecified number of abortion providers to stop providing abortion services in Texas. Some commenters claimed that those results would constitute an "undue burden" under *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833 (1992). The department disagrees with these comments for three reasons.

First, the commenters misunderstand the rights at issue. In *Casey,* the Supreme Court recognized the State's profound and legitimate interest in unborn life and its right to reasonably regulate the operation of abortion facilities. The Court held that "[r]egulations designed to foster the health of a woman seeking an abortion are valid if they do not constitute an undue burden on a woman's right to terminate a pregnancy." *Id.* at 878. The Court instructed that "[a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability." *Id.* And in reaching those conclusions, the Court emphasized that "[w]hat is at stake is *the woman's right* to make the ultimate decision," *id.* at 877 (emphasis added); no commenter points to any decision that has interpreted the Constitution to afford *abortion providers' rights* to operate particular clinics, to operate those clinics in particular ways, or to maintain particular profit margins.

Second, the comments include only generalized claims that some unspecified number of unidentified clinics might struggle to comply with the rule or close for some undetermined time on account of it. While the department received more than 19,000 comments, the department is not aware of any comment that identified a particular clinic that will permanently shut down; nor is the department aware of any comment that identified a particular reason that a particular clinic would be unable to comply with the rule; and the department is not aware of any comment that identified a particular reason that new clinics will not open and comply with the rule. To the contrary, the department is aware of reports that at least three new ASCs that plan to open and comply with the rule in Dallas, Houston, and San Antonio by September of 2014. And in all events, the department is not aware of any comments that purport to show how any alleged effect on particular clinics will impact the only right recognized in Casey--namely, a woman's right to obtain an abortion. For example, the department is aware of no comments that explain how particular abortion-seeking patients will face unconstitutionally long travel distances, unconstitutionally long wait times, or unconstitutionally high costs for abortion services in any particular part of the State.

Third, even if commenters had provided specific allegations of future harms, the department reasonably could be skeptical of those predictions based on its experience with previous challenges to HB 2. In September 2013, various abortion providers sued to enjoin the department's commissioner from enforcing HB 2's admitting-privileges requirement. In that lawsuit, the abortion providers alleged that particular clinics would be forced to close if the admitting-privileges requirement went into effect. Those allegations proved to be overstated because multiple providers that allegedly would be forced to close nonetheless received admitting privileges and either stayed open or reopened. Not one of the comments received by the department provides any basis to believe that abortion providers would be unable to make similar adjustments and likewise comply with the rule.

The preamble to the proposed rules restated the Legislature's determination that application of certain ASC standards would "create the least burdensome set of minimum standards sufficient to improve the safety of patients of a licensed abortion facility." (38 TexReg 6536) (September 27, 2013 issue). However, as noted previously, the department has examined whether the requirements of the ASC standards in Chapter 135 that the department proposed to integrate into Chapter 139 establish substantial obstacles to a woman's right to elect to terminate a pregnancy. The department understands that the standards may negatively impact some current licensees that elect not to comply with the requirements of the adopted rules, but the department also believes that the Legislature carefully and thoroughly considered these issues in determining that ASC standards were appropriate and necessary to ensure the safety of patients who seek abortion services. In light of this unequivocal expression of legislative intent, the department is not, through the adoption of these rules, at liberty to craft exceptions where the Legislature did not see fit to supply any. See *Public Utilities Com'n v. Cofer,* 754 S.W.2d 121, 124 (Tex. 1988); *Spears v. City of San Antonio,* 223 S.W. 166,169 (Tex.1920); *Stubbs v. Lowrey's Heirs,* 253 S.W.2d 312, 313 (Tex.Civ.App.--Eastland 1952, writ ref'd n.r.e). The department also considered that the Legislature did not require licensed abortion facilities to become licensed as ambulatory surgical centers and established in HB 2 a grace period for compliance until September 1, 2014, more than a year after the bill's passage. From these events, the department inferred that the Legislature did not intend for the grandfathering provision of Chapter 135 to extend to abortion facilities licensed under Chapter 245 of the Health and Safety Code. (38 TexReg 6537) (September 27, 2013 issue)

In summary, the department believes that its preamble to the proposed rules and its selection of only a portion of the ASC rules for adoption demonstrate careful consideration of (1) the rights of women to end a pregnancy, and (2) legislative intent in the enactment of HB 2 to impose the least burdensome standards

sufficient to improve the safety of patients of a licensed abortion facility.

2. Comments Relating to Adequate Access to Abortion Services.

Comment: A number of commenters expressed concern that the adopted rules would limit access to abortion facilities. The commenters stated that many licensed abortion facilities will close if they are required to comply with the ASC rules for construction and physical plant standards and ensure that physicians who perform abortions at their facilities have admitting privileges at a hospital located within 30 mile of the facility. The commenters stated the impact would be particularly acute in rural areas of the state that are remote from large cities.

Response: As explained previously, generalized allegations of inadequate access are unhelpful and insufficient to show that old facilities actually will close, that new facilities will not open, or that any particular woman will be unable to access abortion services.

In 2011, all 72,000+ reported abortions in Texas were performed in only 18 counties. (Department of State Health Services, 2011 Vital Statistics Annual Report, Table 34: Induced Termination of Pregnancy by Age and County of Residence 2011); DSHS response to Public Information Act request Feb. 2, 2011 regarding addresses of all facilities where abortions are performed. March 1, 2011) Patients included women from all but six Texas counties, with more than 1,100 patients' county of residence not reported. *(Id.)*

The department can only infer from the existing geographic distribution of facilities and the number of abortions performed despite that distribution that even if a number of facilities were to close, the adverse impact on Texas women seeking an abortion, if any, would be relatively small.

Specific ASC construction and physical plant rules and physician admitting privilege requirements are addressed elsewhere Parts 4 and 3, respectively, of this Preamble. In general, the department believes that both requirements will significantly improve the quality of abortion care for women, in the first case by providing a safer and more comfortable working environment for staff and patients, thus enabling staff to perform its work better. Many of the ASC physical plant requirements are intended to provide space for health-related functions and goods that relate specifically to the health and safety of patients, such as ample room in the hallways for gurneys and staff, and storage for medical goods and clean linens. In the case of the admitting privileges requirement, the department anticipates that the requirement will enhance continuity of care as opposed to a women being left to find follow-up care in emergency rooms with a different physician, and will improve the quality of care by requiring physicians who perform abortions to have hospital credentials.

3. Comments Relating to Admitting Privileges Requirement.

Comment: Some commenters opposed §139.53(c)(1) - (2), which require a physician who performs abortions to have admitting privileges at a hospital which provides obstetrical and gynecological services and is located no farther than 30 miles from the place where the abortion is performed. These commenters stated that the requirement is unnecessary because often the hospital chosen by a patient for her follow-up treatment is one close to her home, not necessarily one close to where the abortion is performed. Commenters also assert that admitting privileges for a physician who performs abortions may be difficult to obtain, that obtaining such privileges often requires months, and that the result of this requirement will be the closure of some facilities and the resultant denial of abortion services to women in the affected areas. They urged that the department not adopt such rules.

Response: The department disagrees. The department is charged with enforcing Chapter 171 of the Health and Safety Code, including §171.0031 as amended by HB 2, the section that contains the provisions opposed by these commenters. The provisions of §171.0031 in question are expressed as conditions precedent to a physician's performing an abortion. ("[A] physician must. . . ."). Government Code, §311.016(3).

HB 2's plain language requires a physician who performs abortions to have active admitting privileges at a hospital which provides obstetrical or gynecological services and is located no farther than 30 miles from the place where the abortion is performed.

Section 139.53(c)(1) and (2) clarify that the department will, as the Legislature directed, enforce the statutory requirements by requiring the abortion facilities it licenses to require compliance by the physicians who perform abortions there.

The department understands that the principal objective of the admitting privileges requirement is not to restrict a woman's choice of provider of follow-up care, but to ensure safety and continuity of care by a treating physician in cases that require emergency hospital care. Furthermore, the proposed rules do not limit a woman's ability to seek follow-up care wherever she chooses.

While commenters stress the safety of abortion procedures, the department is aware that it is likely that complications from abortions are underreported. Furthermore, the department cannot overlook the fact that more than 70,000 such procedures are performed each year in Texas. Reported complications of medical abortions, which the commenters believe are the safest, are estimated in medical literature of which the department is aware, at 5-8% of medical abortions. (Re: Overall complication rates: U.S. Food and Drug Administration. Mifeprex Medication Guide. 2009).

Re: Heavy bleeding and failure to remove all products of conception: American Congress of Obstetricians and Gynecologists. Medical Management of Abortion. ACOG Practice Bulletin No. 67. Obstetrics and Gynecology. 2005;106:871-82. Texas Medical Disclosure Panel. List A, Procedures Requiring Full Disclosure of Specific Risks and Hazards; 2012. Royal College of Obstetricians and Gynaecologists (RCOG); The Care of Women Requesting Induced Abortion. London (England): Royal College of Obstetricians and Gynaecologists (RCOG); 2011 Nov. 130 p. (Evidence-based Clinical Guideline; no. 7). *Note: An evidence review of the guideline is available in the U.S. Health and Human Services, Agency for Healthcare Research and Quality National Guideline Clearinghouse.*

Therefore, applying a conservative estimate of 5%, more than 3,500 Texas patients of abortion facilities will experience complications.

4. Comments Relating to ASC Construction and Physical Plant Rules.

Comment: Some commenters addressed specifically the minimum space and plant arrangement requirements in §135.52(d)(1)(G)(i), requiring 30 square feet per operating room to be set aside for a general storage room; §135.52(d)(3)(A), a requirement for a minimum clear floor area of 80 square

feet in each examination room (but examination rooms are not required); §135.52(d)(9)(B)(i) - (ii), free space requirements for post-operative recovery suites and rooms, multi-bed and private; §135.52(d)(9)(E)(i), space requirements for extended observing room, which are not required; §135.52(d)(10)(B)(i) - (ii), requirement for a minimum of one patient station per operating room and spatial requirements; §135.52(d)(13)(A), a requirement for surgical staff dressing rooms; §135.52(d)(15)(A), clear space minimums for operating rooms (but no clear requirement for an operating room); §135.52(d)(15)(B)(iv) concerning scrub sinks and a viewing window; and the width requirement for doors and corridors, as well as that rule's requirement for swing type doors. Comment was made suggesting the elimination of §135.52(g)(5)(C)(iv) and Table 1 of §135.56(a) because there is no health or safety consideration for requiring a particular room temperature at a licensed abortion facility. Some commenters also objected to the application of off-street parking requirements contained in §135.52(b)(2). The commenters stated that these requirements would not improve patient care and hence are not medically necessary.

The commenters also expressed concern that a large number of licensed abortion facilities would close because they could not or would not meet the construction and physical plant rules, resulting in limited access to abortion for Texas women.

Response: The portions of these comments concerning facility closures are addressed separately under the headings "Adequate Access to Abortion Care" and "Comments Relating to Disproportionate Impact on Low-Income Women and Women Who Live in Rural Areas." Regarding the adopted ASC construction and physical plant rules generally, the department recognizes that some licensed abortion facilities may not be financially capable of complying with these requirements. However, because the physical and financial conditions of licensed abortion facilities will vary, the department cannot accurately estimate the impact of the adopted rules on licensees.

The department nevertheless believes that the Legislature recognized these potential consequences but also considered the state's vital interest in preserving potential life and improving patient safety, and concluded that the ASC standards would not unduly burden a woman's right to an abortion. In light of that legislative determination, the department believes that the adopted ASC construction and physical plant rules reasonably implement the Legislature's directive.

The department believes that higher construction and physical plant design standards for abortion facilities will improve the facilities' response to complications in those facilities by ensuring that the facility is prepared and qualified to address both routine procedures and adverse events when they inevitably do occur. As noted under Topic 3 above, the department is aware that some patients will suffer complications, and for many, if not most or all facilities, the number doing so annually is significant.

As noted in the responses below to comments concerning medical necessity, the true issue is not whether each adopted requirement is medically necessary; it is whether the adopted construction and physical plant requirements reasonably improve the health and safety of women who seek abortion services without creating a substantial obstacle for a woman seeking an abortion. The Legislature determined that the ASC standards would do so. The adoption of requirements from the ASC rules is intended to make licensed abortion facilities more safe, indirectly by providing minimal amenities for staff and patients, and directly by providing as clean and spacious working environment as was deemed reasonably feasible.

Each ASC construction requirement is a response to an issue, such as ample space in hallways for gurneys and attendants, that can reasonably be anticipated to preserve or improve patients' health and welfare, directly or indirectly. For instance, the off-street parking requirements provide safe access to the facility for patients, people who accompany them, visitors, and facility staff, and the HVAC (temperature and humidity) requirements of §135.52(g)(5)(C)(iv) and Table 1 of §135.56(a) help prevent accumulations of mold and pathogens in the facility as well as provide for comfort of patients and staff alike.

Therefore, the department believes that the requirements proposed for adoption not only fulfill HB 2's mandate to adopt standards for construction and physical plant design for licensed abortion facilities that are equivalent to those for ASCs, but also will improve the health and safety of patients at licensed abortion facilities without placing an undue burden on women seeking abortion services.

5. Comments Relating to Medical Necessity for Adoption of ASC and Admitting Privileges Requirements.

Comment: A number of commenters oppose the adoption of ambulatory surgical center standards (see §139.40) or the admitting privilege requirement (see §139.53 and §139.56). These commenters asserted that there is no medical necessity to apply ASC construction and plant standards to licensed abortion facilities, with several asserting that abortion is an extremely safe procedure, citing kinds of cases they assert are less safe than procedures that physicians are allowed to perform in their offices.

Some commenters wrote that the lack of medical necessity is especially true of facilities that provide only medical abortions, because no surgical and little infection risk exists in such procedures. Some commenters urged that abortion is no longer usually a surgical procedure and that requirements that are appropriate for ASCs are inappropriate for abortion facilities, especially those at which only medical abortions are performed.

Response: First, the department observes that the presence or absence of medical necessity does not govern the department's duty to adopt rules. These arguments are more appropriately directed to the Legislature, which is responsible in the first instance to establish state policy to govern elective abortions.

The Legislature determined that the operating standards for licensed abortion facilities were insufficient to protect the health and safety of patients and that the state's legitimate interest in protecting potential life outweighed a licensed abortion facility's desire to avoid improvements to assure patient health and safety. Moreover, the terms "medical necessity" and "medically necessary" do not appear in Health and Safety Code, Chapter 245, which authorizes regulation of abortion facilities, nor in Health and Safety Code, Chapter 171, which refers to informed consent and other issues related to abortion and abortion facilities.

Likewise, neither "medical necessity" nor "medically necessary" appear in the licensed abortion facility rules, 25 TAC Chapter 139. In the reporting rule section, there are two instances where a physician is instructed to certify that an abortion was necessary to save the mother's life. In Health and Safety Code, §245.016 there is one similar occurrence of the word "necessary." Accordingly, because the Legislature did not exercise its prerogative to incorporate a medical necessity requirement in either HB 2 or

prior legislation, the department believes that it would be inappropriate to impose one in the adopted rules.

Concerning comparisons with procedures performed by physicians in their offices, the department regulates only healthcare facilities, not physicians. Despite the commenters' belief in the relative safety of abortion, the department is aware of reports in medical literature that abortions are underreported. (Obstet Gynecol. 2005 Oct;106 (4):684-92. Abstract: Underreporting of pregnancy-related mortality in the United States and Europe. Deneux-Tharaux C, Berg C, Bouvier-Colle MH, Gissler M, Harper M, Nannini A, Alexander S, Wildman K, Breart G, Buekens P. Institut National de la Santé et de la Recherche Medicale U 149, Epidemiological Research Unit on Perinatal and Women's Health, Paris, France. Fam Plann. Perspect. 1998 May-Jun;30(3):128-33, 138; Alan Guttmacher Institute, New York, USA. Abstract: Measuring the extent of abortion underreporting in the 1995 National Survey of Family Growth. Fu H, Darroch JE, Henshaw SK, Kolb E.)

The department infers from those reports that complications and mortality whose initial cause is abortion may also be underreported. These reports cast doubt on the statistics relied on by opponents of the rules and the degree of safety of the abortion procedure.

In addition, the department is aware of medical literature that places the incidence of reported complications of medical abortions that occur in the first trimester and should be the safest at 5-8%. (U.S. Food and Drug Administration. Mifeprex Medication Guide. 2009. Re: Heavy bleeding and failure to remove all products of conception: American Congress of Obstetricians and Gynecologists. Medical management of abortion. ACOG Practice Bulletin No. 67. Obstetrics and Gynecology. 2005;106:871-82. Texas Medical Disclosure Panel. List A, Procedures Requiring Full Disclosure of Specific Risks and Hazards. 2012. Royal College of Obstetricians and Gynaecologists (RCOG). The care of women requesting induced abortion. London (England): Royal College of Obstetricians and Gynaecologists (RCOG); 2011 Nov. 130 p. (Evidence-based Clinical Guideline; no. 7). *Note: An evidence review of the guideline is available in the U.S. Health and Human Services, Agency for Healthcare Research and Quality National Guideline Clearinghouse.*

If a facility performed 3,000 abortions per year, it could expect 150 of its patients each year--approximately three per week--to suffer serious complications from an abortion, many of which ultimately require surgery. While it may be true, as some commenters suggest, that follow-up surgery for these complications often can and will be done at surgical facilities other than the abortion clinic, the department believes that the Legislature determined it is reasonable to anticipate that a significant number of patients with complications will want to have them treated at the same clinic where they arose. Presumably the patients originally chose that clinic at least in part for its relative convenience to them.

Therefore, the department believes that it is wise to adopt a proactive approach that requires enhanced precautions to enhance patient safety without placing an undue burden on women who seek services at the regulated facilities.

6. Comments Relating to Grandfathering Licensed Abortion Facilities.

Comment: A number of commenters suggested that the rules should extend a provision from Chapter 135 (§135.21(a)(1) and (2)) to grandfather existing licensed abortion facilities so that they would not be required to comply with construction and design standards imposed on ASCs. They urge that, by failing to adopt this grandfathering provision, the department has imposed stricter standards on abortion facilities than on ASCs rather than making the standards "equivalent to" those for ASCs.

Response: The department disagrees. As noted in the Section-by-Section Summary of the provisions of Chapter 135, Subsection C in this Preamble, HB 2 gives the department no authority to exempt any licensed abortion facility from its provisions, nor to waive the application of its provisions or the rules adopted pursuant to HB 2 to particular facilities. Nor does any other provision of Health and Safety Code, Chapter 245 grant the department such authority. Therefore, the department has no authority to exempt by rule or grant waivers for "medical-only" providers from the provisions of HB 2 or the rules adopted pursuant to HB 2.

7. Comments Relating to Exempting Facilities Where Only Medical Abortions Are Performed and Waiving the Statute for Such Facilities.

Comment: Regarding the adoption of ASC construction and plant rules for licensed abortion facilities, some commenters suggested that facilities that perform only medical abortions be exempted by rule from these requirements. The commenters reasoned that if a facility performs only medical procedures, it should not be required to comply with the ASC rules, which, according to the commenters, were designed only for clinics where surgery is performed.

Similarly, some commenters urged that facilities that provide only medical abortions be granted waivers from the application of the requirements regarding the adoption of ASC construction and plant rules for licensed abortion facilities. These commenters believe that if a facility performs only medical procedures, it should not be required to comply with the ASC rules. Some commenters state that waivers can be issued on a case-by-case basis that would be better tailored to the needs of the community in which the facility is located than a statute that is the same for all licensed facilities in Texas.

Response: HB 2 gives the department no authority to exempt any licensed abortion facility from its provisions or to waive the application of its provisions or the rules adopted pursuant to HB 2, to particular facilities. No other provision of Health and Safety Code, Chapter 245 or any other statute that grants the department rulemaking authority also grants the department the power to waive statutory provisions or exempt licensed abortion facilities from complying with statutes by rule, with the sole exception of Health and Safety Code, §241.06(c), which applies only to licensed hospitals. The department infers that the legislature would have, if that was its intent, written into HB 2 a waiver provision. It did not do so; therefore, the department has no authority to exempt by rule or grant waivers for "medical-only" providers from the provisions of HB 2 or the rules adopted pursuant to HB 2.

8. Comments Relating to Abortion Facility Rules Assertedly Not "Equivalent to" Those for ASCs.

Comment: Some commenters asserted that the adopted rules are not "equivalent to" those of ASCs, and question the department's proposal to adopt the rules as being outside the department's authority granted by HB 2.

Others stated that by adopting many ASC requirements from 25 TAC Chapter 135 and retaining most abortion facility rules that

existed before HB 2 was passed, the department is exceeding its authority and is adopting a set of rules that are, as a whole, more strict that those for ASCs, and not "equivalent to" ASC rules. These commenters note that each other type of health facility has only one set of rules that regulate the licensed facilities, and assert that the department has singled out licensed abortion facilities for excessive and burdensome regulation.

Response: The department disagrees. Adopting rules by reference is a common procedure, with the result being one set of rules containing provisions that it lacked before the adoption by reference. 1 TAC §91.40. In this case, HB 2 required the addition of a number of rules that are "equivalent to" rules identified by the five topic areas listed in Health and Safety Code, §243.010. The department determined that the most appropriate method to achieve the intent that the rules for licensed abortion facilities in 25 TAC Chapter 139 be "equivalent to" those in Chapter 135 for ASCs listed by topic in Health and Safety Code, §243.010 is to select the appropriate rules from Chapter 135 and adopt them by reference.

Regarding the department's authority to adopt ASC rules and retain abortion facility rules, the department's rulemaking authority is not limited to that provided by HB 2. The department also has rulemaking authority under Health and Safety Code, Chapter 171, as amended by HB 2, concerning requirements for a physician who performs an abortion; under Health and Safety Code, §245.010 as amended by HB 2, concerning rules and minimum standards for the licensing and regulation of abortion facilities; and under Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The department observes that HB 2 did not direct the department to replace all its pre-existing rules with those for ASCs. Nor did HB 2 repeal any part of Health and Safety Code, Chapter 245, the pre-existing statutes governing abortion facilities. Thus, the department also has rulemaking authority under other statutes that allows it discretion to adopt rules necessary to implement the intent of HB 2 as the department understands it. That many rules in Chapter 139 were retained or that some few of the adopted rules may be more stringent for ASCs than similar rules for other facilities does not mean that the department has exceeded its authority by adopting them.

Finally, the department understands HB 2 to intend to enhance the existing abortion facilities regulations in part by extending the regulatory scheme for licensed abortion facilities to include construction and physical plant design, in order to enhance the health and safety of patients of those facilities without unduly burdening a woman seeking to obtain an abortion in Texas. The department is required to carry out that intent.

9. Comments Relating to Challenged Statements in the Preamble to the Proposed Rules.

Comment: A few commenters stated that the preamble to the proposed rules contained factual errors. Firstly, there was objection to the statement in the proposal preamble that "Texas allows no other procedure to opt out of the accepted standard of care." Commenters asserted that licensed abortion facilities are, in fact, well-regulated under existing state law and departmental practice, and do not operate at a lower standard than other facilities or at a standard of care lower than that applied to other medical procedures.

Secondly, one commenter asserted that the preamble statement "[T]oday 38 licensed abortion facilities still operate at a second, lower standard for the most common surgical procedure in Texas performed solely on women[.]" is false because licensed abortion facilities have a safety record that demonstrates a high standard of care and Texas licensed abortion facilities are already extensively regulated under existing state statutes and rules.

Thirdly, at least one commenter stated that the proposal preamble's statement that "[W]omen who choose to have an abortion should receive the same standard of care any other individual in Texas receives, regardless of the surgical procedure performed[.]" is false for the same reasons recited concerning the previous two comments.

One of the commenters supported this objection by writing that "abortion providers in Texas absolutely follow the standard of care" because they conform to unidentified regulatory standards and, according to the commenter, have an exemplary safety record. These comments referred to procedures that physicians are allowed to perform in their offices or outpatient facilities without state regulation and without a requirement that these procedures be done under the rules for ASCs. The commenter asserted that many of these unregulated procedures are more dangerous than abortions.

Response: The department notes that all three of the statements objected to are taken verbatim from Bill Analysis. Tex. HB 2, 83rd Leg., 2nd C.S. (2013); (38 TexReg 6537) (September 27, 2013 issue). These comments are more appropriately addressed in the first instance to the Legislature. However, the department will respond to the comments as they relate to the adopted rules.

The department disagrees that any of the statements quoted by the commenters are false. When read in context, it becomes clear that the phrase "standard of care" in the bill analysis was not referring to the standard of care applicable to a licensed physician, but generally to the quality of care that all consumers of healthcare should reasonably expect to receive in a licensed healthcare facility.

The portion of the preamble to the rules proposed for licensed abortion facilities dedicated to the "standard of care" contains four paragraphs. The sentence to which objection is made is the final sentence of the portion. The reference to "standard of care" first occurs in the first sentence of that portion. That first sentence is quoted from the Bill Analysis for HB 2, and reads: "Women who choose to have an abortion should receive the same standard of care any other individual in Texas receives, regardless of the surgical procedure performed."

The third paragraph recites the requirement of HB 2 that the minimum standards for abortion facilities, on and after September 1, 2014, be equivalent to the minimum standards for ambulatory surgical centers.

The fourth and last paragraph quoted from the Bill Analysis reads as follows:

Moving abortion clinics under the guidelines for ambulatory surgical centers will provide Texas women choosing abortion the highest standard of health care. Texas allows no other procedure to opt out of the accepted standard of care.

Thus, the "standard of care" that the Legislature referred to is one that generally is applicable to healthcare facilities, which the department regulates, not to individual physicians, whom the department has no authority to regulate. That standard is derived from the Medicare standard, which applies to facilities but is also recognized by physicians and other healthcare professionals. Compliance with it is a necessary condition for reimbursement for services that are paid for by Medicare and by Medicaid. The preamble to the proposed rules correctly states that licensed abortion facilities "opt[ed] out" of the higher standard enforced by Medicare in the sense that licensed abortion facilities chose not to pursue licensure as ASCs, and that licensed abortion facilities, as noted above, are paid by cash or credit card and are thus not subject to the Medicare (and Medicaid) standard.

10. Comments Relating to Retention of Annual Inspections for Licensed Abortion Facilities.

Comment: Some commenters opposed retaining the requirement in Chapter 139 for annual inspections (§139.31(b)(1)) instead of adopting the 3-year inspection standard for ASCs (§135.21).

Response: The department disagrees. This section of the ASC rules relating to inspection was not adopted because it only requires inspections of licensed facilities every three years, whereas present §139.31 requires annual inspections of licensed abortion facilities. Section 139.31 provides greater protection by requiring more frequent (annual) inspections than the three-year minimum intervals prescribed by §135.21.

Further, as noted previously, the department believes that abortion facilities operate primarily on a self-pay basis and therefore are not subject to oversight by the Centers for Medicare and Medicaid Services, so that they should be inspected more frequently than facilities which are subject to such oversight, to ensure that minimum standards are being met and to better protect the health and safety of patients as required by HB 2.

As previously noted, medical literature suggests that abortions are underreported, raising a concern that morbidity and mortality resulting from abortions is also underreported. The department believes that applying a significantly less frequent ASC survey rate to licensed abortion facilities would jeopardize the health and safety of patients at those facilities.

Furthermore, annual inspections are reasonable given (1) the high priority that the Legislature has placed on improving the health and safety of women who receive abortion services, and (2) the department's understanding that the Legislature intended licensed abortion facilities to comply with minimum standards that at least equal to those applicable to a licensed ambulatory surgical center.

Given these factors, the department believes that in some areas such as frequency of inspections, more stringent standards for licensed abortion facilities are useful means of protecting the health and safety of patients by better implementing HB 2 and enforcing the rules for licensed abortion facilities. The department believes also that, while more frequent inspections may create a small additional burden on facilities, they create no burden at all on women who seek an abortion.

11. Comments Relating to Disproportionate Impact on Low-Income Women and Women Who Live in Rural Areas.

Comment: Commenters expressed concern that facility closures resulting from the rules would have a more severe adverse impact on low-income women and those living in rural areas of the state than others. A premise of the commenters' position is that abortion and preventive care services are available for smaller fees than a hospital or ASC must charge. Primarily, two provisions of the proposed rules may cause extensive facility closures, according to the commenters: they are the ASC construction and physical plant rules (adopted by reference in §139.40) and the admitting privileges requirement (§139.53 and §139.56).

The commenters anticipate that all or most of the facility closures would occur in Lubbock, the Rio Grande Valley, El Paso, Beaumont and Fort Worth, leaving facilities operating only in Dallas, Houston, Austin, and San Antonio, where the large local populations can support licensed facilities even if those facilities charge more than licensed abortion facilities.

Commenters state that if licensed abortion facilities operated in only the largest cities, all located along I-35 from Dallas to San Antonio plus Houston on I-10, then women who live south of I-10 or west of I 35 would be required to travel relatively long distances to a licensed abortion facility. Nor are ASCs where abortions are performed located outside the I-35 and I-10 corridors, and none are south of Austin. For this reason, the commenters assert that the financial and logistical difficulties of traveling 500 miles or more (e.g., from El Paso to San Antonio).

Commenters also point out that many women who lack the means or ability to be away from their jobs or families will choose to have possibly illicit abortions in Mexico, where they assert abortions are performed unsafely.

Response: The department disagrees. As noted previously (in Comments Relating to the Adoption of ASC Construction and Physical Plant Rules), the department believes the proposed construction and physical plant requirements will improve the outcomes for women seeking abortion. The same is true for the rules requiring admitting privileges. (See response under Comments Relating to Admitting Privileges Requirement.) The department believes that neither rule creates an obstacle that prevents any Texas woman from obtaining an abortion for several reasons: (1) it is unlikely that all licensed abortion facilities will close; (2) abortions by licensed physicians can still be obtained at ASCs and some hospitals, so the lack of a nearby licensed abortion facility, though challenging, is not an absolute bar to even a low-income or rural-based woman; and (3) any facility's decision to close is purely an economic one, not a direct result of the rules, because the rules do not require any facility to close rather than comply.

Finally, if the demand for abortions in low-income areas of the state and areas remote from Texas's large cities is as great as commenters urge, one or more providers would find it profitable (or a non-profit would be able to operate within its means) by locating an ASC designed, built, and operated mainly to provide abortions and reproductive care at low prices at a place chosen to minimize the travel distance for a disadvantaged patient population.

12. Comments Relating to Assertions That the Department Is Singling Out Abortion Facilities For Punitive Regulation.

Comment: Several commenters wrote that the proposed rules evidence the department's intent to punitively adopt excessively burdensome rules that only apply to licensed abortion facilities. Among the rule changes they suggest exhibit punitive regulation are:

(1) selectively leaving in place abortion facility rules that are more stringent than the comparable ASC rules, such as the annual mandatory inspection requirement (§139.31(b)(1));

(2) declining to adopt §135.2(19), a definition of "premises" that included a reference to surgery, allegedly so that it could apply the ASC rules to medical-only facilities;

(3) applying two sets of rules, Chapters 135 and 139, to licensed abortion facilities; and

(4) exceeding the "equivalent to" requirement of HB 2 in favor of more stringent rules for licensed abortion facilities.

Response: The department acknowledges the comments, but disagrees, and declines to alter the proposed rules to remedy any alleged punitive intent.

As noted in the Section-By-Section Summary, the department agrees that on several occasions it chose not to adopt an ASC rule where there was already an abortion facility rule that implemented a more stringent requirement, such as the annual inspections versus three years (and not mandatory) for ASC inspections. Doing otherwise would not have given effect to the intent of HB 2, which was to enhance the level of regulation of licensed abortion facilities so that the effect of the new rule set would be equivalent to that of ASC rules on ASCs, a higher standard and more safety for patients of licensed abortion facilities. HB 2 required the adoption of some ASC rules, or rules equivalent to them in their effect on licensed abortion facilities, but did not require or authorize the repeal of Chapter 139 rules.

Licensed abortion facilities are unique in that they are not subject to Medicare inspection because, unlike almost all other licensed facilities, they operate on a cash and credit card basis. Abortion facilities are also unique among Texas medical facilities in that they are places where death is intentionally caused. In such facilities, it is reasonable to anticipate higher staff burnout and turnover rates, with the resultant lack of experienced caregivers as compared to other kinds of facilities. Thus, differing requirements for the different facilities are required in order to achieve rules that have an effect on licensed abortion facilities that is "equivalent to" the effect of the ASC rules on ASCs. If the Legislature had intended for the two rule sets to be identical, it could easily have required the department to do so.

The department notes that it did not always choose against abortion facilities and in favor of more stringent regulation of them. As examples, it proposes to keep in effect:

(1) $5,000 license fee (§139.22(a)(1) - (3)) versus the $5,200 ASC license fee (§135.3(a));

(2) §139.31(c)(2), which requires that complaints be in writing and signed by the complainant versus §135.25(b), which allows anonymous complaints by telephone.

Regarding §135.2(19), its definition of "premises" was not adopted, but not in order to evade any prohibition against the department's applying ASC rules to medical-only facilities as some commenters suggest. The application of ASC rules was required by HB 2, which did not create an exception for medical-only facilities in Health and Safety Code, §245.010(a) as amended by HB 2. Instead, the department did not adopt §135.2(19) because its reference to "premises" as places "where surgery is performed" was an inappropriate and confusing description of abortion facilities, in which the procedure may be either medical or surgical.

The department believes its selection of rules for adoption under HB 2 is even-handed, appropriate to the intent of HB 2, is not based on any intent to punish or single out licensed abortion facilities for excessive regulation, and does not pose a substantial obstacle to a woman who seeks an abortion in Texas.

13. Comment Relating to Rules Requiring Facilities to Be Prepared to Respond Indefinitely to Abortion Patient Calls.

Comment: At least one commenter stated that §§139.56(a)(2)(A) and 139.57(a)(2)(A) are unduly burdensome, unnecessarily extensive, and often impractical and unworkable. The comment specifies as excessive regulation the requirement that the patient's medical record must, by implication, be available to the physician or qualified staff person 24 hours a day, as well as the absence of a termination date for the responsibility to respond to patient calls with her medical records accessible.

Response: The department disagrees. The rule simply restates Health and Safety Code, §171.0031(a)(2)(A), as amended by HB 2.

The rules allow a staff person as well as a physician to respond to calls. Therefore, the duties may be rotated among facility staff. With the advent of electronic medical records, access to patient records should not cause a problem other than protecting patient confidentiality. The rules specify that the responding staff member have access to only the patient's "relevant medical records," not her entire medical history. Presumably, these records would not be voluminous, so that paper copies may be compiled and given to the responder, so long as patient confidentiality is protected. Nor do the rules require an instant answer to the patient's questions, so a reasonable time to search on a computer or through paper files is implied.

No time is specified after which a duty person is not required for 24-hour coverage of follow-up calls because complications, for instance scarred or weakened tissue that tears, can first present symptoms many months after an abortion.

14. Comments Relating to Request for Definition of "Admitting Privileges" in Connection with §139.53 and §139.56.

Comment: At least one commenter requested that the department define what "admitting privileges" mean. The commenter stated that the term is vague because different hospitals define it differently and it has no single, clearly articulated meaning that is commonly accepted in the medical community.

Response: The department acknowledges the comment. It has considered the issue, and believes that defining what admitting privileges are is not practical for the reason the commenter offers: there is no single, accepted definition in common use. If the department were to adopt a definition, it would incidentally affect many facilities and physicians whose admitting privileges might be acceptable in substance, but did not fit the department's definition. The department anticipates enforcing this rule by inspecting each facility's copies of the admitting privileges of each physician who performs abortions there, to determine whether each physician has such privileges at a qualifying hospital. Thus, the exact wording of the privileges will not be an issue, as it would be if there were a single definition for all admitting privileges issued across Texas.

FISCAL NOTE

Renee Clack, Director, Health Care Quality Section, has determined that for each year of the first five years that the sections

will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the sections as adopted. For purposes of this fiscal note, the department assumes that some of the 30 currently licensed abortion clinics will attempt to comply with the newly adopted standards. Assuming all 30 licensees were to attempt to comply, the department has reviewed its capacity to inspect licensed facilities and to enforce these new provisions and has determined that the additional inspection and enforcement can be absorbed within existing resources.

PUBLIC BENEFIT

In addition, Ms. Clack has determined that for each year of the first five years the sections are in effect, the public benefit that is anticipated as a result of adopting and enforcing these rules will be to enhance the protection of the health and safety of patients that receive services in licensed abortion facilities. This will be accomplished because as a result of these rules, a licensed abortion facility must be equivalent to the minimum standards adopted under Health and Safety Code, §243.010, for ambulatory surgical centers.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§139.1, 139.2, 139.4, 139.9

STATUTORY AUTHORITY

The amendments and new rule are authorized by Health and Safety Code, Chapter 171, as amended by HB 2, concerning requirements for a physician who performs an abortion and the use of abortion-inducing drugs; by Health and Safety Code, §245.010, as amended by HB 2, concerning rules and minimum standards for the licensing and regulation of abortion facilities required to obtain a license under the chapter, clarification of the authority of the department to refuse, suspend or revoke a license for an abortion facility and add the finding of noncompliance with Health and Safety Code, Chapter 171, as grounds for license probation, suspension or revocation, and a change to the data required to be reported annually; and by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

SUBCHAPTER C. ENFORCEMENT

25 TAC §139.32

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, Chapter 171, as amended by HB 2, concerning requirements for a physician who performs an abortion and the use of abortion-inducing drugs; by Health and Safety Code, §245.010, as amended by HB 2, concerning rules and minimum standards for the licensing and regulation of abortion facilities required to obtain a license under the chapter, clarification of the authority of the department to refuse, suspend or revoke a license for an abortion facility and add the finding of noncompliance with Health and Safety Code, Chapter 171, as grounds for license probation, suspension or revocation, and a change to the data required to be reported annually; and by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. MINIMUM STANDARDS FOR LICENSED ABORTION FACILITIES

25 TAC §§139.40, 139.53, 139.56, 139.57

STATUTORY AUTHORITY

The new rule and amendments are authorized by Health and Safety Code, Chapter 171, as amended by HB 2, concerning requirements for a physician who performs an abortion and the use of abortion-inducing drugs; by Health and Safety Code, §245.010, as amended by HB 2, concerning rules and minimum standards for the licensing and regulation of abortion facilities required to obtain a license under the chapter, clarification of the authority of the department to refuse, suspend or revoke a license for an abortion facility and add the finding of noncompli-

ance with Health and Safety Code, Chapter 171, as grounds for license probation, suspension or revocation, and a change to the data required to be reported annually; and by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 41. PRACTICE AND PROCEDURE

The Texas Department of Insurance, Division of Workers' Compensation (Division) adopts the repeal of §41.50, concerning Carrier's Address; §41.101, concerning Purpose; §41.105, concerning Definitions; §41.110, concerning Availability; §41.115, concerning Inspection; §41.120, concerning Duplication and Related Services; §41.125, concerning Duplicating Charges; §41.130, concerning Certified Copies; §41.135, concerning Subpoenas for Confidential Records; §41.140, concerning Record Checks; §41.150, concerning Publications; and §41.160, concerning Annual Review of Charges.

The repeal of §41.50 and Chapter 41, Subchapter B, §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 is adopted without changes to the proposed repeal as published in the July 5, 2013, issue of the *Texas Register* (38 TexReg 4292) and the text of the repealed sections will not be published. No comments were received and there was not a request for a public hearing submitted to the Division.

In accordance with Government Code §2001.033, this preamble contains a summary of the factual basis for the repeal.

The repeal of §41.50 is necessary because it is redundant. Section 41.50, concerning Carrier's Address, was adopted effective November 20, 1977 (2 TexReg 4315). It provides that unless otherwise approved by the board, all notices and communications to insurance carriers will be addressed to the carrier at an address designated by the carrier as its Texas mailing address. Section 41.60, concerning Communication to Insurance Carriers, was adopted November 11, 1983 (8 TexReg 4491). Section 41.60 supersedes §41.50 because it was adopted almost six years after §41.50 and is more specific. Section 41.60 provides that unless otherwise required by statute or a board rule all notices and other communications to insurance carriers will be sent either to an address designated by the insurance carrier as its principal Texas mailing address or to its designated Austin representative.

The repeal of Subchapter B is necessary because its sections are outdated and have been replaced by other statutory and regulatory provisions. The statutes and rules cited in this adoption order are not an exhaustive list of all the statutes and rules that apply and that have superseded these repealed rules. The issues addressed by Subchapter B pertain to confidentiality provisions and open records which are currently addressed by other statutes and rules including, Government Code Chapter 552, known as the Texas Public Information Act; Labor Code §§402.081, 402.083 - 402.088, 402.090, 402.091, 402.092, 413.0513, and 413.0514; 1 TAC Chapter 63, concerning Public Information; 1 TAC Chapter 70, concerning Cost of Copies of Public Information; and 28 TAC §108.1, concerning Charges for Copies of Public Information.

Because §§41.50, 41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 are unnecessary they are repealed.

The adoption of the repeal of §41.50 and Chapter 41, Subchapter B, will eliminate unnecessary sections.

The Division did not receive any comments on the proposed repeal.

SUBCHAPTER A. COMMUNICATIONS

28 TAC §41.50

The repeal is adopted pursuant to Labor Code §§402.0111, 402.00116, and 402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce Labor Code Title 5, and other laws applicable to the Division or Commissioner. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2013.

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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

SUBCHAPTER B. ACCESS TO BOARD RECORDS

28 TAC §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, 41.160

The repeal of §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 is adopted pursuant to Labor Code §§402.00111, 402.061, 402.081, 402.083 - 402.088, 402.090, 402.092, 413.0513, and 413.0514; and Government Code Chapter 552. Section 402.00111 requires that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.061 requires that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code. Section 402.081 provides that the Commissioner of Workers' Compensation is the custodian of the Division's records and shall perform the duties of a custodian required by law, including providing copies and the certification records; requires compliance with the records retention schedules as provided by §441.185, Government Code; pertains to formats of records maintained; allowable fees for inspection of information and copies; and requires the fee for access to information under Chapter 552, Government Code, shall be in accord with the rules of the attorney general that prescribe the method for computing the charge for copies under that chapter. Section 402.081(d) provides that reasonable fees can be billed for inspecting Division records and the fee for access to information under Government Code Chapter 552 shall be in accord with the rules of the attorney general that prescribe the method for computing the charge for copies under that chapter. Section 402.083 requires that information in or derived from a claim file regarding an employee is confidential and may not be disclosed except as provided by law. Section 402.084 regulates when the Division shall perform and release a record check on an employee and claim file information, requires confidentiality, allows the Commissioner of Workers' Compensation to establish by rule a reasonable fee for information, requires adoption of rules for reasonable security parameters for all transfers of information requested under this section in electronic data format, and requires adoption of rules to establish requirements regarding the maintenance of electronic data in the possession of insurance carriers or their authorized representatives. Section 402.085 contains regulations regarding exceptions to confidentiality. Section 402.086 requires transfer of confidentiality of claim information except in certain circumstances. Section 402.087 regulates information available to prospective employers. Section 402.088 regulates the release of reports of prior injuries. Section 402.090 allows the Division, the Texas Department of Insurance, or any other governmental agency to prepare and release statistical information if the identity of an employee is not explicitly disclosed. Section 402.091 provides that a person commits a Class A misdemeanor that may be prosecuted in a court in the county where the information was unlawfully received, published, disclosed, or distributed if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under Labor Code Chapter 402, Subchapter D, to a person not authorized to receive the information directly from the division. Section 402.092 requires that investigation files compiled or maintained by the Division be confidential, states that they are not open records for purposes of Government Code Chapter 522, and provides exceptions to confidentiality. Section 413.0513 describes what constitutes an investigation file and the information that is not subject to discovery or court subpoena. Section 413.0514 pertains to the sharing confidential information between the division and occupational licensing boards. Government Code Chapter 552 contains the Texas Public Information Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.10

The Texas Department of Insurance, Division of Workers' Compensation (Division) adopts amendments to §133.10, concerning required billing forms and formats.

The section is adopted with changes to the proposed text published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 6999). In the October 18, 2013, issue of the *Texas Register* (38 TexReg 7334), a notice of correction revises the implementation from "April 1, 2013" to "April 1, 2014."

The Division has adopted non-substantive changes throughout the text of §133.10, including conforming to agency style and amending for consistency and clarity. These changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

In accordance with Government Code §2001.033, the Division's reasoned justification for these rules is set out in this order, which includes the preamble. The following paragraphs include a detailed section by section description and reasoned justification of all amendments necessary to implement §133.10.

Amended §133.10 is necessary to align the workers' compensation medical billing requirements with the federal Centers for Medicare and Medicaid Services (CMS) June 2013 revision of the 1500 Health Insurance Claim Form Version 02/12 (CMS-1500) to comply with Labor Code §413.011(a). Labor Code §413.011(a) states, "The commissioner shall adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet the requirements of Section 413.053." Section 133.10 only affects health care providers who use paper forms for medical billing and does not change electronic medical billing requirements. Amendments to §133.10 eliminate unnecessary requirements, clarify instructions for providers, and diverge from the federal form instructions to meet the requirements of the Texas workers' compensation system.

Not all changes to the CMS-1500 form required amendments to the text of this section. For example, health care providers using the new CMS-1500 form should note that the diagnosis pointers referenced in §133.10(f)(1)(R) changed from numeric diagnosis pointers to reference letter diagnosis pointers. Section 133.10 also updates the requirements for the UB-04, DWC-066, ADA 2006 Dental Claim Form, and CMS-1500 forms to align 28 TAC §§133.200, 134.803 and 134.804.

Section 133.10 addresses Required Billing Forms and Formats. The amendment to §133.10(b) changes the form requirement for medical bills filed or resubmitted for professional and noninstitutional services from 1500 Health Insurance Claim form Version 08/05 (CMS-1500) to the updated 02/12 (CMS-1500) and is necessary to comply with Labor Code §413.011(a).

Section 133.10(f)(1)(H) deletes the requirement that the billing provider enter 'UNKNOWN' if the workers' compensation claim number is not known. If the workers' compensation claim number is not known to the billing provider, field 11 "Workers' Compensation Claim Number Assigned by the Insurance Carrier" must be left blank. The amendment is necessary to align the requirements of §133.10 with 28 TAC §§133.200, 134.803, and 134.804 (relating to Insurance Carrier Receipt of Medical Bills from Health Care Providers, Reporting Standards, and Reporting Requirements, respectively), which require the reporting of medical billing and payment information to the Division. Section 133.10(f)(1)(H) does not include the CMS changes to fields 11 and 11(b) because they are unnecessary in the Texas workers' compensation system and may create an unnecessary burden on health care providers.

Section 133.10(f)(1)(I) adds a date of injury qualifier to field 14 "Date of Current Illness, Injury, or Pregnancy (LMP)." All paper medical bills related to Texas workers' compensation health care must enter the 431 qualifier indicating the "Onset of Current Symptoms or Illness." The alternative qualifier 484 indicating the "Last Menstrual Period" is not applicable to workers' compensation claims.

Section 133.10(f)(1)(J) clarifies that a qualifier to field 17 "Name of Referring Provider or Other Source" is not required. Paper medical bills related to Texas workers' compensation health care should not indicate any qualifier in this field. Currently, health care providers are not required to report qualifiers on the CMS-1500 form field 17 and the Division has determined that this reporting requirement for healthcare providers is not necessary for the adjudication of a medical bill.

Section 133.10(f)(1)(M) requires that the health care provider enter an "ICD Indicator" in field 21 "Diagnosis or Nature of Injury." This indicator identifies which version of the ICD code set is being reported (ICD-9-CM or ICD-10-CM).

Section 133.10(f)(2)(GG) deletes the requirement that billing providers filing bills for institutional services using the UB-04 must enter 'UNKNOWN' if the workers' compensation claim number is not known. If the workers' compensation claim number is not known to the billing provider, field 62 "Insured's Group Number" should be left blank. The amendment is necessary to align the requirements of §133.10 with 28 TAC §§133.200, 134.803, and 134.804 which require the reporting of medical billing and payment information to the Division.

Section 133.10(f)(3)(O) deletes the requirement that billing providers filing bills for drugs or other pharmacy services using the Division's DWC-066 form enter 'UNKNOWN' if the workers' compensation claim number is not known. If the workers' compensation claim number is not known to the billing provider, field 15 "Insurance Carrier Claim Number" should be left blank. The amendment is necessary to align the requirements of §133.10 with 28 TAC §§133.200, 134.803, and 134.804, which require the reporting of medical billing and payment information to the Division.

Section 133.10(f)(3)(AA) references the requirements for billing compound drugs found in 28 TAC §134.502 (relating to Pharmaceutical Services), which requires compound drugs to be billed by listing each drug included in the compound and calculating the charge for each drug separately. The amendment is necessary to clarify the billing of compound drugs in the Texas workers' compensation system.

Section 133.10(f)(4)(E) deletes the requirement that billing providers filing bills for dental services using the ADA 2006 Dental Claim Form must enter 'UNKNOWN' if the workers' compensation claim number is not known. If the workers' compensation claim number is not known to the billing provider, field 15 "Policyholder/Subscriber ID (SSN or ID#)" must be left blank. The amendment is necessary to align the requirements of §133.10 with 28 TAC §§133.200, 134.803 and 134.804, which require the reporting of medical billing and payment information to the Division.

Section 133.10(g) deletes the requirement that the billing provider use a default value of '999999999' if the injured worker does not have a Social Security Number as required in subsection (f). If the Social Security Number is unknown, the field must be left blank. The amendment to existing §133.10(g) is necessary to align with 28 TAC §§133.200, 134.803 and 134.804, which require the reporting of medical billing and payment information to the Division.

Section 133.10(l) changes the effective date from August 1, 2011 to April 1, 2014. The effective date in §133.10(l) is necessary to comply with the implementation timeline set out by CMS for submission and processing of paper claims submitted on the CMS-1500 (02/12). The Division changed the term "filed" to "submitted" in §133.10(l) for consistency with 28 TAC §133.20 and §408.027.

Section 133.10 specifies the required billing forms and formats that healthcare providers, pharmacists and pharmacy processing agents, and dentists must use for a complete medical bill related to Texas workers' compensation healthcare.

SUMMARY OF COMMENTS AND AGENCY RESPONSES

General

Comment: A commenter agrees that the alignment of the workers' compensation billing requirements with the federal CMS changes is an appropriate objective. The commenter states that Labor Code §413.001 requires the Commissioner of Workers' Compensation to adopt rules aligned with the federal CMS coding and billing policies to promote standardization and efficiency.

A commenter applauds the Division for being one of several state workers' compensation agencies to address the need to update regulations regarding submission of the CMS-1500 claim form. The commenter explains that several states have not yet taken steps to update their workers' compensation billing regulations for the new form version or its accompanying updated National Uniform Claim Committee (NUCC) instructions, which can be concerning for payers, processers and providers who will be re-

quired by Medicare to use only the new form version and its specific standard instructions by April 1, 2014.

A commenter supports the amendments to §133.10(b)(1), (f)(1)(I), (f)(1)(J), (f)(1)(M) and (g) and believes each proposed amendment aligns closely with CMS standards while also minimizing burdens on providers.

A commenter strongly agrees with and supports the requirement in §133.10(f)(3)(AA), that clarifies that bills for compound drugs must be submitted in accordance with §134.502 (addressing pharmaceutical services). The commenter notes that §133.10(f)(3)(AA) contains a requirement in existing §134.502(d)(2) that ingredient-level billing is in conformity with the Division's adopted electronic billing standards for pharmacy transactions: NCPDP Telecommunication Standard D.0 and Batch Standard 1.2.

A commenter states that the requirements in §133.10(f)(3)(AA) are common practice in pharmacy billing across many healthcare markets because they provides needed transparency as to what specific underlying medications are being provided to patients and aids in more accurate and reasonable reimbursement. A commenter states that ingredient national drug codes (NDCs) are also needed to properly apply the Division's Pharmacy Fee Guideline. The commenter states this requirement aids in determining applicability of the Division's Pharmacy Closed Formulary rules to ingredients within the compound, which may be listed.

A commenter agrees that the new NUCC requirement to submit the employer's workers' compensation policy number in field 11 is less relevant to the adjudication of a medical bill in workers' compensation and potentially burdensome on providers. The commenter supports not adding this data element as a new requirement for Texas workers' compensation.

Division Response: The Division appreciates the supportive comments.

§133.10(f)(1)(H).

Comment: A commenter recommends §133.10(f)(1)(H) align with the standard instructions for use of the CMS-1500 (02/12) and to better comply with Labor Code provisions requiring adoption of standardized structures for billing.

A commenter states that field 11 on the new form version should be used for workers' compensation purposes only to submit the employer's workers' compensation policy number. The commenter states that only field 11b should be used to submit the workers' compensation claim number assigned by the insurance carrier. The commenter states the Division's proposed rules suggest field 11 should still be used to submit the claim number and population of 11b is not addressed.

A commenter strongly encourages use of field 11b only for submission of the claim number on the new form to avoid a requirement unique to Texas, to maintain standardization, and ease the transition for providers. The commenter states that other states may require claim number submission in field 11b rather than field 11. The commenter states that maintaining different submission standards in Texas compared to other states may create an additional burden on providers and the payers reviewing their bills.

The commenter also states this will be more in line with the statutory requirement in Labor Code §413.011(a).

Division Response: The Division agrees that the NUCC has changed its standard instructions for fields 11 and 11b. However, the Division disagrees that these changes are necessary for the Texas workers' compensation system. The Division has determined that the field changes are not relevant to the adjudication of a medical bill in the Texas workers' compensation system and are potentially burdensome to healthcare providers. The changes would offer no new information necessary for a complete medical bill and may require programming changes from system participants. The Division disagrees with the recommendation because such changes are not necessary, could cause confusion, and medical bills that would be complete under the adopted rule would potentially be rejected based on a failure to correctly fill in an unnecessary field. Labor Code §413.011(a) requires the Division to adopt standardized structures based on the most current CMS policies with respect to billing. However, under Labor Code §413.011(a) and §413.053, the commissioner has discretion to establish standards for the Division that may diverge from federal standards to meet the requirements of the Texas workers' compensation system.

§133.10(l)

Comment: Commenters suggest amendments to the timelines for rule implementation. A commenter noted that the revised CMS 1500 paper claim form was changed by the NUCC to accommodate and implement ICD-10-CM diagnosis codes. The commenter states that revised form includes indicators for differentiating between ICD-9-CM and ICD-10-CM diagnosis codes, expands the number of possible diagnosis codes to 12, and contains qualifiers to identify provider roles of ordering, referring, and supervising that will require substantive and administrative adjustments. The commenter states the Division should allow for a dual use period, as well as align with the CMS tentative schedule for implementing the revised form for an effective transition.

A commenter states that the effective date does not align with the proposed CMS dual use period, between January 6, 2014 and April 1, 2014. The commenter strongly recommends that the Division follow the CMS timeline to assist physicians in compliance with claim filing requirements and decrease administrative burden on physicians.

A commenter is concerned implementing the changes to the form. The commenter states some health care providers may start submitting medical bills using the updated CMS-1500 before the 04/01/2014 effective date. The commenter states there is also a concern over the possible use of ICD-10 codes by the health care provider prior to the effective date of 10/01/2014. Based on these concerns, the commenter would like guidance from the Division over whether or not medical bills should be rejected for submitting the wrong version of the CMS-1500 form or for using the wrong version of the ICD codes. The commenter noted that the Maryland Workers Compensation Commission recently adopted the CMS-1500 (version 02/12) effective 04/01/2014 and ICD-10 effective 10/01/2014 and provided guidance to stakeholders. The commenter suggests that the Maryland timeline provides for an orderly transition for both health care providers and carriers for the mandatory use of CMS-1500 (version 02/12) and ICD-10 codes based on current CMS directives.

Division's Response: The Division declines to make the suggested change. The Division recognizes that changes to the form will require administrative adjustments for both healthcare providers and insurance carriers. While providers who participate in the Medicare system may be ready to implement these form changes starting in January, most workers' compensation

insurance carriers will not be ready to accept the new form at the time. The division has determined the April 1, 2014 deadline will afford the hundreds of insurance carriers participating in the system ample time to update their bill processing systems as necessary in order to ensure that medical bills submitted are processed correctly and timely. It will also provide the Division ample time to conduct outreach activities to educate those healthcare providers who treat workers' compensation patients, but do not participate in the Medicare system. The Division acknowledges that Medicare's tentative timeline has a dual use period, but has determined that a dual use period is not appropriate for the Texas workers' compensation system because the significant volume of varying billing formats and submissions might cause confusion, which may result in unnecessary medical bill denials and fee disputes. The single deadline of April 1, 2014 offers system participants certainty as to the implementation date. The Division anticipates offering guidance on the ICD-9 to ICD-10 diagnoses codes through educational and informational outreach.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS

For: None

For, with changes: Texas Medical Association, Property Casualty Insurers Association of America, and PMSI

Against: None

Neither for nor against, with changes: None

This amended section is adopted under the Labor Code §§402.00111, 402.061, 413.053 and 413.011. Labor Code §413.011 generally requires the Commissioner of Workers' Compensation to adopt rules aligned with the federal Centers for Medicare and Medicaid Services coding and billing policies and permit modification when necessary. Labor Code §413.053 requires the Commissioner to establish standards of reporting and billing governing both form and content. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

§133.10. Required Billing Forms/Formats.

(a) Health care providers, including those providing services for a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 or to political subdivisions with contractual relationships under Labor Code §504.053(b)(2), shall submit medical bills for payment in an electronic format in accordance with §133.500 and §133.501 of this title (relating to Electronic Formats for Electronic Medical Bill Processing and Electronic Medical Bill Processing), unless the health care provider or the billed insurance carrier is exempt from the electronic billing process in accordance with §133.501 of this title.

(b) Except as provided in subsection (a) of this section, health care providers, including those providing services for a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 or to political subdivisions with contractual relationships under Labor Code §504.053(b)(2), shall submit paper medical bills for payment on:

(1) the 1500 Health Insurance Claim Form Version 02/12 (CMS-1500);

(2) the Uniform Bill 04 (UB-04); or

(3) applicable forms prescribed for pharmacists, dentists, and surgical implant providers specified in subsections (c), (d) and (e) of this section.

(c) Pharmacists and pharmacy processing agents shall submit bills using the Division form DWC-066. A pharmacist or pharmacy processing agent may submit bills using an alternate billing form if:

(1) the insurance carrier has approved the alternate billing form prior to submission by the pharmacist or pharmacy processing agent; and

(2) the alternate billing form provides all information required on the Division form DWC-066.

(d) Dentists shall submit bills for dental services using the 2006 American Dental Association (ADA) Dental Claim form.

(e) Surgical implant providers requesting separate reimbursement for implantable devices shall submit bills using:

(1) the form prescribed in subsection (b)(1) of this section when the implantable device reimbursement is sought under §134.402 of this title (relating to Ambulatory Surgical Center Fee Guideline); or

(2) the form prescribed in subsection (b)(2) of this section when the implantable device reimbursement is sought under §134.403 or §134.404 of this title (relating to Hospital Facility Fee Guideline--Outpatient and Hospital Facility Fee Guideline--Inpatient).

(f) All information submitted on required paper billing forms must be legible and completed in accordance with this section. The parenthetical information following each term in this section refers to the applicable paper medical billing form and the field number corresponding to the medical billing form.

(1) The following data content or data elements are required for a complete professional or noninstitutional medical bill related to Texas workers' compensation health care:

(A) patient's Social Security Number (CMS-1500/field 1a) is required;

(B) patient's name (CMS-1500/field 2) is required;

(C) patient's date of birth and gender (CMS-1500/field 3) is required;

(D) employer's name (CMS-1500/field 4) is required;

(E) patient's address (CMS-1500/field 5) is required;

(F) patient's relationship to subscriber (CMS-1500, field 6) is required;

(G) employer's address (CMS-1500, field 7) is required;

(H) workers' compensation claim number assigned by the insurance carrier (CMS-1500/field 11) is required when known, the billing provider shall leave the field blank if the workers' compensation claim number is not known by the billing provider;

(I) date of injury and "431" qualifier (CMS-1500, field 14) are required;

(J) name of referring provider or other source is required when another health care provider referred the patient for the services; No qualifier indicating the role of the provider is required (CMS-1500, field 17);

(K) referring provider's state license number (CMS-1500/field 17a) is required when there is a referring doctor listed in CMS-1500/field 17; the billing provider shall enter the '0B'

qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX');

(L) referring provider's National Provider Identifier (NPI) number (CMS-1500/field 17b) is required when CMS-1500/field 17 contains the name of a health care provider eligible to receive an NPI number;

(M) diagnosis or nature of injury (CMS-1500/field 21) is required, at least one diagnosis code and the applicable ICD indicator must be present;

(N) prior authorization number (CMS-1500/field 23) is required when preauthorization, concurrent review or voluntary certification was approved and the insurance carrier provided an approval number to the requesting health care provider;

(O) date(s) of service (CMS-1500, field 24A) is required;

(P) place of service code(s) (CMS-1500, field 24B) is required;

(Q) procedure/modifier code (CMS-1500, field 24D) is required;

(R) diagnosis pointer (CMS-1500, field 24E) is required;

(S) charges for each listed service (CMS-1500, field 24F) is required;

(T) number of days or units (CMS-1500, field 24G) is required;

(U) rendering provider's state license number (CMS-1500/field 24j, shaded portion) is required when the rendering provider is not the billing provider listed in CMS-1500/field 33; the billing provider shall enter the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX');

(V) rendering provider's NPI number (CMS-1500/field 24j, unshaded portion) is required when the rendering provider is not the billing provider listed in CMS-1500/field 33 and the rendering provider is eligible for an NPI number;

(W) supplemental information (shaded portion of CMS-1500/fields 24d - 24h) is required when the provider is requesting separate reimbursement for surgically implanted devices or when additional information is necessary to adjudicate payment for the related service line;

(X) billing provider's federal tax ID number (CMS-1500/field 25) is required;

(Y) total charge (CMS-1500/field 28) is required;

(Z) signature of physician or supplier, the degrees or credentials, and the date (CMS-1500/field 31) is required, but the signature may be represented with a notation that the signature is on file and the typed name of the physician or supplier;

(AA) service facility location information (CMS-1500/field 32) is required;

(BB) service facility NPI number (CMS-1500/field 32a) is required when the facility is eligible for an NPI number;

(CC) billing provider name, address and telephone number (CMS-1500/field 33) is required;

(DD) billing provider's NPI number (CMS-1500/Field 33a) is required when the billing provider is eligible for an NPI number; and

(EE) billing provider's state license number (CMS-1500/field 33b) is required when the billing provider has a state license number; the billing provider shall enter the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX').

(2) The following data content or data elements are required for a complete institutional medical bill related to Texas workers' compensation health care:

(A) billing provider's name, address, and telephone number (UB-04/field 01) is required;

(B) patient control number (UB-04/field 03a) is required;

(C) type of bill (UB-04/field 04) is required;

(D) billing provider's federal tax ID number (UB-04/field 05) is required;

(E) statement covers period (UB-04/field 06) is required;

(F) patient's name (UB-04/field 08) is required;

(G) patient's address (UB-04/field 09) is required;

(H) patient's date of birth (UB-04/field 10) is required;

(I) patient's gender (UB-04/field 11) is required;

(J) date of admission (UB-04/field 12) is required when billing for inpatient services;

(K) admission hour (UB-04/field 13) is required when billing for inpatient services other than skilled nursing inpatient services;

(L) priority (type) of admission or visit (UB-04/field 14) is required;

(M) point of origin for admission or visit (UB-04/field 15) is required;

(N) discharge hour (UB-04/field 16) is required when billing for inpatient services with a frequency code of "1" or "4" other than skilled nursing inpatient services;

(O) patient discharge status (UB-04/field 17) is required;

(P) condition codes (UB-04/fields 18 - 28) are required when there is a condition code that applies to the medical bill;

(Q) occurrence codes and dates (UB-04/fields 31 - 34) are required when there is an occurrence code that applies to the medical bill;

(R) occurrence span codes and dates (UB-04/fields 35 and 36) are required when there is an occurrence span code that applies to the medical bill;

(S) value codes and amounts (UB-04/fields 39 - 41) are required when there is a value code that applies to the medical bill;

(T) revenue codes (UB-04/field 42) are required;

(U) revenue description (UB-04/field 43) is required;

(V) HCPCS/Rates (UB-04/field 44):

(i) HCPCS codes are required when billing for outpatient services and an appropriate HCPCS code exists for the service line item; and

(ii) accommodation rates are required when a room and board revenue code is reported;

(W) service date (UB-04/field 45) is required when billing for outpatient services;

(X) service units (UB-04/field 46) is required;

(Y) total charge (UB-04/field 47) is required;

(Z) date bill submitted, page numbers, and total charges (UB-04/field 45/line 23) is required;

(AA) insurance carrier name (UB-04/field 50) is required;

(BB) billing provider NPI number (UB-04/field 56) is required when the billing provider is eligible to receive an NPI number;

(CC) billing provider's state license number (UB-04/field 57) is required when the billing provider has a state license number; the billing provider shall enter the license number and jurisdiction code (for example, '123TX');

(DD) employer's name (UB-04/field 58) is required;

(EE) patient's relationship to subscriber (UB-04/field 59) is required;

(FF) patient's Social Security Number (UB-04/field 60) is required;

(GG) workers' compensation claim number assigned by the insurance carrier (UB-04/field 62) is required when known, the billing provider shall leave the field blank if the workers' compensation claim number is not known by the billing provider;

(HH) preauthorization number (UB-04/field 63) is required when preauthorization, concurrent review or voluntary certification was approved and the insurance carrier provided an approval number to the health care provider;

(II) principal diagnosis code and present on admission indicator (UB-04/field 67) are required;

(JJ) other diagnosis codes (UB-04/field 67A - 67Q) are required when there conditions exist or subsequently develop during the patient's treatment;

(KK) admitting diagnosis code (UB-04/field 69) is required when the medical bill involves an inpatient admission;

(LL) patient's reason for visit (UB-04/field 70) is required when submitting an outpatient medical bill for an unscheduled outpatient visit;

(MM) principal procedure code and date (UB-04/field 74) is required when submitting an inpatient medical bill and a procedure was performed;

(NN) other procedure codes and dates (UB-04/fields 74A - 74E) are required when submitting an inpatient medical bill and other procedures were performed;

(OO) attending provider's name and identifiers (UB-04/field 76) are required for any services other than nonscheduled transportation services, the billing provider shall report the NPI number for an attending provider eligible for an NPI number and the state license number by entering the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX');

(PP) operating physician's name and identifiers (UB-04/field 77) are required when a surgical procedure code is included on the medical bill, the billing provider shall report the NPI number for an operating physician eligible for an NPI number and the state license number by entering the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX'); and

(QQ) remarks (UB-04/field 80) is required when separate reimbursement for surgically implanted devices is requested.

(3) The following data content or data elements are required for a complete pharmacy medical bill related to Texas workers' compensation health care:

(A) dispensing pharmacy's name and address (DWC-066/field 1) is required;

(B) date of billing (DWC-066/field 2) is required;

(C) dispensing pharmacy's National Provider Identification (NPI) number (DWC-066/field 3) is required;

(D) billing pharmacy's or pharmacy processing agent's name and address (DWC-066/field 4) is required when different from the dispensing pharmacy (DWC-066/field 1);

(E) invoice number (DWC-066/field 5) is required;

(F) payee's federal employer identification number (DWC-066/field 6) is required;

(G) insurance carrier's name (DWC-066/field 7) is required;

(H) employer's name and address (DWC-066/field 8) is required;

(I) injured employee's name and address (DWC-066/field 9) is required;

(J) injured employee's Social Security Number (DWC-066/field 10) is required;

(K) date of injury (DWC-066/field 11) is required;

(L) injured employee's date of birth (DWC-066/field 12) is required;

(M) prescribing doctor's name and address (DWC-066/field 13) is required;

(N) prescribing doctor's NPI number (DWC-066/field 14) is required;

(O) workers' compensation claim number assigned by the insurance carrier (DWC-066/field 15) is required when known, the billing provider shall leave the field blank if the workers' compensation claim number is not known by the billing provider;

(P) dispensed as written code (DWC-066/field 19) is required;

(Q) date filled (DWC-066/field 20) is required;

(R) generic National Drug Code (NDC) code (DWC-066/field 21) is required when a generic drug was dispensed or if dispensed as written code '2' is reported in DWC-066/field 19;

(S) name brand NDC code (DWC-066/field 22) is required when a name brand drug is dispensed;

(T) quantity (DWC-066/field 23) is required;

(U) days supply (DWC-066/field 24) is required;

(V) amount paid by the injured employee (DWC-066/field 26) is required if applicable;

(W) drug name and strength (DWC-066/field 27) is required;

(X) prescription number (DWC-066/field 28) is required;

(Y) amount billed (DWC-066/field 29) is required;

(Z) preauthorization number (DWC-066/field 30) is required when preauthorization, voluntary certification, or an agreement was approved and the insurance carrier provided an approval number to the requesting health care provider; and

(AA) for billing of compound drugs refer to the requirements in §134.502 of this title (relating to Pharmaceutical Services).

(4) The following data content or data elements are required for a complete dental medical bill related to Texas workers' compensation health care:

(A) type of transaction (ADA 2006 Dental Claim Form/field 1);

(B) preauthorization number (ADA 2006 Dental Claim Form/field 2) is required when preauthorization, concurrent review or voluntary certification was approved and the insurance carrier provided an approval number to the health care provider;

(C) insurance carrier name and address (ADA 2006 Dental Claim Form/field 3) is required;

(D) employer's name and address (ADA 2006 Dental Claim Form/field 12) is required;

(E) workers' compensation claim number assigned by the insurance carrier (ADA 2006 Dental Claim Form/field 15) is required when known, the billing provider shall leave the field blank if the workers' compensation claim number is not known by the billing provider;

(F) patient's name and address (ADA 2006 Dental Claim Form/field 20) is required;

(G) patient's date of birth (ADA 2006 Dental Claim Form/field 21) is required;

(H) patient's gender (ADA 2006 Dental Claim Form/field 22) is required;

(I) patient's Social Security Number (ADA 2006 Dental Claim Form/field 23) is required;

(J) procedure date (ADA 2006 Dental Claim Form/field 24) is required;

(K) tooth number(s) or letter(s) (ADA 2006 Dental Claim Form/field 27) is required;

(L) procedure code (ADA 2006 Dental Claim Form/field 29) is required;

(M) fee (ADA 2006 Dental Claim Form/field 31) is required;

(N) total fee (ADA 2006 Dental Claim Form/field 33) is required;

(O) place of treatment (ADA 2006 Dental Claim Form/field 38) is required;

(P) treatment resulting from (ADA 2006 Dental Claim Form/field 45) is required, the provider shall check the box for occupational illness/injury;

(Q) date of injury (ADA 2006 Dental Claim Form/field 46) is required;

(R) billing provider's name and address (ADA 2006 Dental Claim Form/field 48) is required;

(S) billing provider's NPI number (ADA 2006 Dental Claim Form/field 49) is required if the billing provider is eligible for an NPI number;

(T) billing provider's state license number (ADA 2006 Dental Claim Form/field 50) is required when the billing provider is a licensed health care provider; the billing provider shall enter the license type, license number, and jurisdiction code (for example, 'DS1234TX');

(U) billing provider's federal tax ID number (ADA 2006 Dental Claim Form/field 51) is required;

(V) rendering dentist's NPI number (ADA 2006 Dental Claim Form/field 54) is required when different than the billing provider's NPI number (ADA 2006 Dental Claim Form/field 49) and the rendering dentist is eligible for an NPI number;

(W) rendering dentist's state license number (ADA 2006 Dental Claim Form/field 55) is required when different than the billing provider's state license number (ADA 2006 Dental Claim Form/field 50), the billing provider shall enter the license type, license number, and jurisdiction code (for example, 'MDF1234TX'); and

(X) rendering provider's and treatment location address (ADA 2006 Dental Claim Form/field 56) is required when different from the billing provider's address (ADA Dental Claim Form/field 48).

(g) If the injured employee does not have a Social Security Number as required in subsection (f) of this section, the health care provider must leave the field blank.

(h) Except for facility state license numbers, state license numbers submitted under subsection (f) of this section must be in the following format: license type, license number, and jurisdiction state code (for example 'MDF1234TX').

(i) In reporting the state license number under subsection (f) of this section, health care providers should select the license type that most appropriately reflects the type of medical services they provided to the injured employees. When a health care provider does not have a state license number, the field is submitted with only the license type and jurisdiction code (for example, DMTX). The license types used in the state license format must be one of the following:

(1) AC for Acupuncturist;

(2) AM for Ambulance Services;

(3) AS for Ambulatory Surgery Center;

(4) AU for Audiologist;

(5) CN for Clinical Nurse Specialist;

(6) CP for Clinical Psychologist;

(7) CR for Certified Registered Nurse Anesthetist;

(8) CS for Clinical Social Worker;

(9) DC for Doctor of Chiropractic;

(10) DM for Durable Medical Equipment Supplier;

(11) DO for Doctor of Osteopathy;

(12) DP for Doctor of Podiatric Medicine;

(13) DS for Dentist;

(14) IL for Independent Laboratory;

(15) LP for Licensed Professional Counselor;

(16) LS for Licensed Surgical Assistant;

(17) MD for Doctor of Medicine;

(18) MS for Licensed Master Social Worker;

(19) MT for Massage Therapist;

(20) NF for Nurse First Assistant;

(21) OD for Doctor of Optometry;

(22) OP for Orthotist/Prosthetist;

(23) OT for Occupational Therapist;

(24) PA for Physician Assistant;

(25) PM for Pain Management Clinic;

(26) PS for Psychologist;

(27) PT for Physical Therapist;

(28) RA for Radiology Facility; or

(29) RN for Registered Nurse.

(j) When resubmitting a medical bill under subsection (f) of this section, a resubmission condition code may be reported. In reporting a resubmission condition code, the following definitions apply to the resubmission condition codes established by the Uniform National Billing Committee:

(1) W3 - Level 1 Appeal means a request for reconsideration under §133.250 of this title (relating to Reconsideration for Payment of Medical Bills) or an appeal of an adverse determination under Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage);

(2) W4 - Level 2 Appeal means a request for reimbursement as a result of a decision issued by the division, an Independent Review Organization, or a Network complaint process; and

(3) W5 - Level 3 Appeal means a request for reimbursement as a result of a decision issued by an administrative law judge or judicial review.

(k) The inclusion of the appropriate resubmission condition code and the original reference number is sufficient to identify a resubmitted medical bill as a request for reconsideration under §133.250 of this title or an appeal of an adverse determination under Chapter 19, Subchapter U of this title provided the resubmitted medical bill complies with the other requirements contained in the appropriate section.

(l) This section is effective for medical bills submitted on or after April 1, 2014.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2013.

TRD-201305959
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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Proposal publication date: October 11, 2013
For further information, please call: (512) 804-4703

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.281

The Comptroller of Public Accounts adopts an amendment to §3.281, concerning Records Required; Information Required, without changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5417). This section is being amended to implement provisions of Senate Bill 934, 82nd Legislature, 2011, and Senate Bill 1, 82nd Legislature, First Called Session, 2011.

Subsection (b)(1) is amended, and new subsection (b)(4) is added, to implement Section 14 of Senate Bill 934, 82nd Legislature, 2011. Section 14 amended Tax Code, §151.025(a) to require all sellers, and other persons storing, using, or consuming a taxable item purchased from a seller, to keep records of all gross receipts and to keep records showing all sales and use tax, and any money represented to be sales and use tax, received or collected on each sale, rental, lease, or service transaction during each reporting period. The following paragraph is renumbered accordingly.

Subsection (c) is amended to implement Sections 17 and 18 of Senate Bill 934, 82nd Legislature, 2011. Section 17 amended Tax Code, §151.707(b) to apply subsection (b) to all offenses described under Tax Code, §151.707(a). Section 18 amended Tax Code, Chapter 151, Subchapter L, to add §151.7075. This new section creates a criminal penalty for knowingly failing to produce records that are required to be kept under Tax Code, §151.025, and that document a taxpayer's sale of beer, wine, or malt liquor, cigarettes, or cigars and tobacco products that the taxpayer obtained using a resale certificate, when such records are requested by the comptroller under Tax Code, §151.023.

Subsection (c) is further amended to implement Section 4.02 of Senate Bill 1, 82nd Legislature, First Called Session, 2011, which amended Tax Code, §111.0041 to require taxpayers to keep and produce contemporaneous records.

Subsection (e) is amended to implement Section 4.02 of Senate Bill 1, 82nd Legislature, First Called Session, 2011, which amended Tax Code, §111.0041 to require taxpayers to keep records for a minimum of 4 years and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller, or in which an administrative hearing or judicial proceeding is pending.

No comments were received regarding adoption of the amendment.

The section is adopted under Tax Code, §111.002 and §111.0022, which provide 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, as well as taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §§151.025, 111.0041, 151.707, and 151.7075.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2013.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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Proposal publication date: August 23, 2013
For further information, please call: (512) 475-0387

SUBCHAPTER NN. FIREWORKS TAX

34 TAC §3.1281

The Comptroller of Public Accounts adopts an amendment to §3.1281, concerning fireworks tax, with changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6562). The text will be republished.

This section is being amended to implement Senate Bill 1, Article 14, 82nd Legislature, 2011, First Called Session and to reflect policy clarification.

Subsection (a)(1) is added to provide a definition for consignment sales. The remaining paragraphs are renumbered accordingly.

Subsection (c) is amended to reflect the new name of §3.286 of this title, which was amended effective July 11, 2010.

Subsection (d) is added to explain and clarify the sales tax collection responsibility of sellers making consignment sales. The remaining subsections are relettered accordingly.

Subsection (g), formerly subsection (f), is reworded to reflect that additional language is included under the heading relating to when a report is timely.

Subsection (g)(2) - (4) are added to specify due dates for tax reports and payments. For consistency and clarity, the term "returns" is now changed to the term "reports" in these paragraphs.

Subsection (i), formerly subsection (h), is reworded to add information relating to late filing fees. For consistency and clarity, the term "returns" is now changed to the term "reports" in this subsection.

Subsection (i)(4) is added to implement Senate Bill 1, Article 14, 82nd Legislature, 2011, First Called Session, which repealed Tax Code, §151.7031 and added §151.703(d), both effective October 1, 2011. The repealed statutory language imposed a $50 filing penalty on a person for each report filed after the due date, when the person had failed to file a timely report on two or more previous occasions. New Tax Code, §151.703(d) imposes a $50 penalty for each time a person fails to file a report on or before the due date without regard to whether or not the person has previously failed to file a timely report.

No comments were received regarding adoption of the amendment.

This amendment is adopted 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.

This amendment implements Tax Code, §151.703(d).

§3.1281. Fireworks Tax.

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

(1) Consignment sale--An arrangement where a consignee pays a distributor only for items that the consignee sells and returns any unsold items.

(2) Fireworks--Any composition or device that is designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation that is classified as Division 1.4G explosives by the United States Department of Transportation in 49 C.F.R. Part 173 as of September 1, 1999. Examples of fireworks include items that are commonly known as firecrackers, bottle rockets, Roman candles, and shooting stars.

(3) Retail sale--Any sale of fireworks directly to the public.

(4) Sales tax--The tax imposed by Tax Code, Chapter 151.

(b) Imposition. A 2.0% tax is imposed on the retail sale of fireworks in Texas. The fireworks tax imposed under Tax Code, Chapter 161, is in addition to any state and local sales taxes that are due on the retail sale of fireworks.

(c) Collection. Each seller must collect the fireworks tax from the purchaser on the total price of each retail sale of fireworks in Texas. The fireworks tax is collected in the same manner as sales tax. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, Collection and Exemption Rules, and Criminal Penalties) for information on the collection and remittance of sales tax.

(d) Consignment sales. For Texas tax purposes, distributors who make consignment sales of fireworks are considered the sellers of the fireworks and are responsible for reporting and remitting the sales and fireworks taxes due on all retail sales made by consignees.

(e) Exclusions and exemptions.

(1) The following items are excluded from the fireworks tax base, but retail sales of these items may be subject to sales tax:

(A) a toy pistol, toy cane, toy gun, or other device that uses a paper or plastic cap;

(B) a model rocket or model rocket motor that is designed, sold, and used for the purpose of propelling a recoverable aero model;

(C) a propelling or expelling charge that consists of a mixture of sulfur, charcoal, and potassium nitrate;

(D) a novelty or trick noisemaker;

(E) a pyrotechnic signaling device or distress signal that is designed for marine, aviation, or highway use in an emergency situation;

(F) a fusee or railway torpedo for use by a railroad;

(G) a blank cartridge that is sold for use in a radio, television, film, or theater production, for signal or ceremonial purposes in athletic events, or for industrial purposes; or

(H) a pyrotechnic device that is sold for use by a military organization.

(2) No fireworks tax is due on a sale that is exempt from sales tax.

(3) A seller who accepts a valid and properly completed resale or exemption certificate for sales tax is not required to collect the fireworks tax. All sales that are unsupported by valid resale or exemption certificates or by other exemption documentation acceptable under the law are considered to be retail sales, and the seller will be liable for the fireworks tax on those sales.

(f) Reports. A seller must report the fireworks tax to the comptroller on forms that the comptroller prescribes. A seller who fails to receive the correct form from the comptroller is not relieved of the responsibility for filing a fireworks tax report and for payment of the tax by the due date.

(g) Due dates for reports and payments. A seller must report and remit fireworks tax on or before the applicable due date for the sales period as specified in this section.

(1) The due dates are:

(A) August 20 for tax collected on sales that occur during:

(i) the period that begins May 1 and ends at midnight on May 5 at a location that is not more than 100 miles from the Texas-Mexico border in a county in which the commissioners court has approved the sale of fireworks during that period; and

(ii) the period that begins on June 24 and ends at midnight on July 4; and

(B) February 20 for tax collected on sales that occur during the period that begins December 20 and ends at midnight on January 1.

(2) Reports and remittances that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(3) Reports submitted by mail must be postmarked on or before the due date to be considered timely.

(4) Reports filed electronically must be completed and submitted by 11:59 p.m., central time, on the due date to be considered timely.

(h) Prepayment and timely filing discounts.

(1) The 1.75% sales tax prepayment discount does not apply to fireworks tax.

(2) A seller who timely files the fireworks report and pays the tax due on or before the applicable due date may retain 0.5% of the gross fireworks tax due.

(i) Late filing of reports and payment of tax due; penalty and interest.

(1) If the tax is paid or postmarked one to 30 days after the due date, a penalty of 5.0% of the tax due is imposed.

(2) If the tax is paid or postmarked more than 30 days after the due date, a penalty of 10% of the tax due is imposed.

(3) If the tax is paid or postmarked more than 60 days after the due date, interest is also due on the late payment. Interest is applied at the applicable annual rate to the amount of the delinquent tax due, exclusive of any late penalty. The comptroller publishes the annual interest rate online at www.window.state.tx.us and by phone at 1-877-44RATE4.

(4) A late filing penalty of $50 is imposed for each report that is not filed on or before the due date. The penalty is due regardless of whether the person subsequently files the report or whether no taxes are due for the reporting period. The $50 penalty is due in addition to any other penalties assessed for the reporting period.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

CHAPTER 13. UNCLAIMED PROPERTY REPORTING AND COMPLIANCE

34 TAC §13.21

The Comptroller of Public Accounts adopts new §13.21, concerning property report format, with changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7421). The new section is necessary to better enable the comptroller's office to efficiently process reported property information and identify persons who are entitled to unclaimed property in a timely manner. The section establishes requirements for the submission method, accessibility and format of property reports and defines consequences for non-compliance.

We received one comment from the State Tax Committee of the Texas Society of Certified Public Accountants expressing concern that proposed subsections (e) and (f) did not allow sufficient time for holders to submit revised property reports; and seeking clarification regarding the imposition of criminal penalties in subsection (f) for failure to comply with reporting requirements. In response, subsections (e) and (f) have been revised to allow 30 calendar days for holders to submit revised property reports. We determined no need for additional revisions to subsection (f) because it clearly states the criminal penalties are conditioned upon failure to resubmit revised property reports within the specified timeframe.

The new rule is authorized under Property Code, §74.701, which allows the comptroller to adopt rules necessary to carry out the property report process.

The new rule implements Property Code, §§74.101(a), 74.709(f), and 74.710(a)(1); (b).

§13.21. Property Report Format.

(a) Property report(s) filed by a holder pursuant to Property Code, Chapters 72-75, shall be submitted to the comptroller in the NAUPA2 format via one of the online submission methods specified in the Comptroller's Unclaimed Property Reporting Instructions.

(b) Information contained in property report(s) shall comply with the data entry standards for property type, securities delivery and country codes, owner name and property description fields, and abbre-

viations of owner title and common terms as specified in the Unclaimed Property Reporting Instructions.

(c) Incomplete reports and reports not meeting the format specifications described above will be rejected by the comptroller and returned to the holder for correction. The comptroller will keep a copy of any report that is returned for correction.

(d) Information shall be submitted in a format that is accessible by the comptroller's office. Reports that are encrypted, corrupted, or otherwise inaccessible will be rejected by the comptroller and returned to the holder for correction. The comptroller will keep a copy of any report that is returned for correction.

(e) When a report is rejected, the responsible holder shall submit a revised, complete, accessible and properly formatted report to the comptroller no later than 30 calendar days after notification of the rejection.

(f) If a complete, accessible, and properly formatted report is not resubmitted within 30 calendar days after notification of the rejection, the holder will be considered delinquent and subject to interest and civil penalties and criminal charges in Property Code, Chapter 74, Subchapter H, until a complete and properly formatted report is submitted to the comptroller.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.19

The Texas Board of Criminal Justice adopts amendments to §159.19, Continuity of Care and Service Program for Offenders who are Elderly and Offenders with Physical Disabilities or Significant or Terminal Illnesses, without changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5854).

The adopted amendments are necessary to conform the title with appropriate statutory references and to update the address for the Texas Correctional Office on Offenders with Medical or Mental Impairments.

No comments were received regarding the amendments.

The amendments are adopted under Texas Health and Safety Code §614.014 and §614.015.

Cross Reference to Statutes: Texas Health and Safety Code §614.007 and §614.008.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201305931
Sharon Felfe Howell
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Texas Department of Criminal Justice
Effective date: January 2, 2014
Proposal publication date: September 6, 2013
For further information, please call: (512) 463-9693

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.43

The Texas Board of Criminal Justice adopts amendments to §163.43, concerning Funding and Financial Management, without changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7426).

The adopted amendments are necessary to revise language; clarify mileage and per diem reimbursements standards for community supervision and corrections department employees; and to make grammatical and formatting updates.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code, §509.003 and §509.004.

Cross Reference to Statutes: Texas Government Code, §§76.004, 76.008, 76.009, 76.010, and 492.013 and Chapter 551, and Texas Local Government Code, §140.003 and §140.004.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
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Proposal publication date: October 25, 2013
For further information, please call: (512) 463-9693

CHAPTER 195. PAROLE

37 TAC §195.51

The Texas Board of Criminal Justice adopts amendments to §195.51, concerning Sex Offender Supervision, without changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5854).

No comments were received regarding the amendments.

The amendment is adopted under Texas Government Code, §492.013, which grants general rulemaking authority to the Board of Criminal Justice, and §508.112, which gives the Parole Division responsibility for supervision of releasees.

Cross Reference to Statutes: Texas Government Code, §508.112.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
Texas Department of Criminal Justice
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For further information, please call: (512) 463-9693

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement (Commission) adopts an amendment to §211.1, concerning Definitions, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7631). The section will not be republished.

The amendment changes language in §211.1, Definitions, to conform the definition of "Commission" to the statutory agency name change.

It clarifies and conforms the definitions of "Contractual Training Provider," "Law Enforcement Academy," and "Training Provider" to the commission's longstanding practice of entering into contractual relationships with training providers. The frame mounted optical enhancing sighting device defined in "Patrol Rifle" is changed from 3 power to 5 power to expand the varieties of acceptable patrol rifles.

Also, in response to the statutory creation of the school marshal program, the amendment defines "School Marshal."

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

37 TAC §211.27

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §211.27, concerning Reporting Responsibilities of Individuals, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7634). The section will not be republished.

The repeal of §211.27, Reporting Responsibilities of Individuals, is replaced by a new rule which incorporates telecommunicator licenses and removes cross-referencing to only peace officers and jailers.

This repeal is necessary to conform to the amended telecommunicator licensee statute by clarifying "licensee" to include telecommunicators. It also clarifies that a single military, not F-5 Report of Separation, dishonorable or bad conduct discharge is a disqualifier or violation.

No comments were received regarding adoption of this repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7713

37 TAC §211.27

The Texas Commission on Law Enforcement (Commission) adopts new §211.27, concerning Reporting Responsibilities of Individuals, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7634). The section will not be republished.

New §211.27, Reporting Responsibilities of Individuals, clarifies "licensee" to include telecommunicators. It also clarifies that a

single military, not F-5 Report of Separation, dishonorable or bad conduct discharge is a disqualifier or violation.

The new rule is necessary to conform to statutory amendments and clarify disqualifiers.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.405, Telecommunicators.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

37 TAC §211.33

The Texas Commission on Law Enforcement (Commission) adopts amendments to §211.33, concerning Law Enforcement Achievement Awards, with changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7635). The section will be republished.

The amendments to §211.33, Law Enforcement Achievement Awards, add telecommunicator licensee as a licensee eligible for an achievement award.

This amendment is necessary to conform to statutory amendments.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.405, Telecommunicators.

§211.33. Law Enforcement Achievement Awards.

(a) The commission shall issue achievement awards to qualified peace officers, reserve law enforcement officers, jailers, or telecommunicators licensed by the commission and, hereinafter, will be referred to as the nominees. A nominee for the achievement award must meet the following criteria:

(1) must have maintained, on a continuous basis, an average job performance during the individual's employment or appointment;

(2) must have exhibited relevant characteristics of the following:

(A) valor - an act of personal heroism or bravery which exceeds the normal expectations of job performance, such as placing one's own life in jeopardy to save another person's life, prevent serious bodily injury to another, or prevent the consequences of a criminal act;

(B) public service - when an individual, through initiative, creates or participates in a program or system which has a significant positive impact on the general population of a community which would exceed the normal expectations of job performance; or

(C) professional achievement - when an individual, through personal initiative, fixity of purpose, persistence, or endeavor, creates a program or system which has a significant positive impact on the law enforcement profession which would exceed the normal expectations of job performance;

(3) must have held a license at the time the qualifying act was performed;

(4) shall not ever have had a license suspended, revoked, cancelled, or voluntarily surrendered; and

(5) must not be in violation of Occupations Code, Chapter 1701 or rules of the commission.

(b) The nominations/recommendations for the achievement awards shall be filed as follows:

(1) received by the commission on or before December 31st of each year;

(2) must have been submitted by one of the following:

(A) an elected official of the state;

(B) an elected official of a political subdivision;

(C) an administrator of a law enforcement agency; or

(D) any person holding a current license issued by the commission; and

(3) shall be supported by acceptable evidence of the nominee's qualifications for the award. Such evidence may consist of evaluations, police reports, newspaper clippings, eyewitness accounts, or other valid, confirmable evidence, consisting of certified copies of documents and sworn affidavits.

(c) A committee shall be appointed by the executive director for the purpose of reviewing recommendations. Upon completion of the review, the committee will forward to the executive director nominees for consideration. The executive director will provide a list to the commissioners who will then make the final determination of who merits awards at a regularly scheduled meeting.

(d) The effective date of this section is February 1, 2014.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS

37 TAC §215.1

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §215.1, concerning Licensing of Training Providers, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7636). The section will not be republished.

The repeal of §215.1, Licensing of Training Providers, is necessary in order to adopt a new §215.1 which sets out the Commission's discretionary authority to enter into a contract with a training provider.

The repeal creates no substantive changes to a training provider applicant's previous responsibilities or duties under rule. The repeal helps delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of this repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.251, Training Programs; Instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7713

37 TAC §215.1

The Texas Commission on Law Enforcement (Commission) adopts new §215.1, concerning Commission Authorization of Training Providers, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7636). The section will not be republished.

New §215.1, Commission Authorization of Training Providers, sets out the Commission's discretionary authority to enter into a contract with a training provider.

The new rule is necessary to set out the Commission's discretionary authority to enter into a contract with a training provider. The new rule creates no substantive changes to a training provider applicant's previous responsibilities or duties under rule. The new rule helps delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of this new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.251, Training Programs; Instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7713

37 TAC §215.2

The Texas Commission on Law Enforcement (Commission) adopts new §215.2, concerning General Application and Approval Process, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7637). The section will not be republished.

New §215.2, General Application and Approval Process, sets out the Commission's general approval process for all prospective training provider applicants.

The new rule is necessary to set out the Commission's general approval process for all prospective training provider applicants. This new rule creates no substantive changes to a training provider applicant's previous responsibilities or duties under rule. The new rule helps, delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of this new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.251, Training Programs; Instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
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For further information, please call: (512) 936-7713

37 TAC §215.3

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §215.3, concerning Academy Licensing, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7638). The section will not be republished.

The repeal of §215.3, Academy Licensing, allows for the adoption of a new rule to clarify requirements for law enforcement academies.

The repeal creates no substantive changes to a training provider applicant's previous responsibilities or duties under rule. The repeal helps delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of this repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.251, Training Programs; Instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7713

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37 TAC §215.3

The Texas Commission on Law Enforcement (Commission) adopts new §215.3, concerning Law Enforcement Academy Training Provider, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7638). The section will not be republished.

New §215.3, Law Enforcement Academy Training Provider, clarifies requirements for law enforcement academies.

The new rule is necessary to set out the Commission's general approval process for all prospective training provider applicants. The new rule creates no substantive changes to a training provider applicant's previous responsibilities or duties under rule. The new rule helps delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.251, Training Programs; Instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

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37 TAC §215.5

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §215.5, concerning Contractual Training, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7639). The section will not be republished.

The repeal of §215.5, Contractual Training, allows for the adoption of a new rule to clarify requirements for law enforcement academies.

The repeal creates no substantive changes to a training provider applicant's previous responsibilities or duties under rule. The repeal helps delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.251, Training Programs; Instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7713

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37 TAC §215.5

The Texas Commission on Law Enforcement (Commission) adopts new §215.5, concerning Other Training Providers, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7640). The section will not be republished.

New §215.5, Other Training Providers, establishes specific requirements for academy training provider applicants.

The new rule is necessary to set out the Commission's general approval process for all prospective training provider applicants. The new rule creates no substantive changes to a training provider applicant's previous responsibilities or duties under rule. The new rule helps delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.251, Training Programs; Instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §215.6

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §215.6, concerning Academic Alternative Licensing, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7640). The section will not be republished.

The repeal of §215.6, Academic Alternative Licensing, allows for the adoption of a new rule to clarify requirements for academic alternative training provider applicants.

With the exception of requiring an academic alternative program to conduct a comprehensive review subject to commission approval prior to licensing exam, the repeal creates no substantive changes to an academic alternative training provider applicant's previous responsibilities or duties under rule. The repeal helps delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of this repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.251, Training Programs; Instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §215.6

The Texas Commission on Law Enforcement (Commission) adopts new §215.6, concerning Academic Alternative Training Provider, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7641). The section will not be republished.

New §215.6, Academic Alternative Training Provider, establishes specific requirements for academic alternative training provider applicants.

The new rule is necessary to set out the Commission's general approval process for all prospective academic alternative training provider applicants. With the exception of requiring an academic alternative program to conduct a comprehensive review subject to commission approval prior to licensing exam, the new rule creates no substantive changes to an academic alternative training provider applicant's previous responsibilities or duties under rule. The new rule helps delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of the new rule.

The new section is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The new section as adopted is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors and §1701.252, Program and School Requirements; Advisory Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §215.7

The Texas Commission on Law Enforcement (Commission) adopts amended §215.7, concerning Training Provider Advisory Board, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7641). The section will not be republished.

The amendment to §215.7, Training Provider Advisory Board, is necessary to conform the rule with the Commission's longstanding practice of entering into contracts with training providers by replacing "license" with "contract."

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The amendment as adopted is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors and §1701.252, Program and School Requirements; Advisory Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §215.13

The Texas Commission on Law Enforcement (Commission) adopts amended §215.13, concerning Risk Assessment, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7642). The section will not be republished.

The amendment to §215.13, Risk Assessment, is necessary to conform the rule with the Commission's longstanding practice of entering into contracts with training providers by replacing "license" with "contract."

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter, and §1701.254, Risk Assessment and Inspections.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §215.15

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §215.15, concerning Basic Licensing Enrollment Standards, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7644). The section will not be republished.

The repeal of §215.15, Basic Licensing Enrollment Standards, allows for the adoption of a new rule which deletes redundant information, conforms disqualifying family violence language to current suspension and revocation rules, clarifies longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct, and removes telecommunicators from federal motor vehicle and firearm possession disqualifiers.

This repeal is necessary to set out the Commission's general approval process for all basic licensing enrollment applicants.

No comments were received regarding adoption of this repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §215.16

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §215.16, concerning Telecommunicator Enrollment Standards, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7644). The section will not be republished.

The repeal of §215.16, Telecommunicator Enrollment Standards, allows for the adoption of a new rule which deletes redundant information, conforms disqualifying family violence language to current suspension and revocation rules, and clarifies longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct.

This repeal is necessary to set out the Commission's general approval process for all telecommunicator enrollment applicants.

No comments were received regarding adoption of this repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §215.17

The Texas Commission on Law Enforcement (Commission) adopts new §215.17, concerning General Contract Procedures and Provisions, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7645). The section will not be republished.

New §215.17, General Contract Procedures and Provisions, consolidates and establishes general contract provisions with approved training provider applicants.

The new rule is necessary to consolidate and set out Commission's general contract provisions with approved training provider applicants. The new rule creates no substantive changes to training provider applicant's previous responsibilities or duties under rule and helps to delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.251, Training Programs; Instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §215.19

The Texas Commission on Law Enforcement (Commission) adopts new §215.19, concerning Contract Cancellation, Suspension, and Termination, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7646). The section will not be republished.

New §215.19, Contract Cancellation, Suspension, and Termination, consolidates and establishes general contract provisions with approved training provider applicants.

The new rule is necessary to consolidate and set out training provider contract cancellation, suspension, and termination provisions. The new rule creates no substantive changes to training provider applicant's previous responsibilities or duties under rule and helps to delete, renumber, and organize redundant information regarding training provider application, approval, and contract provisions.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.251, Training Programs; Instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.1

The Texas Commission on Law Enforcement (Commission) adopts amended §217.1, concerning Minimum Standards for Initial Licensure, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7646). The section will not be republished.

The amendment to §217.1, Minimum Standards for Initial Licensure, conforms disqualifying military discharges and family violence language to current suspension and revocation rule.

This amendment is necessary to conform disqualifying "family violence" language to current suspension and revocation rules. It also clarifies longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.5

The Texas Commission on Law Enforcement (Commission) adopts amended §217.5, concerning Denial and Cancellation, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7649). The section will not be republished.

The amendment to §217.5, Denial and Cancellation, adds "school districts" to list of entities who may not appoint an unqualified person under Commission standards.

In response to the statutory creation of the school marshal program, this amendment is necessary to conform with statutory amendments by adding "school districts" to the list of entities who may not appoint an unqualified person under Commission standards. In order to protect Texans from exposure to ineligible license holders or applicants, it is necessary to deny appointment or issuance of a license pending a determination of eligibility or administrative sanction. Also, school districts are added to this section under the legislatively created "School Marshal" program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.7

The Texas Commission on Law Enforcement (Commission) adopts amended §217.7, concerning Reporting Appointment and Separation of a Licensee, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7650). The section will not be republished.

The amendment to §217.7, Reporting Appointment and Separation of a Licensee, adds telecommunicators to agency appointment requirements.

The amendment is necessary to conform with statutory amendments by adding "telecommunicator" to agency appointment requirements. It also removes redundant cross-referencing to other rule numbers.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.405, Telecommunicators.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.8

The Texas Commission on Law Enforcement (Commission) adopts amended §217.8, concerning Contesting an Employment Termination Report, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7651). The section will not be republished.

The amendment to §217.8, Contesting an Employment Termination Report, clarifies how reports of separation will be changed after an F-5 Report of Separation hearing.

The amendment is necessary to conform with statutory amendments by adding telecommunicator as a licensee entitled to an F-5 Report of Separation. Also, instead of issuing orders to the chief administrators, administrative law judges will now instruct the Commission to make any necessary changes after an F-5 Report of Separation hearing. The amendment further removes redundant cross-referencing to other rule numbers.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.4525, Petition for Correction of Report; Hearing; Administrative Penalty.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.9

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §217.9, concerning Continuing Education Credit for Licensees, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7652). The section will not be republished.

The repeal of §217.9, Continuing Education Credit for Licensees, allows for the adoption of a new rule which renumbers and organizes provisions regarding licensee continuing education requirements.

The repeal is necessary to set out the Commission's general approval process for all continuing education credit for licensees. This repeal creates no substantive changes to continuing ed-

ucation responsibilities or duties under rule. The repeal helps renumber and organize rules regarding licensee continuing education requirements.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.13

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §217.13, concerning Reporting Legislatively Required Continuing Education, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7652). The section will not be republished.

The repeal of §217.13, Reporting Legislatively Required Continuing Education, allows for the adoption of a new rule which renumbers and organizes provisions regarding licensee continuing education requirements.

This repeal is necessary to set out the Commission's general approval process for reporting education credit for licensees. This repeal creates no substantive changes to continuing education reporting responsibilities or duties under rule. This repeal helps renumber and organize rules regarding licensee continuing education requirements.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.15

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §217.15, concerning Waiver of Legislatively Required Continuing Education, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7653). The section will not be republished.

The repeal of §217.15, Waiver of Legislatively Required Continuing Education, allows for the adoption of a new rule which renumbers and organizes provisions regarding licensee continuing education requirements.

The repeal is necessary to set out the Commission's general approval process for reporting education credit for licensees. This repeal creates no substantive changes to continuing education reporting responsibilities or duties under rule. The repeal helps renumber and organize rules regarding licensee continuing education requirements.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.19

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §217.19, concerning Reactivation of a License, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7653). The section will not be republished.

The repeal of §217.19, Reactivation of a License, allows for the adoption of a new rule which renumbers and organizes provisions regarding licensee reactivation requirements.

The repeal is necessary to move current §217.19 to new §219.11 under Chapter 219, Prelicensing, Reactivation, Tests, and Endorsements.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.20

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §217.20, concerning Retired Peace Officer Reactivation, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7654). The section will not be republished.

The repeal of §217.20, Retired Peace Officer Reactivation, allows for the adoption of a new rule which renumbers and organizes provisions regarding licensee reactivation requirements for retired peace officers.

This repeal is necessary to move current §217.20 to new §219.13 under Chapter 219, Prelicensing, Reactivation, Tests, and Endorsements.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.21

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §217.21, concerning Firearms Proficiency Requirements, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7654). The section will not be republished.

The repeal of §217.21, Firearms Proficiency Requirements, allows for the adoption of a new rule which clarifies time period and types of weapons required for proficiency qualification.

The repeal is necessary to set out the Commission's general approval process for firearms qualifications. The repeal creates no substantive changes to continuing education responsibilities or duties under rule. The repeal helps renumber and organize rules regarding firearms qualifications.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.23

The Texas Commission on Law Enforcement (Commission) adopts new §217.23, concerning Basic Licensing Enrollment Standards, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7654). The section will not be republished.

New §217.23, Basic Licensing Enrollment Standards, consolidates and establishes basic enrollment standards for applicants.

The new rule is necessary to delete redundant information, conform disqualifying family violence language with current suspension and revocation rules, clarify longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct, and remove telecommunicators from federal motor vehicle and firearm possession disqualifiers.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.255, Enrollment Qualifications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.25

The Texas Commission on Law Enforcement (Commission) adopts new §217.25, concerning Telecommunicator Enrollment Standards, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7656). The section will not be republished.

New §217.25, Telecommunicator Enrollment Standards, consolidates and establishes basic enrollment standards for telecommunicator applicants.

The new rule is necessary to delete redundant information, conform disqualifying family violence language with current suspension and revocation rules and clarify longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.405, Telecommunicators.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §217.27

The Texas Commission on Law Enforcement (Commission) adopts new §217.27, concerning Appointment Eligibility of a Telecommunicator, with changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7657). The section will be republished.

New §217.27, Appointment Eligibility of a Telecommunicator, establishes appointment requirements for telecommunicator applicants.

The new rule is necessary to conform with statutory amendments by adding "telecommunicator" appointment eligibility requirements similar to other licensees. It is necessary to ensure that the public is served by telecommunicators who meet the same high standards as other Commission licensees. The change is non-substantive and conforms to rules of grammar.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.405, Telecommunicators.

§217.27. Appointment Eligibility of a Telecommunicator.

(a) A chief administrator shall not appoint or employ a person as a telecommunicator unless the person: holds a telecommunicator license; or agrees to obtain the license not later than the first anniversary of the date of employment.

(b) A person employed to act as a telecommunicator who has not obtained a license to act as a telecommunicator may not continue to act as a telecommunicator after the first anniversary of the date of employment unless the person obtains the license.

(c) Notwithstanding §1701.405, Texas Occupations Code, an officer is not required to obtain a telecommunicator license to act as a telecommunicator.

(d) The effective date of this section is February 1, 2014.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.1

The Texas Commission on Law Enforcement (Commission) adopts new §218.1, concerning Continuing Education Credit for Licensees, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7658). The section will not be republished.

New §218.1, Continuing Education Credit for Licensees, ensures clear and concise requirements for licensees receiving continuing education credit.

The new rule is necessary to set out the Commission's general approval process for all continuing education credit for licensees. The new rule creates no substantive changes to continuing education responsibilities or duties under rule. The new rule helps renumber and reorganize provisions regarding licensee continuing education requirements.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.352, Continuing Education Programs, and §1701.353, Continuing Education Procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §218.5

The Texas Commission on Law Enforcement (Commission) adopts new §218.5, concerning Reporting Legislatively Required Continuing Education, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7659). The section will not be republished.

New §218.5, Reporting Legislatively Required Continuing Education, ensures clear and concise requirements for licensees receiving continuing education credit.

The new rule is necessary to set out the Commission's general approval process for reporting education credit for licensees. The new rule creates no substantive changes to continuing education responsibilities or duties under rule. The new rule helps renumber and reorganize rules regarding licensee continuing education requirements.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.353, Continuing Education Procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

37 TAC §218.7

The Texas Commission on Law Enforcement (Commission) adopts new §218.7, concerning Waiver of Legislatively Required Continuing Education, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7659). The section will not be republished.

New §218.7, Waiver of Legislatively Required Continuing Education, ensures clear and concise requirements for licensees receiving a waiver from continuing education credit.

The new rule is necessary to set out the Commission's general approval process for a waiver from continuing education credit for licensees. The new rule creates no substantive changes to continuing education responsibilities or duties under rule. The new rule helps renumber and reorganize rules regarding licensee continuing education waiver requirements.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.351, Continuing Education Required for Peace Officers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §218.9

The Texas Commission on Law Enforcement (Commission) adopts new §218.9, concerning Continuing Firearms Proficiency Requirements, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7660). The section will not be republished.

New §218.9, Continuing Firearms Proficiency Requirements, ensures clear and concise firearm requirements for licensees.

The new rule is necessary to set out the Commission's general approval process for firearms qualifications to clarify time period and types of weapons required for proficiency qualification.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.308, Weapons Proficiency, and §1701.355, Continuing Demonstration of Weapons Proficiency.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

37 TAC §219.1

The Texas Commission on Law Enforcement (Commission) adopts amended §219.1, concerning Eligibility to Take State Examinations, with changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7661). The section will be republished.

The amendment to §219.1, Eligibility to Take State Examinations, conforms rule with school marshal amendment by, when applicable and in addition to this rule, making school marshal licenses subject to reactivation requirements.

In response to the statutory creation of the school marshal program, this amendment is necessary to conform to statutory amendments by adding school marshal licenses and remove redundant cross-referencing to other rule numbers.

The rule sets forth examination requirements in relation to the period of time since a person's basic licensing training. The requirements recognize the diminishing effect of time on the basic licensing course skills. The reexamination and retraining requirements are necessary to refresh and fully update the training, knowledge, and skills of a person who fails to be appointed or licensed within a certain period of time.

Professional and technical competence as taught in a basic licensing course is paramount to commission licensees. Basic licensing course subject matter must be mastered as demonstrated by passing an examination. As such, multiple examination failures demonstrate an unacceptable lack of retention in basic licensing course instruction. Thus, to ensure the public's safety, welfare, and trust in the regulated community, a licensing course must be repeated until competence is demonstrated.

As for school marshals, due to possible changes in training and changes to the school marshal program itself, the requirement that an individual be licensed within two years from the date of their successful completion of the licensing exam is necessary. As with any new licensing course, after reevaluation of the program by the commission, changes may be required.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.304, Examination.

§219.1. Eligibility to Take State Examinations.

(a) An individual may not take a licensing exam for a license they actively hold.

(b) To be eligible to take a state licensing exam, an individual must:

(1) have successfully completed a commission-approved basic licensing course or academic alternative program;

(2) meet the requirements for reactivation if the individual is currently licensed;

(3) meet the requirements for reinstatement if the individual is currently licensed;

(4) meet the requirements if an individual is an out of state peace officer, federal criminal investigator, or military; or

(5) be eligible to take the county corrections licensing exam as provided in Texas Occupations Code, Chapter 1701, §1701.310.

(c) To maintain eligibility to attempt a licensing exam the applicant must meet the basic licensing enrollment standards; or if previously licensed, meet minimum initial licensing standards.

(d) An eligible examinee will be allowed three attempts to pass the examination. All attempts must be completed within 180 days from the completion date of the licensing course. Any remaining attempts become invalid on the 181st day from the completion date of the licensing course, or if the examinee passes the licensing exam. If an attempt is invalidated for any other reason, that attempt will be counted as one of the three attempts.

(e) The examinee must repeat the basic licensing course for the license sought if:

(1) the examinee fails all three attempts to pass the licensing exam;

(2) the examinee fails to complete all three attempts within 180 days from the completion date of the licensing course; or

(3) the examinee is dismissed from an exam for cheating. If dismissed from an exam for cheating, all remaining attempts are invalidated.

(f) An examinee that is required to repeat a basic licensing course under the provisions in subsection (e) of this section will not be allowed to repeat an academic alternative program.

(g) If an individual is not licensed within 2 years from the date of their successful completion of the licensing exam, the basic licensing course must be repeated.

(h) When applicable and in addition to this section, school marshal licenses are subject to the requirements of Chapter 227 of this title.

(i) The effective date of this section is February 1, 2014.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7713

37 TAC §219.11

The Texas Commission on Law Enforcement (Commission) adopts new §219.11, concerning Reactivation of a License, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7662). The section will not be republished.

New §219.11, Reactivation of a License, establishes reactivation procedures for licenses to include school marshal licenses.

In response to the statutory creation of the school marshal program, this rule is necessary to conform to statutory amendments by making school marshal licenses subject to commission license reactivation procedures.

The new rule sets forth graduated reactivation requirements in relation to the period of time since a licensee's last appointment. The increased requirements are necessary to refresh and fully update the training, knowledge, and skills of a licensee who has failed to maintain education and training requirements.

The rule sets forth reactivation requirements in relation to the period of time since a person's last appointment. The requirements recognize the diminishing effect of time on a licensee's skills and proficiency. The reexamination and retraining requirements are necessary to refresh and fully update the training, knowledge, and skills of a person who fails to be appointed or licensed after a certain period of time.

The requirements and time periods are modeled on other state's similar reactivation standards. It also removes redundant cross-referencing to other rule numbers and helps to renumber and organize rules regarding license reactivation requirements.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.316, Reactivation of Peace Officer Licenses; §1701.3161, Reactivation of Peace Officer Licenses; Retired Peace Officers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
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For further information, please call: (512) 936-7713

37 TAC §219.13

The Texas Commission on Law Enforcement (Commission) adopts new §219.13, concerning Retired Peace Officer Reactivation, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7663). The section will not be republished.

New §219.13, Retired Peace Officer Reactivation, establishes reactivation procedures for retired peace officers.

The new rule is necessary to remove redundant cross-referencing to other rule numbers and helps to renumber and reorganize provisions regarding licensee reactivation requirements for retired peace officers.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.316, Reactivation of Peace Officer Licenses, and §1701.3161, Reactivation of Peace Officer Licenses; Retired Peace Officers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
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37 TAC §219.25

The Texas Commission on Law Enforcement (Commission) adopts new §219.25, concerning License Requirements for Persons with Military Special Forces Training, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7663). The section will not be republished.

New §219.25, License Requirements for Persons with Military Special Forces Training, establishes procedures for licensing qualified former special forces members.

The new rule is necessary to conform with statutory amendment giving the Commission authority to adopt rules allowing former special forces members to take the basic licensing examination.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
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CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.28

The Texas Commission on Law Enforcement (Commission) adopts amended §221.28, concerning Advanced Instructor Proficiency, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7664). The section will not be republished.

The amendment to §221.28, Advanced Instructor Proficiency, conforms to statutory agency name change.

The amendment is necessary to conform to statutory agency name change amendment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
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CHAPTER 223. ENFORCEMENT

37 TAC §223.2

The Texas Commission on Law Enforcement (Commission) adopts amended §223.2, concerning Administrative Penalties, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7664). The section will not be republished.

The amendment to §223.2, Administrative Penalties, includes administrative penalties for appointing ineligible individuals as a school marshal or telecommunicator.

In response to the statutory creation of the school marshal program, the amendment is necessary to conform to school marshal and telecommunicator statutory amendments. The amendment adds school districts as an appointing entity subject to administrative penalties.

Under the rule, governmental entities are subject to administrative penalties for, among other things, appointing or employing an ineligible person or failing to timely submit required documentation. The graduated fees directly correlate to a violation's severity and adverse effect on the public's safety, welfare, and trust in the regulated community.

As such, violations related to statutory requirements or the appointment of licensees are assigned penalties at or near the top of the penalty scale. Compliance and administrative violations are at the low or midrange of the penalty scale.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.507, Administrative Penalties.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
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37 TAC §223.13

The Texas Commission on Law Enforcement (Commission) adopts amended §223.13, concerning Surrender of License, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7666). The section will not be republished.

The amendment to §223.13, Surrender of License, clarifies that a surrender of one license surrenders all Commission-issued licenses.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.501, Disciplinary Action.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §223.15

The Texas Commission on Law Enforcement (Commission) adopts amended §223.15, concerning Suspension of License, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7667). The section will not be republished.

The amendment to §223.15, Suspension of License, conforms disqualifying family violence language with enrollment and licensing rules and sets out a list of illustrative circumstances the Commission may consider when determining the seriousness of an offense in order to determine an appropriate period of suspension.

The amendment is necessary to conform disqualifying family violence language with enrollment and licensing rules. The amendment sets out a list of illustrative circumstances the Commission may consider when determining the seriousness of an offense in order to determine an appropriate period of suspension. The nonexclusive list of considerations would help afford commissioners full knowledge of the conduct leading to a licensee's disposition offense. Such circumstances would allow for the reasoned consideration of any mitigating circumstances presented

in light of the seriousness of conduct. The amendment moves the bodily injury or coercion component from "mitigating factors" to the determination of suspension criteria.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.501, Disciplinary Action.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §223.16

The Texas Commission on Law Enforcement (Commission) adopts amended §223.16, concerning Suspension of License for Constitutionally Elected Officials, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7668). The section will not be republished.

The amendment to §223.16, Suspension of License for Constitutionally Elected Officials, conforms disqualifying family violence language with enrollment and licensing rules and sets out a list of illustrative circumstances the Commission may consider when determining the seriousness of an offense in order to determine an appropriate period of suspension.

The amendment is necessary to conform disqualifying family violence language with enrollment and licensing rules. The amendment sets out a list of illustrative circumstances the Commission may consider when determining the seriousness of an offense in order to determine an appropriate period of suspension. The nonexclusive list of considerations would help afford commissioners full knowledge of the conduct leading to a licensee's disposition offense. Such circumstances would allow for the reasoned consideration of any mitigating circumstances presented in light of the seriousness of conduct. The amendment moves the bodily injury or coercion component from "mitigating factors" to the determination of suspension criteria.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.302, Certain Elected Law Enforcement Officer, License Required, and §1701.501, Disciplinary Actions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §223.19

The Texas Commission on Law Enforcement (Commission) adopts amended §223.19, concerning Revocation of License, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7670). The section will not be republished.

The amendment to §223.19, Revocation of License, conforms disqualifying military discharges and family violence language to current enrollment and licensing rule.

The amendment is necessary to clarify and reflect longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct. It also conforms disqualifying "family violence" language to current suspension and revocation rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.501, Disciplinary Actions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 227. SCHOOL MARSHALS

37 TAC §227.1

The Texas Commission on Law Enforcement (Commission) adopts new §227.1, concerning School District Responsibilities, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7671). The section will not be republished.

New §227.1, School District Responsibilities, ensures qualified school marshal licensee appointments are reported to the Commission.

The new rule is necessary to conform to the statutory school marshal amendment by setting forth a school district's requirements in order to appoint a school marshal. Due to the obvious potential harm of an ineligible or untrained person holding a school marshal license or appointment, a detailed process regarding appointment requirements is necessary.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
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37 TAC §227.3

The Texas Commission on Law Enforcement (Commission) adopts new §227.3, concerning School Marshal Licensing and Reporting Requirements, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7672). The section will not be republished.

New §227.3, School Marshal Licensing and Reporting Requirements, ensures qualified school marshal licensee appointments.

The new rule is necessary to conform to the statutory school marshal amendment by setting forth an applicant's requirements in order to be eligible for appointment as a school marshal. Due to the obvious potential harm of an ineligible or untrained person holding a school marshal license or appointment, a detailed process regarding appointment requirements is necessary.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §227.5

The Texas Commission on Law Enforcement (Commission) adopts new §227.5, concerning School Marshal Training Entities, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7673). The section will not be republished.

New §227.5, School Marshal Training Entities, ensures qualified school marshal licensees.

The new rule is necessary to conform to the statutory school marshal amendment by setting forth the training program requirements for school marshals.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
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37 TAC §227.7

The Texas Commission on Law Enforcement (Commission) adopts new §227.7, concerning School Marshal Renewals, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7673). The section will not be republished.

New §227.7, School Marshal Renewals, ensures qualified school marshal licensees.

The new rule is necessary to conform to the statutory school marshal amendment by setting forth the license renewal requirements for school marshals. Due to the obvious potential harm of an ineligible or untrained person holding a school marshal license or appointment, a detailed process regarding appointment requirements is necessary.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rule-

making Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §227.9

The Texas Commission on Law Enforcement (Commission) adopts new §227.9, concerning License Action, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7674). The section will not be republished.

New §227.9, License Action, establishes disciplinary procedures for school marshal licensees.

The new rule is necessary to conform to the statutory school marshal amendment by setting forth the license revocation and suspension procedures for school marshal licenses. Due to the obvious potential harm of an ineligible or untrained person holding a school marshal license or appointment, public policy weighs heavily in favor of immediate revocation or suspension action.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
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37 TAC §227.11

The Texas Commission on Law Enforcement (Commission) adopts new §227.11, concerning Confidentiality of Information, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7674). The section will not be republished.

New §227.11, Confidentiality of Information, protects information received in relation to school marshal licensees. The new rule is necessary to conform to the statutory school marshal amendment by setting forth the confidentiality of information received in relation to school marshals.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
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CHAPTER 229. TEXAS PEACE OFFICERS' MEMORIAL MONUMENT

37 TAC §229.1

The Texas Commission on Law Enforcement (Commission) adopts amended §229.1, concerning Eligibility for Memorial Monument, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7675). The section will not be republished.

The amendment to §229.1, Eligibility for Memorial Monument, clarifies type of memorial.

The amendment is necessary to conform to statutory amendment by adding "monument" to caption of Peace Officer Memorial provisions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Government Code, Chapter 3105, §3105.003, Eligibility for Memorial.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201305805

Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

37 TAC §229.3

The Texas Commission on Law Enforcement (Commission) adopts amended §229.3, concerning Specific Eligibility of Memorial Monument, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7675). The section will not be republished.

The amendment to §229.3, Specific Eligibility of Memorial Monument, clarifies type of memorial. The amendment is necessary to conform to statutory amendment by adding "monument" to caption of Peace Officer Memorial provisions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Government Code, Chapter 3105, §3105.003, Eligibility for Memorial.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
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PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 259. NEW CONSTRUCTION RULES

SUBCHAPTER B. NEW MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.167

The Commission on Jail Standards adopts an amendment to §259.167, concerning Audible Communication in New Maximum Security Design, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6877).

This amendment is being adopted to add licensed peace officers, bailiffs, and staff designated by the sheriff to communicate with inmates using two-way systems. To create uniformity, the term jailer will be substituted for corrections officer.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201305859
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-8236

SUBCHAPTER C. NEW LOCKUP DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.263

The Commission on Jail Standards adopts an amendment to §259.263, concerning Audible Communication in New Lockup Security Design, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6878).

This amendment is being adopted to add licensed peace officers, bailiffs, and staff designated by the sheriff to communicate with inmates using two-way systems. To create uniformity, the term jailer will be substituted for corrections officer.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305860
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-8236

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SUBCHAPTER D. NEW MEDIUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.357

The Commission on Jail Standards adopts an amendment to §259.357, concerning Audible Communication in New Medium Security Design, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6878).

This amendment is being adopted to add licensed peace officers, bailiffs, and staff designated by the sheriff to communicate with inmates using two-way systems. To create uniformity, the term jailer will be substituted for corrections officer.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brandon Wood
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-8236

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SUBCHAPTER E. NEW MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.453

The Commission on Jail Standards adopts an amendment to §259.453, concerning Audible Communication in New Minimum Security Design, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6879).

This amendment is being adopted to add licensed peace officers, bailiffs, and staff designated by the sheriff to communicate with inmates using two-way systems. To create uniformity, the term jailer will be substituted for corrections officer.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305862
Brandon Wood
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-8236

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SUBCHAPTER F. TEMPORARY HOUSING--TENTS

37 TAC §259.520

The Texas Commission on Jail Standards adopts an amendment to §259.520, concerning Audible Communication in Temporary Housing--Tents, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6879).

This amendment is being adopted to add licensed peace officers, bailiffs, and staff designated by the sheriff to communicate with inmates using two-way systems. To create uniformity, the term jailer will be substituted for corrections officer.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305863
Brandon Wood
Executive Director
Texas Commission on Jail Standards
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Proposal publication date: October 4, 2013
For further information, please call: (512) 463-8236

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SUBCHAPTER G. TEMPORARY HOUSING--BUILDINGS

37 TAC §259.620

The Texas Commission on Jail Standards adopts an amendment to §259.620, concerning Audible Communication in Temporary Housing--Buildings, without changes to the proposed text

as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6880).

This amendment is being adopted to add licensed peace officers, bailiffs, and staff designated by the sheriff to communicate with inmates using two-way systems. To create uniformity, the term jailer will be substituted for corrections officer.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305864
Brandon Wood
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-8236

SUBCHAPTER H. NEW LONG-TERM INCARCERATION DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.769

The Texas Commission on Jail Standards adopts an amendment to §259.769, concerning Audible Communication in New Long-term Incarceration Design, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6880).

This amendment is being adopted to add licensed peace officers, bailiffs, and staff designated by the sheriff to communicate with inmates using two-way systems. To create uniformity, the term jailer will be substituted for corrections officer.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305865
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-8236

CHAPTER 260. COUNTY CORRECTIONAL CENTERS
SUBCHAPTER B. CCC DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §260.161

The Texas Commission on Jail Standards adopts an amendment to §260.161, regarding Audible Communication in County Correctional Centers Incarceration Design, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6880).

This amendment is being adopted to add licensed peace officers, bailiffs, and staff designated by the sheriff to communicate with inmates using two-way systems. To create uniformity, the term jailer will be substituted for corrections officer.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305866
Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-8236

CHAPTER 271. CLASSIFICATION AND SEPARATION OF INMATES

37 TAC §271.1

The Texas Commission on Jail Standards adopts an amendment to §271.1, concerning Objective Classification Plan, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6881).

This amendment is being adopted to replace CARE with CCQ as the CARE check is no longer in use.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

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Brandon Wood
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-8236

CHAPTER 273. HEALTH SERVICES

37 TAC §273.8

The Texas Commission on Jail Standards adopts an amendment to §273.8, concerning Memorandum of Understanding, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6881).

The purpose of amending this rule is to update the proper names of the Texas Commission on Law Enforcement and the Texas Correctional Office of Offenders with Medical and Mental Impairments. In addition, to maintain uniformity, the term "jailer" is being substituted for the term "corrections officer".

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

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Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: January 1, 2014
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For further information, please call: (512) 463-8236

CHAPTER 275. SUPERVISION OF INMATES

37 TAC §275.1

The Texas Commission on Jail Standards adopts an amendment to §275.1, concerning Regular Observation by Corrections Officers, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6883).

The purpose of amending this rule is to clarify that face-to-face observations shall be conducted no less than once every 60 minutes and the observations shall be documented. The change will add licensed peace officers, bailiffs, and designated staff to communicate with inmates using two-way communications. In addition, to maintain uniformity, the term "jailer" is substituted for the term "corrections officer".

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

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Brandon Wood
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-8236

37 TAC §275.2

The Texas Commission on Jail Standards adopts an amendment to §275.2, concerning Corrections Officer Training and Licensing, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6883).

The purpose of this amendment is to clarify that personnel who directly supervise jailers shall be licensed by the Texas Commission on Law Enforcement. The term jailer is also substituted for the term corrections officers.

One comment was received in reference to streamlining the language of the standard. The Commission voted to adopt the language as proposed.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305870

Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-8236

37 TAC §275.4

The Texas Commission on Jail Standards adopts an amendment to §275.4, concerning Staff, with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6884). The text of the rule will be republished.

The purpose of this amendment is to clarify that jailers shall observe inmates once every 60 minutes. The term jailer shall be substituted for corrections officer. The changes to the proposed text include adding the word "documented" in the third sentence and changing the word department to office in the fifth sentence.

One comment was received in reference to streamlining the language of the standard. The Commission chooses not to accept the recommendations of the commenter.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

§275.4. Staff.

Inmates shall be supervised by an adequate number of jailers to comply with state law and this chapter. One jailer shall be provided on each floor of the facility where 10 or more inmates are housed, with no less than 1 jailer per 48 inmates or increment thereof on each floor for direct inmate supervision. This jailer shall provide documented visual inmate supervision not less than once every 60 minutes. Sufficient staff to include supervisors, jailers and other essential personnel as accepted by the Commission shall be provided to perform required functions. A plan concurred in by both commissioners' court and sheriff's office, which provides for adequate and reasonable staffing of a facility, may be submitted to the Commission for approval. This rule shall not preclude the Texas Commission on Jail Standards from requiring staffing in excess of minimum requirements when deemed necessary to provide a safe, suitable, and sanitary facility nor preclude submission of variance requests as provided by statute or Chapter 299 of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305871
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-8236

37 TAC §275.5

The Texas Commission on Jail Standards adopts an amendment to §275.5, concerning Census, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6884).

The purpose of the amendment is to substitute jailer with corrections officer to promote uniformity within minimum jail standards.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305872
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-8236

37 TAC §275.7

The Texas Commission on Jail Standards adopts new §275.7, concerning Supervision Outside the Security Perimeter--Court Holding Cells, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6885).

The purpose of the new section is to provide standards on the proper supervision of inmates when occupying court holding cells outside the secured perimeter of the jail.

One comment was received regarding the definition of "where required". The Commission chose not to address the issue in the adoption of this rule.

The new section is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305873

Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-8236

CHAPTER 289. WORK ASSIGNMENTS

37 TAC §289.4

The Texas Commission on Jail Standards adopts an amendment to §289.4, concerning Outside the Security Perimeter, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6885).

The purpose of the amendment is to clarify that jailers or persons designated by the sheriff should supervise inmates assigned to work outside the security perimeter.

One comment was received regarding the use of the term "personnel" rather than the term "persons". The Commission chose not to change the proposed wording.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201305874
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-8236

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 455. MINIMUM STANDARDS FOR WILDLAND FIRE PROTECTION CERTIFICATION

37 TAC §§455.3, 455.5, 455.7

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 455, concerning §455.3, Minimum Standards for Basic Wildland Fire Protection Certification; §455.5, Minimum Standards for Intermediate Wildland Fire Protection Certification; and §455.7, Examination Requirements. The amendments are adopted without changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5423) and will not be republished.

The amendments are adopted to correct an incorrect title of a commission curriculum, to delete obsolete language, and to amend the minimum requirements for Intermediate Wildland Fire Protection Certification by the commission.

The adopted amendments will provide clear and concise rules regarding the minimum requirements for obtaining Intermediate Wildland Fire Protection certification from the commission

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2013.

TRD-201305955
Tim Rutland
Interim Executive Director
Texas Commission on Fire Protection
Effective date: January 5, 2014
Proposal publication date: August 23, 2013
For further information, please call: (512) 936-3813

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §9.177, concerning certification principles: staff member and service provider requirements; §9.185, concerning certification process; §9.577, concerning corrective action and program provider sanctions; and §9.579, concerning certification principles: qualified personnel, in Subchapter D, Home and Community-based Services (HCS) Program, and Subchapter N, Texas Home Living (TxHmL) Program, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, without changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7090).

The purpose of the amendments is to implement the 2014-2015 General Appropriations Act (Article II, Special Provisions, Section 61, Senate Bill 1, 83rd Legislature, Regular Session, 2013) by requiring HCS program providers to pay a base wage to service providers of supported home living and TxHmL program providers and to service providers of community support. The

required base wages are at least $7.50 per hour as of the effective date of the amendments and at least $7.86 per hour effective September 1, 2014.

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

40 TAC §9.177, §9.185

The amendments are adopted under Texas Government Code, §531.0005, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305827
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: January 1, 2014
Proposal publication date: October 11, 2013
For further information, please call: (512) 438-3734

SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM

40 TAC §9.577, §9.579

The amendments are adopted under Texas Government Code, §531.0005, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305828
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: January 1, 2014
Proposal publication date: October 11, 2013
For further information, please call: (512) 438-3734

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §19.216, concerning license fees, and §19.2206, concerning general requirements for a certified facility, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7281).

The amendments are adopted to implement portions of House Bill (HB) 3196, 83rd Legislature, 2013, Regular Session. HB 3196 amended Texas Health and Safety Code (THSC), §242.034, to increase the maximum nursing facility license fee from $250 to $375 and the maximum per bed fee from $10 to $15. The nursing facility licensure period was changed from two years to three years by the 82nd Legislature but no fee increase was included in the law at that time. DADS charges the maximum license fee allowed under §242.034.

HB 3196 also amended THSC, §242.40, increasing the Alzheimer's certification period from one to three years. The adoption changes the certification fee from $100 annually to $300 for the three-year certification. THSC, §242.40 authorizes DADS to charge an appropriate certification fee; therefore, no amendment to THSC was required to increase the fee.

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

40 TAC §19.216

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305768
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: January 1, 2014
Proposal publication date: October 18, 2013
For further information, please call: (512) 438-4162

SUBCHAPTER W. CERTIFICATION OF FACILITIES FOR CARE OF PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS

40 TAC §19.2206

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305769
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: January 1, 2014
Proposal publication date: October 18, 2013
For further information, please call: (512) 438-4162

CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION
SUBCHAPTER E. BUDGETS

40 TAC §41.505

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §41.505, in Chapter 41, Consumer Directed Services Option, with changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7097).

The purpose of the amendments is to implement the 2014-15 General Appropriations Act (Article II, Special Provisions, Section 61, Senate Bill 1, 83rd Legislature, Regular Session, 2013) by requiring an employer or designated representative in the consumer-directed services option to budget a base wage of at least $7.50 per hour as of the effective date of the proposed amendments, and at least $7.86 per hour effective September 1, 2014, for employees providing certain personal attendant services.

A minor editorial change was made to §41.505(a)(1)(B)(vi) to improve the accuracy of the section by changing "client" to "consumer" in the title of the Consumer Managed Personal Attendant Services Program.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0005, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§41.505. Payroll Budgeting.

(a) An employer or DR must, when developing a budget that includes payroll expenses for an employee:

(1) budget to pay:

(A) subject to subparagraph (B) of this paragraph, an employee at least the minimum hourly wage required by law before withholdings and garnishments; and

(B) the following employees at least $7.50 per hour and, effective September 1, 2014, at least $7.86 per hour, if the rate required by this subparagraph exceeds the minimum wage required by law:

(i) an employee providing primary home care, family care, or community attendant services;

(ii) an employee providing personal assistance services in the Community Based Alternatives Program;

(iii) an employee providing flexible family support and respite services in the Medically Dependent Children Program;

(iv) an employee providing habilitation in the Community Living Assistance and Support Services Program;

(v) an employee providing residential habilitation in the Deaf Blind Multiple Disabilities Program;

(vi) an employee providing personal attendant services in the Consumer Managed Personal Attendant Services Program;

(vii) an employee providing supported home living in the Home and Community-based Services Program; and

(viii) an employee providing community support in the Texas Home Living Program;

(2) budget employee benefits, if chosen by the employer or DR:

(A) as provided in:

(i) this chapter;

(ii) Section 1000, Wages and Benefits Plan, of the *Consumer Directed Services Handbook* available at http://www.dads.state.tx.us/handbooks/CDS/1000/index.htm; or

(iii) Appendix XI, Allowable and Non-Allowable Expenditures, in the *Consumer Directed Services Handbook* available at http://www.dads.state.tx.us/handbooks/CDS/appendix/XI/index.htm;

(B) that are in accordance with requirements of the individual's program:

(i) an allowable cost, as defined in §41.103 of this chapter (relating to Definitions);

(ii) reasonable, with regard to the cost of the service, good, or item; and

(iii) necessary to meet employer responsibilities;

(C) that are within the approved rate and spending limits established for the service;

(D) that are accrued and paid based on actual hours worked; and

(E) that may include any of the following:

(i) increased wages;

(ii) paid vacation;

(iii) paid holiday;

(iv) paid sick leave;

(v) medical insurance;

(vi) taxable work-related expenses;

(vii) coverage of work-related injuries or illnesses for employees, including workers' compensation or options listed in "Liability Notice to Applicants for Employment," Section II, of Form 1728, Liability Acknowledgment;

(viii) a hire-on bonus, paid when an employee is hired, and the amount budgeted for the bonus must be accrued from hours worked by the person within the first three months of employment;

(ix) a bonus, based on the employee's job performance, that is budgeted and accrued from hours worked as a portion of the budget unit rate from hours worked by the employee, not to extend beyond the end date of the individual's service plan;

(x) a bonus, based on the employee's length of employment, with the employer, if budgeted and accrued as a portion of the budget unit rate from hours worked by the employee, not to extend beyond the end date of the individual's service plan; and

(xi) employer contributions for employee benefits; and

(3) make budget revisions if necessary to compensate for payment of overtime pay that must be calculated and paid in accordance with current state and federal labor laws and regulations.

(b) An employer or DR must:

(1) complete, but not sign, Form 1730, Employee Wage and Benefits Plan, for each employee at the time of hire and when an employee's wages or benefits are being changed;

(2) submit the form to the FMSA for approval;

(3) obtain written approval from the FMSA; and

(4) after FMSA approval, sign the form and obtain the employee's signature on Form 1730 on or before the employee's first day of work or the effective date of the change.

(c) A FMSA must:

(1) review the employer's budgeted payroll spending decisions;

(2) review Form 1730 for each employee at time of hire and as revised by the employer or DR;

(3) verify that each applicable budget workbook and Form 1730 is within the approved budget; and

(4) notify the employer in writing of the approval or disapproval of Form 1730 and work with the employer or DR to resolve those issues that prevent the approval of the Form 1730.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305829
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: January 1, 2014
Proposal publication date: October 11, 2013
For further information, please call: (512) 438-3734

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CHAPTER 49. CONTRACTING FOR COMMUNITY CARE SERVICES
SUBCHAPTER G. PERSONAL ATTENDANT WAGES

40 TAC §49.71, §49.72

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §49.71 and §49.72, in Chapter 49, Contracting for Community Care Services. Section 49.71 is adopted with changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7099). Section 49.72 is adopted without changes and will not be republished.

The purpose of the amendments is to implement the 2014-2015 General Appropriations Act (Article II, Special Provisions, Section 61, Senate Bill 1, 83rd Legislature, Regular Session, 2013) by requiring contractors in certain community service programs to pay or ensure payment of a minimum base wage to employees, contractors, and subcontractors providing certain personal attendant services. The base wages are at least $7.50 per hour as of the effective date of the proposed amendments and at least $7.86 per hour effective September 1, 2014. The amend-

ments apply to services in the Deaf Blind with Multiple Disabilities (DBMD) Program and the Community Living Assistance and Support Services (CLASS) Program. The amendments also require a financial management services agency (FMSA) to ensure that an employer in the consumer directed services option pays an employee in accordance with a budget that meets the requirements of 40 TAC §41.505(a)(1), which requires an employer or designated representative to develop a budget to pay personal attendants the required base wages.

A minor editorial change was made to §49.71(a)(6) to improve the accuracy of the section by changing "client" to "consumer" in the title of the Consumer Managed Personal Attendant Services Program.

DADS received no comments regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §531.0005, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§49.71. Personal Attendants.

(a) In this subchapter, "personal attendant" means a person who is employed by or contracts with a contractor to provide:

(1) primary home care, family care, or community attendant services;

(2) day activity and health services;

(3) Community Care for the Aged and Disabled--Title XX Residential Care;

(4) personal assistance services in the Community Based Alternatives Program;

(5) flexible family support or respite services in the Medically Dependent Children Program;

(6) personal attendant services in the Consumer Managed Personal Attendant Services Program;

(7) habilitation in the Community Living Assistance and Support Services Program; or

(8) residential habilitation, chore services, or day habilitation in the Deaf Blind with Multiple Disabilities Program.

(b) A contractor must pay a personal attendant a base wage of at least $7.50 per hour. Effective September 1, 2014, a contractor must pay a personal attendant a base wage of at least $7.86 per hour.

(c) A contractor required to pay the wages described in subsection (b) of this section must:

(1) no later than January 15, 2014, notify a person who is a personal attendant on January 1, 2014, that the contractor is required to pay the wages described in subsection (b) of this section; and

(2) notify a person who becomes employed or contracts as a personal attendant after January 1, 2014, within three days after the person accepts the offer of employment or enters into the contract, that the contractor is required to pay the wages described in subsection (b) of this section.

(d) If a person is employed by or contracts with a subcontractor of a contractor to provide the services listed in subsection (a) of this section, the contractor must ensure that the subcontractor complies with subsections (b) and (c) of this section as if the subcontractor were the contractor.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 11, 2013.

TRD-201305830
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: January 1, 2014
Proposal publication date: October 11, 2013
For further information, please call: (512) 438-3734

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 Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs ("the Department") files this notice of Intention to Review 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.2, concerning Department Complaint System. The review is being conducted in accordance with Texas Government Code, §2001.039, which requires state agencies to review and consider for repeal, readoption, or readoption with amendments their administrative rules every four years. The review shall assess whether the reasons for initially adopting the rules continue to exist.

The Department will accept public comments for thirty (30) days following the publication of this notice concerning whether the reasons for initially adopting the rule continue to exist. This review is being done in conjunction with proposed amendments to the rule.

Any written comments pertaining to this notice should be directed to David Johnson, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 469-9606. Public comment period will be held from December 27, 2013, to January 29, 2014. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. on January 29, 2014. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201305942
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 13, 2013

Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice adopts the review of 37 TAC §159.19 concerning Continuity of Care and Service Program for Offenders who are Elderly and Offenders with Physical Disabilities or Significant or Terminal Illnesses, pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously adopts amendments to §159.19.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201305934
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 13, 2013

The Texas Board of Criminal Justice adopts the review of 37 TAC §163.43 concerning Funding and Financial Management, pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously adopts amendments to §163.43.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201305936
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 13, 2013

The Texas Board of Criminal Justice adopts the review of 37 TAC §195.51 concerning Sex Offender Supervision, pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously adopts amendments to §195.51.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201305935
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 13, 2013

Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) adopts the review of Chapter 807, Career Schools and Colleges, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7479).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 807 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 807, Career Schools and Colleges.

TRD-201305989
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Filed: December 17, 2013

The Texas Workforce Commission (Commission) adopts the review of Chapter 811, Choices, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7480).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 811 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 811, Choices.

TRD-201305990
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Filed: December 17, 2013

The Texas Workforce Commission (Commission) adopts the review of Chapter 835, Self-Sufficiency Fund, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7480).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 835 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 835, Self-Sufficiency Fund.

TRD-201305991
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Filed: December 17, 2013

The Texas Workforce Commission (Commission) adopts the review of Chapter 841, Workforce Investment Act, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7480).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 841 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 841, Workforce Investment Act.

TRD-201305992
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Filed: December 17, 2013

The Texas Workforce Commission (Commission) adopts the review of Chapter 847, Project RIO Employment Activities and Support Services, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7480).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission notes that the General Appropriations Act, 82nd Texas Legislature, Regular Session (2011), eliminated funding for Project RIO effective September 1, 2011; however, Texas Labor Code, Chapter 306, the statute that permissively authorizes the program, remains in effect. The Commission, in its Self-Evaluation Report to the Texas Sunset Advisory Commission, has identified Chapter 306 as statutory provisions that no longer reflect TWC operations. At this time, absent a statutory change, the reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 847, Project RIO Employment Activities and Support Services.

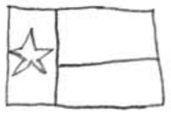
TRD-201305993
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Filed: December 17, 2013

The Texas Workforce Commission (Commission) adopts the review of Chapter 849, Employment and Training Services for Dislocated Workers Eligible for Trade Benefits, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7480).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission notes that current federal law relating to the Trade program is scheduled to expire December 31, 2013, with a reversion of certain provisions to a prior version of federal law. At this time, pending possible congressional action requiring rule amendments, the Commission finds that the rules in Chapter 849 are needed, and the reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 849, Employment and Training Services for Dislocated Workers Eligible for Trade Benefits.

TRD-201305994
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Filed: December 17, 2013



Amy Padron
6th Grade

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: 16 TAC §402.420

Religious Society:	
Qualifications and Requirements	**Necessary Documentation**
Must be organized primarily for religious purposes.	A signed and dated copy of the most recent version of all of the organization's organizing instrument(s); Or A copy of the page from the applicant's parent organization religious directory that lists the applicant organization's information. The name of the applicant organization must match the name of the organization on the documents submitted.
Must have been organized in Texas for at least three years.	If the applicant is affiliated with a state or national organization, Schedule G - Verification by Parent Organization. If the applicant is not affiliated with a state or national organization, a copy of a listing in a publication such as a national roster or newspaper article naming the organization; Or A letter to the applicant from a government agency. The document submitted must reflect the applicant's name, Texas address, and either be dated three years prior to the application date or establish the date the organization was founded.
Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months preceding the date of application.	At least three (3) different types of acceptable documents as proof that your organization was continuously engaged in furthering your charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include: 1. a letter from the diocese, 2. notices of church services, and/or church bulletins, 3. canceled checks for clergy salaries, religious books, materials and/or supplies, maintenance of religious building(s), and 4. records of marriages performed, or records of funerals performed.

	To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been continuously engaged in furthering its charitable purpose throughout the past twelve months. All documents must be dated and indicate the name of the organization.
Must appoint only the organization's members to serve as operators for the organization.	A current membership list with all officers and directors noted. Officers would include a priest, pastor, rabbi, or other head of the church. Membership list will be compared to persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	A signed and dated copy of the most recent version of all of the organization's organizing instruments(s) that list the officer and director positions; Or If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors. If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant. The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed. The Department of Public Safety will conduct a criminal history check on all officers, directors, and operators. Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.
Section 2001.102 License Application Requirements.	Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service. Indicate on application if organization is not required to file Form 990; And

	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.

Non-Profit Medical Organization:	
Qualifications and Requirements	**Necessary Documentation**
Main activities must be in support of medical research or treatment programs.	A signed and dated copy of the most recent version of all of the organization's organizing instruments. The name of the applicant organization must match the name of the organization on the organizing instruments.
Must have had a governing body or officers elected by the vote of the members or delegates elected by the members for at least three years.	Copies of meeting minutes recording officer elections for the past three years showing the date of each meeting and signature of an officer; Or A dated list of officers and positions held for each year of the past three years. A statement signed by an officer indicating which positions were left open if the organization had positions defined in organizing instrument(s) that the organization did not fill. Organizing instrument(s) will be reviewed to ensure that the organization has members who elect officers and to confirm the officer positions.
Must have been affiliated with a state or national organization organized to perform the same purposes for at least three years.	Schedule G - Verification by Parent Organization
Must hold a valid 501(c) exemption through the Internal Revenue Service.	If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.
May not distribute any income to members, officers, or governing body except as reasonable compensation for services.	Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service. Indicate on application if organization is not required to file Form 990. A signed and dated copy of the most recent version of all of the organization's organizing instruments.

Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Acceptable documentation may include: 1. canceled checks in support of medical treatment or research programs, i.e., American Cancer Society, Muscular Dystrophy Association, or other recognized organizations dedicated to the elimination of disease; 2. canceled checks for the purchase of medical equipment or to provide medical care for the needy; 3. letters of appreciation from individuals or organizations receiving benefits for treatment; 4. IRS Form 990; and 5. newspaper articles. To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purposes throughout the past twelve months. All documents must be dated and indicate the name of the organization.
May appoint only the organization's members to serve as operators.	A current membership list with officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions; Or If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors. If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.

	The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed. The Department of Public Safety will conduct a criminal history check on all officers, directors, and operators. Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS) The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.

Volunteer Fire Department:	
Qualifications and Requirements	**Necessary Documentation**
Organized primarily to provide fire-fighting services.	Proof of membership in a professional fire fighting organization; Or Copy of a publication that lists the organization and its phone number to call in case of fire; Or A letter from a local government agency recognizing the organization as a volunteer fire department; Or A copy of all organizing instrument(s) which list this purpose for the organization; Or A dated newspaper article which details the organization's activities. The name of the applicant organization must match the name of the applicant on the documents submitted.
Must have been organized in Texas for at least three years.	If the applicant is affiliated with a state or national organization, Schedule G - Verification by Parent Organization.

	If the applicant is not affiliated with a state or national organization, a copy of a listing in a publication such as a national roster or newspaper article naming the organization; Or A letter to the applicant from a government agency. The document submitted must reflect the applicant's name, Texas address, and either be dated three years before the application date or establish the date the organization was founded.
Must operate fire-fighting equipment.	Pictures of fire equipment reflecting the name of the volunteer fire department; Or Copies of canceled checks or invoices for fire-fighting equipment.
May not pay members other than nominal compensation.	Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service. Indicate on application if organization is not required to file Form 990. If not required to file Form 990, a copy of a volunteer fire fighter application; Or Copy of an organizing instrument that describes compensation of members.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.
May appoint only the organization's members to serve as operators.	Current membership list with all officers and directors noted. Membership list will be compared to the persons listed on application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud	A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions; Or

offense that is a Class C misdemeanor.	If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors. If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant. The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed. The Department of Public Safety will conduct a criminal history check on all officers, directors and operators. Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.
Section 2001.102 License Application Requirements.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation. If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.

Veteran Organization:	
Qualifications and Requirements	**Necessary Documentation**
Must be an unincorporated association or corporation.	A signed copy of the organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation. The name of the applicant organization must match the name of the organization on the organizing instruments.
Must hold a valid 501(c) exemption through the Internal Revenue Service. Must have been organized in Texas for at least three years.	If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant. Schedule G - Verification by Parent Organization.
May not distribute any income to members, officers, or governing body except as reasonable compensation for services.	Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.

	Indicate on application if organization is not required to file Form 990.
Members must be veterans or dependents of veterans of the United States armed serves.	Schedule G - Verification by Parent Organization
Must be chartered by the United States Congress.	The Commission will review the list of chartered veteran organizations maintained by the United States Department of Veteran Affairs. Its website link is: http://www1.va.gov/vso/index.cfm?template=view.
Must be organized to advance the interest of veterans or active duty personnel of the US armed forces and their dependents.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation. The name of the applicant organization must match the name of the organization on the organizing instruments.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of: 1. activity reports filed with the state and/or national organization, 2. monetary donations to Veterans Administration (VA) hospitals, 3. letters of appreciation from veterans and/or organizations receiving benefits, 4. support of and/or contributions to veterans' funerals and/or their families, 5. visits to veteran's hospitals, 6. newspaper articles, and 7. Form 990. To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purpose throughout the past twelve months. All documents must be dated and indicate the name of the organization.

May appoint only the organization's members to serve as operators.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions; Or If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors. If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant. The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers have been disclosed. The Department of Public Safety will conduct a criminal history check on all officers, directors and operators Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.

Fraternal Organization:	
Qualifications and Requirements	**Necessary Documentation**
Must be an Unincorporated Association or Corporation.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation. The name of the applicant organization must match the name of the organization on the organizing instruments.
Must be organized to perform and engage in charitable work.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.

	The name of the applicant organization must match the name of the organization on the organizing instruments.
Must hold a valid 501(c) exemption through the Internal Revenue Service.	If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.
May not distribute any income to members, officers, or governing body except as reasonable compensation.	Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS. Indicate on application if organization is not required to file Form 990. A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.
Must have been organized in Texas for at least three years.	Schedule G - Verification by Parent Organization if affiliated with a state or national organization; Or A copy of a listing in a publication such as a national roster or newspaper article if not affiliated with a state or national organization; Or A letter to the applicant from a government agency. The document submitted to confirm the requirement must reflect organization's name, Texas address, and be either dated prior to the three year period or establish the date the organization was founded.
Must have a bona fide membership.	Current membership list with all officers and directors noted.
Membership actively and continuously engaged in furthering its authorized purposes for the past three years.	Organizing instrument(s) describing the organization's purposes. Copies of minutes from three annual membership meetings reflecting that the organization voted on the election of officers and reported on matters related to furthering the organization's purpose. Collectively, the three meeting minutes must encompass a (36) thirty-six month period (i.e. one per year). The meeting minutes must be dated and signed by an officer of the organization.

May not authorize or support a public office candidate.	Organizing instrument(s) reflecting that organization has not authorized support or opposition of a public office candidate.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of: 1. canceled checks, 2. newspaper articles, 3. brochures, 4. receipts, 5. meeting minutes, and 6. IRS Form 990. All documents must be dated and indicate the organization's name. To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purposes throughout the past twelve months.
May appoint only the organization's members to serve as operators.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions; Or If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors. If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.

	The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed. The Department of Public Safety will conduct a criminal history check on all officers, directors and operators. Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.

Volunteer Emergency Medical Services Provider:	
Qualifications and Requirements	**Necessary Documentation**
Must have been organized in Texas for at least three years.	If the applicant is affiliated with a state or national organization, Schedule G - Verification by Parent Organization. If the applicant is not affiliated with a state or national organization, a copy of a listing in a publication such as a national roster or newspaper article naming the organization; Or A letter to the applicant from a government agency. The document submitted must reflect the applicant's name, Texas address, and either be dated three years before the application date or establish the date the organization was founded.
Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months preceding the date of application.	A Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.
Must appoint only the organization's members to serve as operators for the organization.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation, that list the officer and director positions;

been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	Or If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors. If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant. The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed. The Department of Public Safety will conduct a criminal history check on all officers, directors and operators. Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.
Section 2001.102 License Application Requirements.	Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS. Indicate on application if organization is not required to file Form 990; And A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation; And If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.

Figure: 19 TAC §89.1175(c)

AUTHORIZATION FOR NON-ATTORNEY REPRESENTATIVE

I, the undersigned, authorize the following individual to act as the non-attorney representative of ______________________________ (hereafter referred to as "Party") in Special Education Due Process Hearing Docket No. ______________________________.

Name of Non-Attorney Representative	Telephone Number

Mailing Address

Facsimile Number	Email Address

The non-attorney representative's qualifications are described below.
Special knowledge or training with respect to problems of children with disabilities:
Knowledge of the rules and procedures that apply to due process hearings, including those in 34 Code of Federal Regulations (CFR), §§300.507-300.515 and 300.532, if applicable, and 19 Texas Administrative Code (TAC) §§89.1151-89.1191:

Knowledge of federal and state special education laws, regulations, and rules:
Educational background:

Additional pages may be attached if necessary.

The non-attorney representative has prior employment experience with the school district that is a party to the hearing.

☐ Yes
☐ No

I acknowledge that the non-attorney representative has full authority to act on behalf of Party with respect to the hearing and that the actions or omissions by the non-attorney representative are binding on Party, as if Party had taken or omitted those actions directly.

I acknowledge that documents are deemed to be served on Party if served on the non-attorney representative. I further acknowledge that communications between Party and the non-attorney representative are not generally protected by the attorney-client privilege and may be subject to disclosure during the hearing proceeding.

I acknowledge that neither federal nor state special education laws provide for the recovery of fees for the services of a non-attorney representative.

I acknowledge that it is Party's responsibility to notify the hearing officer and the opposing party of any change in the status of this authorization and that the provisions of this authorization shall remain in effect until Party notifies the hearing officer and the opposing party of Party's revocation of the authorization.

____
Printed Name

______________________________ ______________________________
Signature Date

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Draft Annual Action Plan Available for Public Comment

The Texas State Affordable Housing Corporation presents for public comment its draft 2014 Annual Action Plan, which is a component of the 2014 State Low Income Housing Plan. A copy of the draft 2014 Annual Action Plan may be found on the Corporation's website at www.tsahc.org. The public comment period for the Corporation's Draft 2014 Annual Action Plan is December 13, 2013 through January 27, 2014.

Written comment may be sent to Charlie Leal, 2200 E. Martin Luther King Jr. Boulevard, Austin, Texas 78702 or by email to cleal@tsahc.org.

TRD-201305875
David Long
President
Texas State Affordable Housing Corporation
Filed: December 12, 2013

Texas Department of Agriculture

Notice Regarding Percentage Volume of Texas Grapes Required by Texas Alcoholic Beverage Code, §16.011

Texas Alcoholic Beverage Code, §16.011 (§16.011) establishes an exception to the bar on the sale of wine in dry areas for wineries that sell or dispense wine that contains less than seventy five percent (75%), by volume, of Texas grown grapes or fruit. Texas Agriculture Code, §12.039 (§12.039), provides that the commissioner of agriculture may reduce the percentage by volume of fermented juice of grapes or other fruit grown in this state that wine containing that particular variety of grape or other fruit must contain under §16.011.

Due to state legislative budget cuts, the department did not receive the Texas Grape Production and Demand Report from the Texas Wine Marketing Research Institute (TWMRI), as provided for in §12.039. The department was also not able to utilize information on the grape production forecast, which, in the past has been provided by the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) (grape forecast report). No forecast report was issued for 2013 due to federal budget cuts. Grape production numbers for 2013 will be released in July, 2014. The last available report was issued on August 10, 2012. (USDA National Agricultural Statistics Service, "Crop Production," August 10, 2012). The forecast report is based on a survey of Texas grape growers statewide. The department has determined that there is not sufficient information to change the current percentage of Texas grown grapes and fruit that is required to be in wine produced by wineries located in dry areas from the statutorily-established 75% rate. Accordingly, the department is maintaining the seventy-five percent (75%) rate for the 2014 calendar year.

Additionally, as noted below, for situations where a winery is not able to obtain enough Texas grapes to meet its needs, the department will review individual appeals for reduction of the level set for calendar year 2014. The USDA grape forecast report will be issued in July 2014. TDA staff will review the USDA-NASS grape forecast report when it becomes available and submit to the commissioner at that time a recommendation for any needed adjustments to the 75% rate, as a result of the USDA-NASS data. The commissioner will review any such recommendation and make adjustments to the rate, as deemed necessary. Any change to the rate will be published in the *Texas Register* and posted on the Texas Department of Agriculture website.

In accordance with §12.039(g), the percentage established under this subsection must ensure that the use of that variety of grape or other fruit grown in this state is maximized while allowing for the acquisition of grapes or other fruit grown outside of this state in a quantity sufficient to meet the needs of wineries in this state. Therefore, if a winery in a dry area of Texas finds that a particular variety of grape or other fruit is not available to a level sufficient for the winery to meet the winery's planned production for the relevant year, the winery may submit documentation or other information requested by the commissioner substantiating that the winery has not been able to acquire those grapes or other fruit grown in this state in an amount sufficient to meet the winery's production needs and to comply with requirements of §16.011. Requests for a reduction in the percentage requirement should:

(1) Be submitted to Wendy Womack, coordinator for marketing, at wendy.womack@TexasAgriculture.gov.

(2) Provide details as to the variety and quantity of grapes or other fruit used by the winery in addition to the origin of those products;

(3) Provide details as to why the winery was unable to obtain a sufficient quantity of Texas grown grapes or fruit; and

(4) Include the winery name, name of the person submitting the request, winery location (street address, city, zip code and county).

If the commissioner determines that there is not a sufficient quantity of that variety of grapes or other fruit grown in this state to meet the needs of that winery, the commissioner may reduce the percentage requirement for wine bottled during the remainder of the calendar year that contains that variety of grape or fruit.

TRD-201306029
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 18, 2013

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health & Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that

the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *State of Texas v. Natural Gas Pipeline Company of America, LLC,* Cause No. D-1-GV-13-000535, in the 126th Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant Natural Gas Pipeline Company of America, LLC, owns and operates a natural gas transmission pipeline booster station located near Maple, Bailey County, Texas. At the booster station, Defendant operates two large natural gas fired compressor engines. In 2005, TCEQ granted a permit for air emissions from the two engines based on estimated emissions representations made by Defendant for carbon monoxide and combined oxides of nitrogen. In 2008, Defendant discovered that the engines' actual emissions of carbon monoxide and oxides of nitrogen were much higher than the estimated representations it made in the TCEQ permit. From 2008 to 2013, the Defendant occasionally operated the engines, though it was aware that such operation was not permitted.

Proposed Agreed Judgment: The Agreed Final Judgment enjoins the Defendant to obtain a permit amendment from TCEQ to authorize new allowable emission limitations for carbon monoxide and oxides of nitrogen from the two compressor engines. Defendant is further ordered to install and operate any pollution control equipment required by the amended permit and TCEQ. Defendant will pay civil penalties to the State in the amount of $175,000.00. Defendant will also pay the State's attorney's fees in the amount of $27,500.00 and all costs of court.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201305969
Katherine Cary
General Counsel
Office of the Attorney General
Filed: December 16, 2013

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Cancer Prevention and Research Institute of Texas

Request for Applications

Multi-Investigator Research Award Continuation Grants for Years 4 and 5 - R-14-MIRA-C-1

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations to continue the Multi-Investigator Research Award (MIRA) Continuation Grants for Years 4 and 5 to support integrated programs of collaborative and cross-disciplinary research among multiple investigators and focus on critical research areas that contribute meaningfully to advancing knowledge of the causes, prevention, and/or treatment of cancer. This award mechanism is open only to programs funded in 2010 pursuant to RFA R-10-MIRA1. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us. MIRAs are intended to support the creation of integrated programs of collaborative and cross-disciplinary research among multiple investigators. The equivalent of program projects, centers, NCI SPOREs, shared instrumentation, core laboratories, clinical trials, or other types of collaborative interaction is appropriate. Teams will focus on critical areas of cancer research, especially those that have been inadequately addressed by research up to this point or for which there may be an absence of an established paradigm or technical framework. Laboratory research, translational studies, and clinical and epidemiological investigations may be supported. Awards are expected to promote a cooperative environment that fosters intensive interaction among members in all aspects of the research program. This approach is expected to transform the research process through the integration of basic and/or clinical disciplines, leading to the aggressive translation of scientific discoveries (including the development of databases and tissue banks) into tools and applications that have the potential to significantly impact cancer incidence, detection, treatment, and/or mortality.

The maximum amount that may be requested by applicants is two-thirds of the total amount awarded as part of the initial three year contract (total costs - direct costs plus indirect costs per year). The maximum duration of each award is 2 years, and budgets covering the 2 years of program continuation should be submitted.

Applications will be accepted beginning at 12:00 p.m. Central Time on Thursday, December 19, 2013, through 3:00 p.m. Central Time on Friday, January 10, 2014. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201305953
Wayne Roberts
Chief Executive Officer
Cancer Prevention and Research Institute of Texas
Filed: December 16, 2013

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Request for Applications

Research Training Award Continuation Grants for Years 4 and 5 - R-14-RTA-C-1

Note: This is a re-submission of an earlier Request for Applications (RFA) due to a change in the acceptance date. Applications will begin being accepted on Tuesday, December 17, 2013 instead of starting on the 19th. The corrected version is as follows:

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations to continue the integrated institutional Research Training Awards (RTA) for Years 4 and 5 to support promising individuals who seek specialized training in the area of cancer research. This award mechanism is open only to programs funded in 2010 pursuant to RFA R-10-RTA1. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us. The goals of the Research Training Awards are to attract outstanding predoctoral (Ph.D. or M.D./Ph.D.) and postdoctoral trainees committed to pursuing a career in basic, translational, or clinical cancer research; expanding the skills and expertise of trainees to promote the next generation of investigators and leaders in cancer research; positioning most trainees for independent research careers; and supporting the development of high-quality, innovative, and creative research that, if successful, could provide the basis for a significant impact on cancer prevention, detection, and/or treatment. CPRIT expects outcomes of supported activities to directly and indirectly benefit subsequent cancer research efforts, cancer public health policy, or the continuum of cancer care-from prevention to treatment and cure. To fulfill this vision, trainees may pursue any research topic or issue related to cancer biology, causation, prevention, detection or screening, treatment, or cure. Awards will be made for institutional programs; individual fellowship applications will not be considered.

The maximum amount that may be requested by applicants is two-thirds of the total amount awarded as part of the initial three year contract (total costs - direct costs plus indirect costs per year). The maximum duration of each award is 2 years, and budgets covering the 2 years of program continuation should be submitted.

Applications will be accepted beginning at 7:00 a.m. Central Time on Tuesday, December 17, 2013, through 3:00 p.m. Central Time on Friday, January 3, 2014. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201305954
Wayne Roberts
Chief Executive Officer
Cancer Prevention and Research Institute of Texas
Filed: December 16, 2013

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - November 2013

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period November 2013 is $78.57 per barrel for the three-month period beginning on August 1, 2013, and ending October 31, 2013. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of November 2013 from a qualified low-producing oil lease is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period November 2013 is $2.82 per mcf for the three-month period beginning on August 1, 2013, and ending October 31, 2013. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of November 2013 from a qualified low-producing well is eligible for a 50% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of November 2013 is $93.93 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of November 2013 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of November 2013 is $3.64 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of November 2013 from a qualified low-producing gas well.

Inquiries should be directed to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201305974
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: December 17, 2013

Notice of Contract Award

Pursuant to Chapter 403, Subchapter Q and Chapter 2254, Subchapter A of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals ("RFP") 204c for Professional Accounting Services to Conduct Audits of the Texas Conservation Plan for the Dunes Sagebrush Lizard:

Padgett, Stratemann & Co., LLP, 811 Barton Springs Road, Suite 550, Austin, Texas 78704.

The total maximum amount of the contract is $50,000.00. The term of the contract is December 6, 2013, through June 24, 2014, with two (2) one year options to renew.

The notice of issuance was published in the July 12, 2013, issue of the *Texas Register* (38 TexReg 4530).

TRD-201305833
Robin Reilly
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 12, 2013

Notice of Legal Banking Holidays

Texas Tax Code §111.053(b) requires that, before January 1 of each year, the Texas Comptroller of Public Accounts publish a list of the legal holidays for banking purposes for that year. This is the 2014 Eleventh District Holiday Schedule. Pursuant to the Federal Reserve Bank of Dallas Notice 12-44 dated September 18, 2012, the Federal Reserve Bank of Dallas and its branches at El Paso, Houston, and San Antonio, Texas, will be closed on the following holidays in 2014:

Wednesday, January 1, New Years' Day

Monday, January 20, Martin Luther King Jr. Day

Monday, February 17, Presidents Day

Monday, May 26, Memorial Day

Friday, July 4, Independence Day

Monday, September 1, Labor Day

Monday, October 13, Columbus Day

Tuesday, November 11, Veterans Day

Thursday, November 27, Thanksgiving Day

Thursday, December 25, Christmas Day

The Federal Reserve standard holiday schedule mandates that if January 1, July 4, November 11, or December 25 fall on a Sunday, the following Monday will be observed as a holiday. If January 1, July 4, November 11, or December 25 occur on a Saturday, the preceding Friday will not be observed as a holiday.

For 2014, none of these dates fall on a Saturday or Sunday.

TRD-201305975

Jette Withers
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: December 17, 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, 304.003 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/23/13 - 12/29/13 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 12/23/13 - 12/29/13 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/14 - 01/31/14 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/14 - 12/31/14 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201305976
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 17, 2013

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Credit Union Department

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from FivePoint Credit Union, Nederland, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, and businesses and other legal entities located in Montgomery County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201306010
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 18, 2013

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

MemberSource Credit Union, Houston, Texas (#1) - See *Texas Register* issue dated August 30, 2013.

County and Municipal Employees Credit Union, Edinburg, Texas - See *Texas Register* issue dated September 27, 2013.

Anheuser-Busch Employees' Credit Union, St. Louis, Missouri - See *Texas Register* issue dated October 25, 2013.

Application for a Merger or Consolidation - Approved

Security One Federal Credit Union (Arlington) and Texas Trust Credit Union (Mansfield) - See *Texas Register* issue dated July 26, 2013.

Southside Credit Union (San Antonio) and Firstmark Credit Union (San Antonio) - See *Texas Register* issue dated August 30, 2013.

TRD-201306011
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 18, 2013

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Texas Education Agency

Request for Proficiency Tests for the Assessment of Limited English Proficient Students

Description. The Texas Education Agency (TEA) is notifying assessment publishers that proficiency assessments and/or achievement tests may be submitted for review for the 2014-2015 *List of State Approved Tests for the Assessment of Limited English Proficient Students.*

Texas Education Code (TEC), §29.056(a)(2), authorizes the TEA to compile a list of approved assessments for the purposes of identifying students as limited English proficient for entry into or exit (when appropriate) from bilingual education and/or English as a second language (ESL) programs; annually assessing oral language proficiency in English and Spanish when required; and measuring reading and writing proficiency in English and Spanish for program placement. The state-approved tests placed on the list must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from Prekindergarten (PK)-Grade 12. Assessments must also measure reading and writing in English and Spanish from PK-Grade 12.

Norm-referenced standardized achievement tests in English will be used for identification and entry into programs and for exit from programs for Grades 1 and 2 and may be used as formative assessments.

Norm-referenced standardized achievement tests in Spanish may be used for placement or language development purposes only. All tests to be included on the 2014-2015 *List of State Approved Tests for the Assessment of Limited English Proficient Students* must be re-normed at least every eight years to meet the criteria specified in the TEC, §39.032, which requires that standardization norms not be more than eight years old at the time the test is administered. Only new assessments, newly normed assessments, and/or modified/updated assessments must be submitted for evaluation at this time.

The Assessment Committee, comprised of stakeholders from throughout the state, will review and approve the 2014-2015 *List of State Approved Tests for the Assessment of Limited English Proficient Students.*

Selection Criteria. Assessment publishers will be responsible for submitting tests that they wish to be reviewed for consideration for inclusion on the 2014-2015 *List of State Approved Tests for the Assessment of Limited English Proficient Students.* All tests submitted for review must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from PK-Grade 12. Assessments must measure reading and writing in English and Spanish from PK-Grade 12 and must meet the state criteria for reliability and validity. Therefore, technical manuals must also be submitted and must be available for the review of assessments to be held on Friday, February 7, 2014. Assessments must also measure specific proficiency levels in oral language, reading, and writing in English and Spanish. Assessment instruments (English and Spanish) submitted for review will be grouped in the following categories: (1) Oral Language Proficiency Tests in English in Listening and Speaking domains; (2) Oral Language Proficiency Tests in Spanish in Listening and Speaking domains; (3) Reading and Writing Proficiency in English; and (4) Reading and Writing Proficiency in Spanish. Publishers are not required to submit proposals for all categories.

Proposals must be submitted and presented on Friday, February 7, 2014, to be considered for inclusion on the 2014-2015 *List of State Approved Tests for the Assessment of Limited English Proficient Students.* Assessment publishers will be required to attend the review of the assessments on Friday, February 7, 2014, which will be held at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin, Texas. Complete official sample test copies in English and Spanish with comprehensive explanations, including (1) scoring information; (2) norming data information, including ethnicity, gender, grade level, and geographic region; and (3) technical manuals with validity and reliability information, must be presented at that time. Only materials presented on Friday, February 7, 2014, will be considered for approval. Publishers must be available all day at the request of the committee and must make arrangements to pick up all materials at the end of the day. Any materials and/or revisions submitted after the deadline cannot be reviewed until the following year.

Further Information. For clarifying information, contact Susie Coultress, State Director of Bilingual/ESL/Title III/Migrant, Texas Education Agency, by phone at (512) 463-9581 or by email at susie.coultress@tea.state.tx.us.

TRD-201306025
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 18, 2013

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 27, 2014.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 27, 2014.** 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: A & D Card Lock; DOCKET NUMBER: 2013-2101-PST-E; IDENTIFIER: RN102478062; LOCATION: Bowie, Montague County; TYPE OF FACILITY: unmanned retail gasoline refueling facility; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 78602-7833, (325) 698-9674.

(2) COMPANY: American Marazzi Tile, Incorporated; DOCKET NUMBER: 2013-1922-AIR-E; IDENTIFIER: RN100218080; LOCATION: Sunnyvale, Dallas County; TYPE OF FACILITY: ceramic tile manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1147, Special Terms and Conditions Number 8, and New Source Review Permit Number 19841, Special Conditions Number 1, by failing to comply with the emissions limits for sulfur dioxide, hydrogen chloride, and hydrogen fluoride based on a stack test conducted on June 6, 2012; PENALTY: $5,025; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Brook Angus Ranch LP; DOCKET NUMBER: 2013-2105-WR-E; IDENTIFIER: RN106871866; LOCATION: Brady, McCulloch County; TYPE OF FACILITY: individual; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to impound, divert or use state water without a required permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(4) COMPANY: Bullfrog Station, Incorporated; DOCKET NUMBER: 2012-1729-PST-E; IDENTIFIER: RN103008694; LOCATION: Lake Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), (2), and (A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month and providing release detection for the piping associated with the USTs; TWC, §26.3475(a), by failing to test line lead detectors at least once per year for performance and operational reliability; 30 TAC §115.246(7)(A) and Texas Health and Safety Code

(THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.242(3)(E) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; PENALTY: $12,905; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Coolidge; DOCKET NUMBER: 2013-1436-PWS-E; IDENTIFIER: RN101402485; LOCATION: Coolidge, Limestone County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; and 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 customer by July 1 of each year and 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 to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: $875; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: COASTAL TRANSPORT COMPANY, INCORPORATED; DOCKET NUMBER: 2013-1715-PST-E; IDENTIFIER: RN100712629; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: common carrier; RULE VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; PENALTY: $1,350; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Dallas Housing Authority; DOCKET NUMBER: 2013-1703-PST-E; IDENTIFIER: RN101649754; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: an assisted living facility with an emergency power generator and one petroleum underground storage tank (UST); RULE VIOLATED: 30 TAC §334.8 and TWC, §26.3467(a), by failing to submit a UST registration and self-certification form and subsequent annual renewal registrations; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month; PENALTY: $12,563; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: EASTERN TRUST, LTD dba Hamilton ET; DOCKET NUMBER: 2013-1699-PST-E; IDENTIFIER: RN102376027; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: ENCINAL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1512-PWS-E; IDENTIFIER: RN101441772; LOCATION: Encinal, La Salle County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of Well Number 1; and 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exists; PENALTY: $150; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(10) COMPANY: Ernest Pickens dba Pickens Auto Parts; DOCKET NUMBER: 2013-1075-MLM-E; IDENTIFIER: RN103206975; LOCATION: Waco, McLennan County; TYPE OF FACILITY: salvage yard; RULE VIOLATED: TWC, §26.121(a) and 30 TAC §335.4, by failing to prevent the discharge of industrial waste into or adjacent to water in the state; Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05L381, Part III, Section B.2. and B.3., Routine Facility Inspections and Quarterly Visual Monitoring, and 30 TAC §305.125(1), by failing to conduct quarterly periodic routine facility inspections to determine the effectiveness of the pollution prevention measures and controls and to conduct quarterly visual monitoring of storm water discharges from each outfall; TPDES General Permit Number TXR05L381, Part III, Section B.5., Annual Comprehensive Site Compliance Inspection, and 30 TAC §305.125(1), by failing to conduct the annual comprehensive site evaluations and overall assessments of the effectiveness of the current storm water pollution prevention plan (SWP3) for Calendar Year (CY) 2012; TPDES General Permit Number TXR05L381, Part III, Section C.1.(b), Discharges of Storm Water Runoff, and 30 TAC §305.125(1), by failing to collect grab samples for hazardous metals at a minimum frequency of once per year at the final outfall for CY 2012; TPDES General Permit Number TXR05L381, Part III, Section D.1.(c), General Monitoring and Records Requirements, and 30 TAC §305.125(1), by failing to maintain a rain gauge monitoring log available for review; TPDES General Permit Number TXR05L381, Part IV, Section A.1., Monitoring for Benchmark Parameters in Discharges, and 30 TAC §305.125(1), by failing to conduct semiannual benchmark monitoring for CY 2012; and TPDES General Permit Number TXR05L381, Part III, Section A.6., SWP3 Review, and 30 TAC §305.125(1), by failing to maintain an adequate and up-to-date SWP3; PENALTY: $19,274; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: HLK Auto Group, Incorporated; DOCKET NUMBER: 2013-1728-PST-E; IDENTIFIER: RN102050481; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month and providing release detection for the suction piping associated with the UST system; PENALTY: $3,891; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: HOG CREEK WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1712-PWS-E; IDENTIFIER: RN101459295; LOCATION: McLennan County; TYPE OF

FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: $100; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: John D. Passano dba Hero's Ice & Feed; DOCKET NUMBER: 2013-1559-PST-E; IDENTIFIER: RN102277670; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Kenneth Lesley; DOCKET NUMBER: 2013-2063-WR-E; IDENTIFIER: RN103980306; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: individual; RULE VIOLATED: TWC, §11.053, by failing any unauthorized diversions or use of state water where water diversion curtailments/suspensions have been ordered by the executive director; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Mission Petroleum Carriers, Incorporated; DOCKET NUMBER: 2013-1824-PST-E; IDENTIFIER: RN100569110; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: common carrier; RULE VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; PENALTY: $1,350; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Pollard Aircraft Sales, Incorporated; DOCKET NUMBER: 2013-1473-PST-E; IDENTIFIER: RN101541597; LOCATION: Roanoke, Denton County; TYPE OF FACILITY: aircraft refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month and providing release detection for the suction piping associated with the UST system; PENALTY: $3,893; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: QUICK FILL LLC dba A+ Convenience; DOCKET NUMBER: 2013-1056-PST-E; IDENTIFIER: RN101442739; LOCATION: Canton, Van Zandt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 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: $4,500; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Raktakali Enterprises Incorporated dba Lionbacker Drive Inn; DOCKET NUMBER: 2013-1605-PST-E; IDENTIFIER: RN102713401; LOCATION: Ennis, Ellis 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: $6,375; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Rebecca Creek Municipal Utility District; DOCKET NUMBER: 2013-1630-PWS-E; IDENTIFIER: RN101453587; LOCATION: Spring Branch, Comal County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average; 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: $366; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: RF PETROLEUM #5, INCORPORATED dba Ellison's Convenience Store; DOCKET NUMBER: 2013-1718-PST-E; IDENTIFIER: RN104188750; LOCATION: La Grange, Fayette 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 tanks; PENALTY: $5,755; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(21) COMPANY: Rust Ranch Company; DOCKET NUMBER: 2013-2121-WR-E; IDENTIFIER: RN106890122; LOCATION: Kimble County; TYPE OF FACILITY: individual; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to impound, divert or use state water without a required permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(22) COMPANY: Sheila M Corbello; DOCKET NUMBER: 2013-2094-WR-E; IDENTIFIER: RN106890155; LOCATION: Kimble County; TYPE OF FACILITY: individual; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to impound, divert or use state water without a required permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(23) COMPANY: SUN & SAL INVESTMENTS INCORPORATED dba Collins Food Store; DOCKET NUMBER: 2013-1935-PST-E; IDENTIFIER: RN101444792; LOCATION: Arlington, Tarrant 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: $3,450; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: The Martin-Brower Company, L.L.C.; DOCKET NUMBER: 2013-1356-PST-E; IDENTIFIER: RN101849602; LO-

CATION: Conroe, Montgomery County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,943; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Zaed Business Incorporated dba Shoppers First Choice Mini Mart; DOCKET NUMBER: 2013-1478-PST-E; IDENTIFIER: RN101635712; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month and providing release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $8,879; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

TRD-201305979
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 17, 2013

Enforcement Orders

An agreed order was entered regarding JVAC Properties, LLC dba Riviera Mobile Home Park, Docket No. 2012-0057-PWS-E on December 4, 2013 assessing $664 in administrative penalties with $132 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National Oilwell Varco, L.P., Docket No. 2012-0969-AIR-E on December 4, 2013 assessing $3,500 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kundan Greenwood, LP dba Greenwood Business Park, Docket No. 2012-1050-PWS-E on December 4, 2013 assessing $110 in administrative penalties with $22 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tommy Fisher dba Acuff Steak House, Docket No. 2012-1403-PWS-E on December 4, 2013 assessing $371 in administrative penalties with $73 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ali Mohammad Solhjou dba Aldine Oaks Mobile Home Park, Docket No. 2013-0217-PWS-E on December 4, 2013 assessing $90 in administrative penalties with $18 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Juvenile Justice Department, Docket No. 2013-0462-PST-E on December 4, 2013 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CARRINGTON ASSOCIATES, INC. dba Pioneer Valley Water Company, Docket No. 2013-0515-PWS-E on December 4, 2013 assessing $1,357 in administrative penalties with $271 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CONSUMERS WATER INC., Docket No. 2013-0570-PWS-E on December 4, 2013 assessing $4,117 in administrative penalties with $823 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwestern Bell Telephone, L.P., Docket No. 2013-0577-PST-E on December 4, 2013 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ECOLOGIST SERVICES & DISPOSITION, INC., Docket No. 2013-0620-WQ-E on December 4, 2013 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R & A Harris South, LP dba Intercontinental Motors, Docket No. 2013-0662-IWD-E on December 4, 2013 assessing $6,100 in administrative penalties with $1,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwestern Bell Telephone, L.P., Docket No. 2013-0685-PST-E on December 4, 2013 assessing $5,893 in administrative penalties with $1,178 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CBTP CORPORATION dba Tyrell Park Chevron, Docket No. 2013-0689-PST-E on December 4, 2013 assessing $4,999 in administrative penalties with $999 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quadvest, L.P., Docket No. 2013-0692-MWD-E on December 4, 2013 assessing $2,875 in administrative penalties with $575 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Varughese Philip dba Richwood Food Market, Docket No. 2013-0719-PST-E on December 4, 2013 assessing $5,112 in administrative penalties with $1,022 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COMMUNITY WATER SERVICE, INC., Docket No. 2013-0738-PWS-E on December 4, 2013 assessing $2,050 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nationwide DG New Waverly, Inc., Docket No. 2013-0798-EAQ-E on December 4, 2013 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southcross Gathering Ltd., Docket No. 2013-0800-AIR-E on December 4, 2013 assessing $1,400 in administrative penalties with $280 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Naila Partners, Ltd. dba Handi Plus, Docket No. 2013-0822-PST-E on December 4, 2013 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Hampton Resources, Inc., Docket No. 2013-0840-AIR-E on December 4, 2013 assessing $4,725 in administrative penalties with $945 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRI-BAR RANCH COMPANY, LTD., Docket No. 2013-0847-EAQ-E on December 4, 2013 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randall C. Voorheis and Terry D. Voorheis, Docket No. 2013-0850-EAQ-E on December 4, 2013 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Department of Transportation Maritime Administration, Docket No. 2013-0868-PST-E on December 4, 2013 assessing $2,888 in administrative penalties with $577 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bar V Holdings LLC, Docket No. 2013-0872-WR-E on December 4, 2013 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VSW Properties, LLC dba South Winds Mobile Home Village, Docket No. 2013-0880-PWS-E on December 4, 2013 assessing $470 in administrative penalties with $94 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amy Investments, Inc. dba Triangle Market, Docket No. 2013-0912-PST-E on December 4, 2013 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davoud Sayari dba Fill N Station, Docket No. 2013-0921-PST-E on December 4, 2013 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cargill, Incorporated, Docket No. 2013-0969-AIR-E on December 4, 2013 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel R. Soto dba DRS Rock Materials, LLC, Docket No. 2013-0997-AIR-E on December 4, 2013 assessing $1,188 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alamo Commercial Properties, Ltd., Docket No. 2013-1008-PWS-E on December 4, 2013 assessing $455 in administrative penalties with $91 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BEST FRIEND'S TREASURES, INC., Docket No. 2013-1009-PWS-E on December 4, 2013 assessing $152 in administrative penalties with $30 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Teague, Docket No. 2013-1039-MWD-E on December 4, 2013 assessing $5,699 in administrative penalties with $1,139 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COTULLA FISH HATCHERY, LLC, Docket No. 2013-1054-PWS-E on December 4, 2013 assessing $627 in administrative penalties with $125 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Armortex, Inc., Docket No. 2013-1065-AIR-E on December 4, 2013 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wayne C. Bradford dba Country Place Community, Docket No. 2013-1068-PWS-E on December 4, 2013 assessing $550 in administrative penalties with $110 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Humble Group Investment, Inc. dba Garfield Market, Docket No. 2013-1072-PST-E on December 4, 2013 assessing $2,938 in administrative penalties with $587 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brushy Creek Municipal Utility District, Docket No. 2013-1105-EAQ-E on December 4, 2013 assessing $1,625 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stamford, Docket No. 2013-1126-PWS-E on December 4, 2013 assessing $172 in administrative penalties with $34 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cisco, Docket No. 2013-1134-MWD-E on December 4, 2013 assessing $2,337 in administrative penalties with $467 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hays County, Docket No. 2013-1141-WQ-E on December 4, 2013 assessing $1,676 in administrative penalties with $335 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CASA ESPERANZA, INC. dba Hope House, Docket No. 2013-1144-PWS-E on December 4, 2013 assessing $1,071 in administrative penalties with $213 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MILANO WATER SUPPLY CORPORATION, Docket No. 2013-1167-PWS-E on December 4, 2013 assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS H2O, INC., Docket No. 2013-1268-PWS-E on December 4, 2013 assessing $164 in administrative penalties with $32 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RIO WATER SUPPLY CORPORATION, Docket No. 2013-1293-PWS-E on December 4, 2013 assessing $1,764 in administrative penalties with $352 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Blake Magee Company, L.P., Docket No. 2013-1322-EAQ-E on December 4, 2013 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Hodges and Son Construction Company, Docket No. 2013-1722-WR-E on December 4, 2013 assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Kent Garbett Properties LLC, Docket No. 2013-1805-WQ-E on December 4, 2013 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOUNTAIN BREEZE, L.L.C., Docket No. 2012-0368-PWS-E on December 12, 2013 assessing $2,138 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A order was entered regarding MAGIC PRO INC dba Pro Quick Lube, Docket No. 2012-0486-PST-E on December 13, 2013 assessing $5,137 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca S. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2012-0735-AIR-E on December 12, 2013 assessing $101,038 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of De Kalb, Docket No. 2012-1212-MWD-E on December 12, 2013 assessing $35,890 in administrative penalties with $35,890 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IMMANUEL CHURCH OF AUSTIN, Docket No. 2012-1600-EAQ-E on December 12, 2013 assessing $9,375 in administrative penalties with $5,775 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jose Flores Cabazos aka Jose Flores Cavazos, Docket No. 2012-1879-PWS-E on December 12, 2013 assessing $214 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quad Williamson, LLC, Docket No. 2012-1935-AIR-E on December 12, 2013 assessing $8,925 in administrative penalties with $1,785 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2012-1962-AIR-E on December 12, 2013 assessing $126,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Barakat S & A, Inc. dba SAA Food Mart, Docket No. 2013-0099-PST-E on December 12, 2013 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alloy Polymers Orange, LLC, Docket No. 2013-0353-IHW-E on December 12, 2013 assessing $50,375 in administrative penalties with $10,075 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Lubrizol Corporation, Docket No. 2013-0375-AIR-E on December 12, 2013 assessing $61,796 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CENTERGAS FUELS, INC., Docket No. 2013-0396-PST-E on December 12, 2013 assessing $9,109 in administrative penalties with $1,821 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fiber Brite, Ltd., Docket No. 2013-0401-AIR-E on December 12, 2013 assessing $38,000 in administrative penalties with $7,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mark Stewart, Docket No. 2013-0407-PWS-E on December 12, 2013 assessing $4,861 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R.A.R. BUSINESS INC dba Hardy Stop, Docket No. 2013-0478-PST-E on December 12, 2013 assessing $8,088 in administrative penalties with $1,617 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rainbow Landscape Materials, LLC, Docket No. 2013-0511-WQ-E on December 12, 2013 assessing $9,435 in administrative penalties with $1,887 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding AZZAH ENTERPRISES, INC. dba Blue Star Food Mart, Docket No. 2013-0523-PST-E on December 12, 2013 assessing $15,233 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lockheed Martin Corporation, Docket No. 2013-0603-AIR-E on December 12, 2013 assessing $4,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dario Canales dba DC Auto Collision, Docket No. 2013-0672-AIR-E on December 12, 2013 assessing $5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2013-0673-AIR-E on December 12, 2013 assessing $31,063 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dallas Group of America, Inc., Docket No. 2013-0678-AIR-E on December 12, 2013 assessing $5,038 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Global Waste Services, LLC, Docket No. 2013-0724-MSW-E on December 12, 2013 assessing $8,928 in administrative penalties with $1,785 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding AL-IMRAN ENTERPRISES, INC. dba Vargas Food Mart 2, Docket No. 2013-0764-PST-E on December 12, 2013 assessing $5,048 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walden Environmental Chemistries, Inc. (Formerly CONLEN SURFACTANT TECHNOLOGY, INC.), Docket No. 2013-0777-IHW-E on December 12, 2013 assessing $23,250 in administrative penalties with $4,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Livingston Care Associates, Inc. and Polk Health Holdings LLC, Docket No. 2013-0834-MWD-E on December 12, 2013 assessing $8,914 in administrative penalties with $1,782 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FIRESTONE POLYMERS, LLC, Docket No. 2013-0915-IWD-E on December 12, 2013 assessing $30,000 in administrative penalties with $6,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delek Refining, Ltd., Docket No. 2013-0918-AIR-E on December 12, 2013 assessing $19,001 in administrative penalties with $3,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Beep-Beep, L.L.C. dba Beep Beep Convenience Store, Docket No. 2013-0951-PST-E on December 12, 2013 assessing $8,879 in administrative penalties with $1,775 deferred.

Information concerning any aspect of this order may be obtained by contacting Troy Warden, Enforcement Coordinator at (512) 239-1050, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ashish Verma dba Dixie Mart, Docket No. 2013-0959-PST-E on December 12, 2013 assessing $19,225 in administrative penalties with $3,845 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Port Arthur, LLC, Docket No. 2013-0966-AIR-E on December 12, 2013 assessing $19,689 in administrative penalties with $3,937 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W & W Fiberglass Tank Company, Docket No. 2013-0968-AIR-E on December 12, 2013 assessing $74,550 in administrative penalties with $14,910 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Beaumont Independent School District, Docket No. 2013-0970-PST-E on December 12, 2013 assessing $8,439 in administrative penalties with $1,686 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cities of Waco, Woodway, Bellmead, Lacy-Lakeview, Robinson, Hewitt, and Lorena, Docket No. 2013-0991-MWD-E on December 12, 2013 assessing $7,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Goodrich, Docket No. 2013-1080-MWD-E on December 12, 2013 assessing $16,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G & R SAKUN, INC dba JM Grocery, Docket No. 2013-1149-PST-E on December 12, 2013 assessing $7,688 in administrative penalties with $1,537 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Multisources, LTD, Docket No. 2013-1335-AIR-E on December 12, 2013 assessing $7,875 in administrative penalties with $1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201306020
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 18, 2013

Notice of Correction - EmChem Corporation Notice

In the December 13, 2013, issue of the *Texas Register* (38 TexReg 9090), the Texas Commission on Environmental Quality (commission) published the *Notice of Meeting on January 16, 2014 in Pearland, Brazoria County, Texas Concerning the EmChem Corporation.*

Specifically, on page 9090, first column, fifth paragraph, second line, the address was published incorrectly as "4803 Rice Dryer Road". The correct address is "4308 Rice Dryer Road."

Any questions or comments may be addressed to Mr. John Flores, TCEQ Community Relations Coordinator, at (800) 633-9363, extension 5674.

TRD-201306022
Patricia Durón
Program Supervisor - Texas Register Liaison
Texas Commission on Environmental Quality
Filed: December 18, 2013

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding the proposed repeal of 30 Texas Administrative Code (TAC) Chapter 114, Subchapter K, Division 4, Control of Air Pollution from Motor Vehicles, §§114.640, 114.642, 114.644, 114.646, and 114.648; simultaneous proposal of new §§114.640, 114.642, 114.644, 114.646, and 114.648; and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking would repeal and re-propose 30 TAC Chapter 114, Subchapter K, Division 4, to extend the expiration date to August 31, 2019, for the Texas Clean School Bus Program rules to be consistent with statutory changes by House Bill 1796, 81st Legislature, 2009.

The commission will hold a public hearing on this proposal in Austin on January 21, 2014, at 2:00 p.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.

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 2014-008-114-AD. The comment period closes January 27, 2014. 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 Joe Briseño, Pollution Prevention and Education, (512) 239-6781.

TRD-201305929
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 13, 2013

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 305

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 305, Consolidated Permits, Subchapter P, §305.541, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would adopt by reference 40 Code of Federal Regulations Part 449, which establishes technology-based effluent limitation guidelines and new source performance standards to control discharges of pollutants from airport de-icing operations.

The commission will hold a public hearing on this proposal in Austin on January 23, 2014, 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.

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2013-052-305-OW. The comment period closes January 27, 2014. 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 Laurie Fleet, Wastewater Permitting Section, at (512) 239-5445.

TRD-201305925
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 13, 2013

Notice of Public Hearings on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct public hearings to receive testimony regarding proposed revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency concerning SIPs.

The proposed SIP revision would satisfy Federal Clean Air Act, §172(c)(3) and §182(a)(1) emissions inventory reporting requirements for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas under the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS). States are required to submit a comprehensive, accurate, current inventory of emissions from all sources in nonattainment areas within two years of the July 20, 2012 effective date of designations.

Public hearings on this proposal will be held in Houston on January 14, 2014 at 2:00 p.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane; and in Arlington on January 16, 2014 at 2:00 p.m. in the Council Chambers at the Arlington City Hall Building, 101 W. Abram Street. The hearings are 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 hearings; however, TCEQ staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Joyce Spencer-Nelson, Air Quality Division, at (512) 239-5017. Requests should be made as far in advance as possible.

Written comments may be submitted to Nina Castillo, MC 206, Air Quality Division, Office of Air, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-6188. 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 pertaining to the EI SIP revision for the 2008 eight-hour ozone NAAQS should reference SIP Project Number 2013-016-SIP-NR. The comment period closes January 27, 2014. Copies of the proposed rulemaking can be obtained from the TCEQ's Website at *http://www.tceq.texas.gov/airquality/sip/criteria-pollutants/sip-ozone*. For further information, please contact Nina Castillo, Air Quality Planning Section, (512) 239-4415.

TRD-201305978
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 17, 2013

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Major Permit Amendment Permit Number 2274

APPLICATION. City of Littlefield, P.O. Box 1267, Littlefield, Lamb County, Texas 79339, a municipal solid waste disposal facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type I-AE and Type IV-AE Municipal Solid Waste Limited Scope Major Permit Amendment to obtain authorization to convert the designation of six Type I-AE landfill cells to Type IV-AE land-

fill cells to address a demand for more disposal in a Type IV-AE landfill, and a change in hours of acceptance. The facility is located approximately 4.7 miles east of the intersection of U.S. Highway 385 and FM 2197, in Littlefield, Lamb County, Texas 79339. The TCEQ received the application on October 28, 2013. The permit application is available for viewing and copying at the City of Littlefield, City Hall, 301 XIT Drive, Littlefield, Lamb County, Texas 79339. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.983083&lng=-102.238426&zoom=12&type=r. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from City of Littlefield at the address stated above or by calling Ms. Janine Butler, City Secretary, at (806) 385-5161, Ext. 204.

TRD-201306019
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 18, 2013

Notice of the Executive Director's Response to Public Comment on General Permit Number TXR040000

The executive director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment on Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR040000 (GP TXR040000). As required by Texas Water Code (TWC), §26.040(d) and 30 TAC §205.3(c), before a GP is issued, the executive director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the GP. This response addresses all timely received public comments, whether or not withdrawn. Timely public comments were received from the following persons or entities:

Allan Boone Humphries Robinson LLP; Brazoria County Stormwater Quality Coalition, including the City of Lake Jackson, City of Angleton, City of Alvin, City of Freeport, City of Clute, City of Richwood, Brazoria County, Brazoria Drainage District No. 4, Brazoria County Conservation and Reclamation District No. 3, Velasco Drainage District, and Angleton Drainage District; Dallas Area Rapid Transit; City of Farmers Branch; Fort Bend County Stormwater Quality Coalition, including Fort Bend County Drainage District and Fort Bend County; Geosyntec Consultants, Inc.; Hardin County Stormwater Quality Coalition, including the City of Lumberton and Hardin County; Jefferson County Stormwater Quality Coalition, including the City of Nederland, City of Groves, City of Port Neches, City of Port Arthur, Jefferson County Drainage District No. 7, and Jefferson

County; City of Lewisville; LRGV Stormwater Task Force, comprised of the City of Brownsville, Cameron County, San Benito, La Feria, Primera, Palm Valley, City of Harlingen, Cameron County Drainage District #1, Weslaco, Donna, Alamo, San Juan, Mission, La Joya, Alton and the City of Edinburg; City of Mansfield; City of McKinney; Montgomery County Stormwater Quality Coalition, including the City of Conroe, The Woodlands Joint Powers Agency, and Montgomery County; Orange County Stormwater Quality Coalition, including the City of Vidor, City of Bridge City, City of Orange, City of Pinehurst, City of West Orange, Orange County, and Orange County Drainage District; North Austin Stormwater Quality Coalition, including Wells Branch MUD, North Austin MUD, and Williamson County MUD No. 13; City of Round Rock; City of Sugar Land; City of Temple; Tarrant County; Texas Department of Transportation; and Travis County Transportation Natural Resources Department.

Background

This GP would authorize discharges of stormwater and certain non-stormwater discharges from small municipal separate storm sewer systems (MS4s). Federal Phase II stormwater regulations adopted by TCEQ extend stormwater permitting requirements to small MS4s located in urbanized areas and issuing this permit provides coverage for regulated small MS4s. Under the permit, small MS4s will only be authorized to discharge following the development and implementation of a comprehensive stormwater management program (SWMP). Each regulated small MS4 operator must develop the six minimum control measures (MCMs) according to the provisions of the permit.

The permit is proposed under the statutory authority of: 1) TWC, §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission; 2) TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state; and 3) TWC, §26.040, which provides the commission with authority to amend rules to authorize waste discharges by a GP.

On September 14, 1998, the TCEQ received authority from the United States Environmental Protection Agency (EPA) to administer the TPDES program. TCEQ and EPA have a Memorandum of Agreement (MOA) that authorizes the administration of the National Pollutant Discharge Elimination System program by the TCEQ as it applies to the State of Texas.

The federal Phase II stormwater regulations were published on December 8, 1999 in the *Federal Register,* requiring regulated small MS4s to obtain permit coverage. TPDES GP TXR040000 was issued on August 13, 2007. The Phase II small MS4 regulations are in the federal rules at 40 Code of Federal Regulations (CFR) §§122.30 - 122.37, which were adopted by reference by TCEQ at 30 TAC §281.25(b). TCEQ did not adopt by reference the guidance in 40 CFR §122.33 and §122.34.

Stormwater and certain non-stormwater discharges from medium and large MS4s, those operated within cities with a population of 100,000 or more, are currently authorized under individual TPDES stormwater permits. These individual stormwater permits are for terms of five years.

Notice of availability and an announcement of public meetings for this permit were published in the *Austin American Statesman, Corpus Christi Daily News, Dallas Morning News, El Paso Times, Houston Chronicle, The Monitor, San Antonio Express-News,* and the *Texas Register* on August 24, 2012. A public meeting was held in Austin on September 24, 2012, and the comment period ended on that day as well.

Response to Comments

Comments and Response to Comments may be viewed at: *http://www.tceq.texas.gov/permitting/stormwater/WQ_ms4_small_TXRO4.html.*

TRD-201305977
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 17, 2013

Notice of Water Quality Applications

The following notices were issued on November 29, 2013 through December 13, 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

FLINT HILLS RESOURCES CORPUS CHRISTI LLC Revised. The caption published in the November 22, 2013, publication of the *Texas Register* (38 TexReg 8464) incorrectly identified this application as an application for a major amendment. which operates the FHR West Refinery and Mid-Terminal, a petroleum refinery (comprised of the West Crude Area, the East Plant, the Mid-Plant, and tank farms), the Mid-Terminal, tank farm and terminal facility, and irrigated Land Treatment Units (LTUs) 1 and 2, has applied for a minor amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000531000 to authorize the removal of Outfalls 002, 006, 007, 009, 010, and 013 from the existing permit; and to revise the language in Other Requirements No. 15(a) to allow the use of treated process wastewater and stormwater as process make-up water. The existing permit authorizes the discharge of treated process, stormwater, groundwater, marine-generated, domestic, and utility wastewaters from the West Refinery, contaminated water generated at other facilities, and treated stormwater associated with construction activities at a daily average flow not to exceed 5,300,000 gallons per day (GPD) via Outfall 001 or Outfall 012; hydrostatic test and firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, uncontaminated groundwater, and stormwater on an intermittent and flow variable basis via Outfalls 002, 003, 006, 007, 010, and 013; hydrostatic test and firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, uncontaminated groundwater, emergency discharges of Fluid Catalytic Cracking Unit (FCCU) seal tank water, stormwater, and wet weather discharges of cooling tower and boiler blowdown and the de minimus wet-weather seepage of Outfall 004 wastewaters via Outfall 012 weir on an intermittent and flow variable basis via Outfall 004; hydrostatic test and firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, uncontaminated groundwater, and stormwater on an intermittent and flow variable basis via Outfall 006; hydrostatic test and firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, uncontaminated groundwater, stormwater, and wet weather discharges of cooling tower and boiler blowdown on an intermittent and flow variable basis via Outfalls 005, 008, and 009; firewater and firewater test wastewaters and steam and air conditioner condensate on an intermittent and flow variable basis via Outfall 011; and the summation of Outfalls 001 and 012 at a daily average flow not to exceed 5,300,000 GPD via Outfall Number Sum-A (014). The draft permit authorizes the discharge of treated process, stormwater, groundwa-

ter, marine-generated, domestic, and utility wastewaters from the West Refinery, contaminated water generated at other facilities and treated stormwater associated with construction activities at a daily average flow not to exceed 5,300,000 GPD via Outfall 001 or Outfall 012; hydrostatic test and firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, uncontaminated groundwater, and stormwater on an intermittent and flow variable basis via Outfall 003; hydrostatic test and firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, uncontaminated groundwater, emergency discharges of Fluid Catalytic Cracking Unit (FCCU) seal tank water, stormwater, and wet weather discharges of cooling tower and boiler blowdown and the de minimus wet-weather seepage of Outfall 004 wastewaters via Outfall 012 weir, on an intermittent and flow variable basis via Outfall 004; hydrostatic test and firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, uncontaminated groundwater, stormwater, and wet weather discharges of cooling tower and boiler blowdown on an intermittent and flow variable basis via Outfalls 005 and 008; and firewater and firewater test wastewaters and steam and air conditioner condensate on an intermittent and flow variable basis via Outfall 011; and summation of Outfalls 001 and 012 at a daily average flow not to exceed 5,300,000 GPD via Outfall Number Sum-A (014). The facility is located east and west of Suntide Road and north of Up River Road in the northwest area of, and on the south side of the end of Tribble Lane, in the northern area of the City of Corpus Christi; and LTUs 1 and 2 are located approximately 5,000 feet northwest of the intersection of Suntide Road and Up River Road, in the City of Corpus Christi, Nueces County, Texas 78409.

AIR LIQUIDE LARGE INDUSTRIES US LP which operates Air Liquide - Freeport ASU, a cryogenic air separation facility producing oxygen, nitrogen, and argon, has applied for a renewal of TPDES Permit No. WQ0001954000, which authorizes the discharge of cooling tower blowdown, air compressor condensate, and miscellaneous wash water at a daily average flow not to exceed 460,000 gallons per day via Outfall 001. The facility is located at 1711 Farm-to-Market Road 523, on the west side of Farm-to-Market Road 523, north of the intersection of Farm-to-Market Road 523 and State Highway 332, approximately two miles north of the City of Freeport, Brazoria County, Texas 77541.

LYONDELL CHEMICAL COMPANY which operates a facility that produces synthetic organic chemicals, has applied for a renewal of TPDES Permit No. WQ0002756000 to authorize the discharge of utility wastewater and stormwater on an intermittent and flow-variable basis via Outfalls 001, 002, and 003. The facility is located at 10801 Choate Road, northwest of the intersection of Bay Area Boulevard and Choate Road in the City of Pasadena, Harris County, Texas 77507. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

EEMSTER WEST LLC has applied for a Major Amendment of TPDES Permit No. WQ0002922000 for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy facility at a maximum capacity of 900 head, of which 700 head are milking cows, increase the on-site land application acreage from 93 acres to 109 acres, install a center pivot, convert old RCS #1 to a settling pond and rename new RCS as RCS #1. The facility is located on the east side of Farm-to-Market Road 219, approximately 1.3 miles south of the City of Lingleville in Erath County, Texas.

Hidden View Dairy a Texas General Partnership for a Major Amendment TPDES Permit No. WQ0003197000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 3000 head to a maximum capacity of 5100 head, of which 3500 head are milking cows. The facility is located on the northwest side of County Road 522, approximately one-quarter mile northeast of the intersection of County Road 522 and State Highway 6 in Erath County, Texas.

PETER HENRY SCHOUTEN SR AND NOVA DARLENE SCHOUTEN has applied for a Major Amendment of TPDES Permit No. WQ0003675000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy cattle facility at a maximum capacity of 990 head, all of which are milking cows. The Applicant is proposing to increase the land application acreage from 43 acres to 130 acres, add a new well and utilize third party fields for the application of waste. The facility is located at the southwest corner of the intersection of County Road 229 and County Road 231 approximately 1.8 miles south of the intersection of County road 229 and Farm-to-Market Road 913 in Erath County, Texas.

LOAD TRAIL LLC which operates Load Trail, a trailer manufacturing facility, has applied for new TPDES Permit No. WQ0005012000 to authorize the discharge of process wash water at a daily average flow not to exceed 750 gallons per day via Outfall 001. The facility is located at 220 Farm Road 2216, near the intersection of Farm Road 2352 and Farm Road 2216, in the City of Sumner, Lamar County, Texas 75486.

CITY OF RULE has applied for a renewal of TCEQ Permit No. WQ0010265001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 110,000 gallons per day via surface irrigation of 20 acres of non-public access pasture land. This permit renewal authorizes the disposal of treated domestic wastewater at a reduced daily average flow not to exceed 68,000 gallons per day via surface irrigation of 20 acres of non-public access pasture land. The wastewater treatment facility and disposal site are located approximately two miles southwest of Rule, approximately 1.5 miles south of U.S. Highway 380 and approximately two miles west of State Highway 6 in Haskell County, Texas 79547.

THE CITY OF GRAHAM has applied for a renewal of TPDES Permit No. WQ0010487001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,100,000 gallons per day. The application also includes a request for a temporary variance to the existing water quality standards for Dissolved Oxygen. The facility is located approximately 8,000 feet south of the State Highway 67 bridge over Salt Creek in Young County, Texas.

CITY OF NASSAU BAY has applied for a renewal of TPDES Permit No. WQ0010526001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,330,000 gallons per day. The facility is located at 18920 Point Lookout, approximately one mile south of NASA Road One at the confluence of Clear Creek and Clear Lake and adjacent to Lake Nassau (Pearsons Lake) and approximately one mile east of the City of Webster in the City of Nassau Bay in Harris County, Texas 77058.

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0010742001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located within the Brentwood Manor Subdivision, approximately 0.4 mile south of U.S. Highway 59 and immediately east of Marcado Creek, 2.0 miles due west of the intersection of U.S. Highway 59 and State Highway Loop 175 in Victoria County, Texas 77905.

CITY OF ROTAN has applied for a renewal of TCEQ Permit No. WQ0011256001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 152,000 gallons per day via irrigation of 75 acres of land (31 acres of pasture land, 24 acres of municipal golf course and 20 acres of the City of Rotan Cemetery). This permit will not authorize a discharge of pollutants into waters

in the State. The wastewater treatment facility and disposal site are located 1 mile southeast of the intersection of State Highway 70 and State Highway 92 (Snyder) Road, southeast of the City of Rotan in Fisher County, Texas 79546.

ROVING MEADOWS UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0012691001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. The facility is located at 3806 Farm-to-Market Road 1942, Crosby in Harris County, Texas 77532.

DAVID LEE SHEFFIELD has applied for a renewal of TPDES Permit No. WQ0013147001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located at 404 Branding Iron, 1.2 miles north of the intersection of Farm-to-Market Road 350 and Farm-to-Market Road 3126, approximately 5 miles west of the City of Livingston and on the east shoreline of Lake Livingston in Polk County, Texas 77351.

CITY OF HACKBERRY has applied for a renewal of TPDES Permit No. WQ0013434001 which authorizes the discharge of treated domestic wastewater from a daily average flow not to exceed 710,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 580,000 gallons per day. The facility is located at 119 Maxwell Road, at the southern end of Maxwell Road in Frisco, Denton County, Texas 75034.

ISP TECHNOLOGIES INC WHICH operates ISP Technologies Plant, has applied for a renewal of TPDES Permit No. WQ0001263000, which authorizes the discharge of utility wastewater and storm water at a daily average flow not to exceed 1,580,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 003. The facility is located south of Attwater Avenue and west of State Highway 146, across from the Galveston County Industrial Water Reservoir and extending south the Moses Bayou in the City of Texas City, Galveston County, Texas.

LBC HOUSTON LP which operates LBC Houston Bayport Terminal, has applied for a major amendment to TPDES Permit No. WQ0002110000 to authorize the additional discharge of storm water, steam trap release, hydrostatic test water, fire fighting equipment test water and potable water on an intermittent and flow variable basis via new Outfall 002, and the addition of potable water to the discharge description at Outfall 001. The current permit authorizes the discharge of storm water, steam trap release, hydrostatic test water, and fire fighting equipment water on an intermittent and flow variable basis via Outfall 001. The facility is located 900 feet east of the intersection of Port Road and State Route 146, approximately 2.5 miles north of the City of Seabrook, Harris County, Texas.

THE CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495076, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 21,000,000 gallons per day. The facility is located approximately 0.25 mile west of the confluence of Cole Creek and Whiteoak Bayou, and approximately 1.5 miles northeast of the intersection of U.S. Highway 290 and Antoine Drive in Harris County, Texas 77091.

AQUA UTILITIES INC HAS applied for a renewal of TPDES Permit No. 12519-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately three eighth (3/8) mile east of Kuykendahl Road and approximately one (1) mile north of the intersection of Hufsmith Road and Kuykendahl Road in Harris County, Texas

CITY OF ASHERTON has applied for a renewal of TPDES Permit No. WQ0013746001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day. The facility is located 6,000 feet northeast of U.S. Highway 83 and 4,000 feet northwest of Farm-to-Market Road 190 in Dimmit County, Texas 78827.

TRD-201306018
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 18, 2013

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on December 16, 2013, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Shashi C. Tanwar d/b/a Star Food Mart 1; SOAH Docket No. 582-13-4033; TCEQ Docket No. 2012-2570-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Shashi C. Tanwar d/b/a Star Food Mart 1 on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201306021
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 18, 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) 463-5780.

Deadline: Semiannual Report due July 15, 2013, for Candidates and Officeholders

Pete D. Martinez, 725 Timberhill Dr., Hurst, Texas 76053

Deadline: Lobby Activities Report due September 10, 2013

Danielle Delgadillo, 404 Rio Grande #107, Austin, Texas 78701

Deadline: Lobby Activities Report due October 10, 2013

Danielle Delgadillo, 404 Rio Grande #107, Austin, Texas 78701

John Kroll, 301 Congress Ave., Ste. 1700, Austin, Texas 78701

Harold Oliver, 327 Twisted Wood Dr., San Antonio, Texas 78216

Jennifer E. Sellers, 700 Mandarin Flyway, Unit 203, Cedar Park, Texas 78613

TRD-201305807

David A. Reisman
Executive Director
Texas Ethics Commission
Filed: December 11, 2013

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Texas Facilities Commission

Request for Proposals #303-5-20417

The Texas Facilities Commission ("TFC"), on behalf of the Department of Family and Protective Services ("DFPS"), announces the issuance of Request for Proposals ("RFP") #303-5-20417. TFC seeks a five (5) or ten (10) year lease of approximately 3,821 square feet of office space in Wharton, Wharton County, Texas.

The deadline for questions is January 6, 2014, and the deadline for proposals is January 22, 2014, at 3:00 p.m. The award date is February 19, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=109380.*

TRD-201306030
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 18, 2013

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 13, through December 16, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on December 18, 2013. The public comment period for this project will close at 5:00 p.m. on January 17, 2014.

FEDERAL AGENCY ACTIONS:

Applicant: James Cacioppo;

Location: The project site is located in wetlands adjacent to Rollover Bay, a navigable water of the United States. The project site is located Beach Front Road, Block 23, Lot 42 and Lot 43 located at the end of Gulf Supply Road, in Gilchrist, Galveston County, Texas. CENTER OF PROJECT - LATITUDE and LONGITUDE (NAD 83): Latitude: 29.519440 North; Longitude: 94.488619 West.

Project Description: The applicant is requesting an after-the-fact permit for work already completed and is also applying for additional work to complete the project. Work Completed:

- 422-linear-foot bulkhead into adjacent wetlands

- Discharge of fill material (750 cubic yards) into 0.16 acre of adjacent wetlands

- Discharge of fill material into upland areas (not calculated) Proposed Additional Work:

- 170-linear-foot bulkhead into adjacent wetlands

- Discharge of fill material (250 cubic yards) into 0.04 acre of adjacent wetland

- 100-linear-foot-long by 4-foot wide pier with 15-foot-long by 20-foot-wide T-head

CMP Project No: 14-1223-F1.

Type of Application: This application will be reviewed pursuant to §404 of the Clean Water Act (CWA).

Applicant: Sims Metal Management; Location: The project site is located on the north shore of the Houston Ship Channel/Buffalo Bayou on Mayo Shell Road in Galena Park, Harris County, Texas. CENTER OF PROJECT - LATITUDE and LONGITUDE (NAD 83): Latitude: 29.723611 North; Longitude: 95.246667 West. Project Description: The applicant proposes to conduct dredging and construct structures in waters of the of the United States (U.S.) during the development of a metal recycling facility, including ship and barge berth, warehouses, bulk material handling area, associated buildings and infrastructure. The proposed project would be constructed on a previously developed 73.17-acre property. Prior to construction and dredging, the applicant proposes to demolish all existing structures on the project site, and within the existing basin, utilizing land-based construction equipment or barge-mounted trackhoes and cranes. No discharges of fill material, or other adverse environmental impacts, are anticipated from proposed demolition. CMP Project No: 13-1043-F1. Type of Application: This application will be reviewed pursuant to §10 of the Rivers and Harbor Act and §404 of the Clean Water Act (CWA).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201306027
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: December 18, 2013

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 13-055 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to establish home telemonitoring services as a benefit of the Texas Medicaid program. The proposed amendment is effective October 1, 2013.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $1,015,698 for the remainder of federal fiscal year (FFY) 2014, consisting of $596,113 in federal funds and $419,585 in state general revenue. For FFY 2015, the estimated additional annual expenditure is $1,160,662, consisting of $673,184 in federal funds and $487,478 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Marcus Denton, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 730-7413; by facsimile at (512) 730-7472; or by e-mail at marcus.denton@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201305811
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 11, 2013

Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the Deaf Blind with Multiple Disabilities (DBMD) waiver program, under the authority of §1915(c) of the Social Security Act. The DBMD waiver program is currently approved for the five year period beginning March 1, 2013, and ending February 28, 2018. The proposed effective date for the amendment is September 1, 2013.

DBMD is designed to serve individuals who are legally blind, have a chronic, severe hearing impairment, and have an additional disability that limits independent functioning. The waiver serves individuals in the community who would otherwise require care in an intermediate care facility.

This amendment request proposes to make the following changes:

1. Update unduplicated count and point-in-time limits.

2. Change the name from consumer directed services agencies to financial management services agencies.

3. Update the process for HHSC's administrative oversight of the Department of Aging and Disability Services.

4. Update employment assistance and supported employment definitions and service provider qualifications.

5. Update the cost and user projections for the intervener career ladder.

HHSC is requesting the waiver amendment be approved for the period beginning September 1, 2013, through February 28, 2018. This amendment maintains cost neutrality for waiver years 2013 through 2018.

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 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 462-6289, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201305956
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 16, 2013

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 13-045 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act, and amendment number 35 to the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act.

The purpose of these amendments is to formally submit to the Centers for Medicare and Medicaid Services (CMS) the Form H1205, Texas Streamlined Application, and the Form H1010, Texas Works Application for Assistance - Your Texas Benefits. The Texas Streamlined Application (H1205) is a new health-care only application that can be used for Medicaid, the Children's Health Insurance Program (CHIP), and the federal Health Insurance Marketplace. Federal law requires states to implement a streamlined application effective January 1, 2014. The Texas Works Application for Assistance - Your Texas Benefits (H1010) is an existing application that is being amended to implement new federally required eligibility rules. The proposed amendment is effective October 1, 2013.

The proposed amendment is anticipated to have no fiscal impact. Costs associated with implementing the new application forms are administrative and captured under the agency's cost allocation plan.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 462-6282; by facsimile at (512) 730-7472; or by e-mail at ashley.fox@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services

TRD-201306026
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 18, 2013

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Tri County Clinical dba Seton Heart Institute	L06598	Austin	00	12/10/13
Llano	Scott & White Hospital - Llano	L06599	Llano	00	12/11/13
Southlake	Forest Park Medical Center at Southlake, L.L.C. dba FPMC Southlake	L06600	Southlake	00	12/16/13
Throughout TX	US NDI, L.L.C.	L06597	Abilene	00	12/11/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Cardinal Health dba National Central Pharmacy	L04781	Abilene	34	12/04/13
Austin	Seton Family of Hospitals dba University Medical Center at Brackenridge	L00268	Austin	127	12/05/13
Austin	Seton Family of Hospitals dba University Medical Center at Brackenridge	L00268	Austin	128	12/11/13
Austin	Texas Oncology	L06206	Austin	11	12/03/13
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L06335	Austin	14	12/05/13
Bishop	Ticona Polymers, Inc.	L02441	Bishop	49	12/12/13
Clifton	Goodall Witcher Hospital Authority dba Goodall Witcher Hospital	L06574	Clifton	01	12/11/13
Conroe	CHCA Conroe, L.P. dba Conroe Regional Medical Center	L01769	Conroe	93	12/10/13
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	95	12/04/13
Dallas	IBA Molecular North America, Inc. dba IBA Molecular	L06174	Dallas	12	12/11/13
Dallas	Health Texas Provider Network dba Dallas Heart Group	L06501	Dallas	04	12/11/13
Del Rio	Val Verde Hospital Corporation dba Val Verde Regional Medical Center	L01967	Del Rio	36	12/11/13
Denton	Columbia Medical Center of Denton Subsidiary, L.P. dba Denton Regional Medical Center	L02764	Denton	72	12/05/13
Edinburg	The University of Texas Pan American	L00656	Edinburg	34	12/04/13
El Paso	Tenet Hospitals Limited dba Providence Memorial Hospital	L02353	El Paso	112	12/16/13
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	80	12/03/13
Fort Worth	Physician Reliance, L.P. dba Texas Oncology at Klabzuba	L05545	Fort Worth	46	12/02/13
Fort Worth	Physician Reliance, L.P. dba Texas Oncology at Klabzuba	L05545	Fort Worth	47	12/11/13
Fort Worth	Texas Health Physicians Group dba Consultants in Cardiology	L06468	Fort Worth	03	12/10/13
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	187	12/06/13
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	188	12/11/13
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	81	12/05/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	Houston	105	12/05/13
Houston	Texas Nuclear Imaging, L.P. dba Excel Diagnostics and Nuclear Oncology Center	L05009	Houston	47	12/12/13
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	97	12/11/13
Houston	Heart Care Center of Northwest Houston, P.A.	L05539	Houston	17	12/13/13
Houston	Houston Northwest Operating Company, L.L.C. dba Houston Northwest Medical Center	L06190	Houston	21	12/02/13
Humble	Cardiovascular Association, P.L.L.C.	L05421	Humble	15	12/06/13
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	61	12/11/13
Lubbock	M. Fawwaz Shoukfeh, M.D., P.A. dba Texas Cardiac Center	L05276	Lubbock	18	12/05/13
McAllen	Rio Grande Heart Specialist of South Texas dba Rio Grande Heart Specialist	L05509	McAllen	06	12/06/13
McKinney	Baylor Medical Centers at Garland and McKinney dba Baylor Medical Center at McKinney	L06470	McKinney	04	12/12/13
Midland	West Texas Nuclear Pharmacy Partners	L04573	Midland	23	12/04/13
Orange	E. I. DuPont De Nemours & Company	L00005	Orange	74	12/05/13
Paris	Advanced Heart Care, P.A.	L05290	Paris	37	12/03/13
Pasadena	Quantum Technical Services, L.L.C.	L06406	Pasadena	08	12/12/13
San Antonio	Cancer Care Network of South Texas, P.A. dba Cancer Care Centers of South Texas	L06449	San Antonio	04	12/04/13
Sugar Land	Methodist Sugar Land Hospital Cancer Center	L06232	Sugar Land	02	12/04/13
Sunray	Diamond Shamrock Refining Company, L.P.	L04398	Sunray	22	12/12/13
Sweetwater	Ludlum Measurements, Inc.	L01963	Sweetwater	99	12/06/13
Throughout TX	J-W Wireline Company	L06132	Addison	26	12/05/13
Throughout TX	RWLS, L.L.C. dba Renegade Services	L06307	Andrews	19	12/13/13
Throughout TX	Qualspec Services, L.L.C. dba Qualspec	L06351	Corpus Christi	07	12/05/13
Throughout TX	Baylor University Medical Center	L01290	Dallas	115	12/09/13
Throughout TX	Mistras Group, Inc.	L06369	Deer Park	13	12/12/13
Throughout TX	Terracon Consultants, Inc.	L05268	Fort Worth	45	12/04/13
Throughout TX	DMA Health Technologies, Inc.	L05594	Garland	19	12/13/13
Throughout TX	Baker Hughes Oilfield Operations, Inc. dba Baker Atlas	L00446	Houston	171	12/04/13
Throughout TX	Associated Testing Laboratories, Inc.	L01553	Houston	29	12/05/13
Throughout TX	Metco	L03018	Houston	217	12/09/13
Throughout TX	American Diagnostic Tech, L.L.C.	L05514	Houston	96	12/03/13
Throughout TX	Savoy Technical Services, Inc.	L06502	Houston	02	12/05/13
Throughout TX	Libertytown USA 2, Inc. dba Applus RTD USA, Inc.	L06555	Houston	04	12/05/13
Throughout TX	Libertytown USA 2, Inc. dba Applus RTD USA, Inc.	L06555	Houston	05	12/13/13
Throughout TX	Hi-Tech Testing Service, Inc.	L05021	Longview	103	12/13/13
Throughout TX	Pumpco Energy Services, Inc.	L06507	Valley View	05	12/04/13
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	189	12/04/13
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	190	12/05/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Wichita Falls	Jerry K. Myers, M.D. Associated dba Breast Center of Texoma	L06221	Wichita Falls	05	11/26/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Corpus Christi	Narain D. Mangla, M.D., P.A.	L05630	Corpus Christi	06	12/13/13
El Paso	East El Paso Physicians Medical Center, L.L.C.	L05676	El Paso	29	12/05/13
Fort Worth	Texas Oncology, P.A.	L05606	Fort Worth	26	12/06/13
Houston	GB Biosciences Corporation	L03521	Houston	25	12/13/13
Houston	South Texas Nuclear Pharmacy	L05304	Houston	13	12/06/13
Lubbock	Covenant Medical Group dba Covenant Cardiology Associates	L04468	Lubbock	27	12/09/13
Nocona	Nocona Hospital District dba Nocona General Hospital	L04977	Nocona	16	12/06/13
Throughout TX	Columbia Scientific Balloon Facility	L04717	Palestine	10	12/11/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Llano	Llano County Hospital Authority dba Llano Memorial Healthcare System	L04438	Llano	31	12/11/13
Lufkin	The Heart Institute of East Texas, P.A.	L04147	Lufkin	22	12/03/13
Throughout TX	Sunbelt Laboratories, Inc.	L03926	El Paso	16	12/05/13
Wadsworth	STP Nuclear Operating Company	L04222	Wadsworth	29	12/04/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201305980
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 17, 2013

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Texas Department of Housing and Community Affairs

2013 HOME Single Family Programs Reservation System Notice of Funding Availability

(1) Summary.

(a) The Texas Department of Housing and Community Affairs (Department) announces a Notice of Funding Availability (NOFA) of approximately $12,097,554 in funding from the HOME Investment Partnerships Program (HOME) for non-development single family housing programs under a Reservation System. These funds will be made available to HOME Reservation System Participants with a current Reservation System Participation (RSP) Agreement as of December 27, 2013. The availability and use of these funds are subject to HOME Program

rules including but not limited to, the Administration Rules in 10 TAC Chapter 1, state Single Family Programs Umbrella Rule at 10 TAC Chapter 20, and the state HOME Rules at 10 TAC Chapter 23, concerning Single Family HOME Program (State HOME Rules) in effect at the time the RSP Application is submitted, the federal HOME regulations governing the HOME program (24 CFR Part 92, as amended), and Texas Government Code, Chapter 2306. Other federal regulations include but are not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §84.42 and §85.36 for conflict of interest, 24 CFR §135.38 for Section 3 requirements and, 24 CFR Part 5, Subpart A for fair housing. Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.

(b) Capitalized terms in this NOFA have the meanings defined herein or as defined in HOME Program rules.

(2) Allocation of HOME Funds.

(a) The funds are made available through the Department's 2013 allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD), deobligated HOME funds and HOME Program Income funds. Funds in the amount of $5,269,057 under this NOFA are subject to the Regional Allocation Formula (RAF). Refer to the RAF tables located on the Department's website at www.tdhca.state.tx.us. The remaining funds are not subject to the RAF because funds were regionally allocated during the release of previous HOME Program NOFAs or are a legislatively mandated set aside.

(b) Approximately $5,269,057 in funds is available under this NOFA for non set aside activities and subject to the RAF, an additional $2,000,000 is made available from funds deobligated from previously funded contracts and Program Income and are not subject to the RAF. The total available for non set aside funds is approximately $7,269,057. Funds may be reserved for individual households for the following non set aside Program Activities:

(i) Homeowner Rehabilitation Assistance (HRA). HRA provides funds for the rehabilitation, or demolition and reconstruction of single family residences owned and occupied by eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, Homeowner Rehabilitation Assistance Program, §§23.30 - 23.32.

(ii) Homebuyer Assistance (HBA). HBA provides down payment and closing cost assistance to eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter D, Homebuyer Assistance Program, §§23.40 - 23.42.

(iii) Tenant-Based Rental Assistance (TBRA). TBRA provides rental subsidies to eligible low-income Households. Assistance may include rental, security, and utility deposits. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, Tenant-Based Rental Assistance Program, §§23.60 - 23.62.

(c) Approximately $4,828,497 in funds available under this NOFA, is not subject to the RAF, and may be reserved for individual Households for the following set aside Program Activities:

(i) Persons with Disabilities (PWD) Set Aside. Approximately $1,828,497 (includes $627,000 of reallocated PWD funds from multifamily to single family) is set aside to assist Persons with Disabilities with TBRA, HRA, or HBA and will be incorporated into the most current PWD set aside Reservation balance.

(ii) Contract for Deed Conversion (CFDC) Set Aside. Approximately $2,000,000 in set aside funding will be incorporated into the most current Contract for Deed Conversion set aside Reservation balance to assist eligible Households until March 31, 2014, at which time Staff may reprogram $1,000,000 into other Single Family Activities if insufficient demand exists in this set aside and funds are needed to satisfy excess demand of other Single Family HOME Program Activities. An additional $250,000 may be reprogrammed out of the CFDC set aside on July 1, 2014, if insufficient demand still exists and a need to satisfy excess demand in other Single Family HOME Program Activities. CFDC provides funds for the conversion of a contract for deed to a traditional mortgage. Additional funds for rehabilitation or reconstruction are also available. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter E, Contract for Deed Conversion Program, §§23.50 - 23.52.

(iii) Disaster Relief Set Aside. Approximately $1,000,000 in funding from Program Income and deobligated funds is set aside to provide HRA, HBA, or TBRA assistance to eligible Households affected directly by a disaster.

(d) Except as limited in this NOFA or by statute, the Department may reprogram funds, at anytime to the Reservation System, or to administer directly.

(3) HOME funds subject to the RAF are reserved for HRA, HBA, and TBRA non set aside HOME Activities. HOME funds subject to the RAF totaling $5,269,057 specified under §2(a) will be available under the Uniform State Service Regions by Sub-Region (Rural and Urban) beginning on Monday, December 30, 2013, at 9:00 am CST until Tuesday, January 14, 2014, at 8:00 a.m. CST.

(a) On Tuesday, January 14, 2014, at 9:00 a.m. CST any funds which have not been requested under §2(a) of this NOFA will collapse within each region and will be available by Region until Tuesday, February 11, 2014, at 8:00 a.m. CST.

(b) On Tuesday, February 11, 2014, at 9:00 a.m. CST any funds which have not been requested under §2(a) of this NOFA will be collapsed together and added to Program Income and Deobligated Funds totaling approximately $2,000,000 specified under §2(b) and will be made available statewide for any non set aside activity under this NOFA.

(c) Refer to the RAF tables located on the Department's website at www.tdhca.state.tx.us.

(d) Updated balances for the Reservation System may be accessed online at www.tdhca.state.tx.us/home-division/home-reservation-summary.htm. Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System.

(4) Eligible and Prohibited Activities.

(a) Prohibited activities include those at 24 CFR §92.214 and in the State HOME Rules.

(b) Funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications specifically requesting to access funds under the Persons with Disabilities set aside.

For questions regarding this NOFA, please contact the Single Family HOME Program Division at (512) 463-8921 or via email at HOME@tdhca.state.tx.us.

TRD-201306012
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 18, 2013

Notice to Public and to All Interested Mortgage Lenders - Mortgage Credit Certificate Program

The Texas Department of Housing and Community Affairs (the "Department") intends to implement a Mortgage Credit Certificate Program (the "Program") to assist eligible very low, low, and moderate income first-time homebuyers with the purchase of a residence located within the State of Texas.

Under the Program, a first-time homebuyer who satisfies the eligibility requirements described herein may receive a federal income tax credit in an amount equal to the product of the certificate credit rate established under the Program and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner; provided that such credit allowed in any taxable year does not exceed $2,000. In order to qualify to receive a mortgage credit certificate, the homebuyer must qualify for a conventional, FHA, VA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

The mortgage credit certificates will be issued to qualified mortgagors on a first-come, first-served basis by the Department, which will review applications from lending institutions and prospective mortgagors to determine compliance with the requirements of the Program and determine that mortgage credit certificates remain available under the Program. No mortgage credit certificates will be issued prior to ninety (90) days from the date of publication of this notice or after the date that all of the credit certificate amount has been allocated to homebuyers, and in no event will mortgage credit certificates be issued later than the date permitted by federal tax law.

In order to satisfy the eligibility requirements for a mortgage credit certificate under the Program:

(a) the prospective residence must be a single-family residence located within the State of Texas that can be reasonably expected to become the principal residence of the mortgagor within a reasonable period of time after the financing is provided;

(b) the prospective homebuyer's current income must not exceed,

(1) for families of three or more persons, 115% (140% in certain targeted areas or in certain cases permitted under applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code")) of the area median income; and

(2) for individuals and families of two persons, 100% (120% in certain targeted areas or in certain cases permitted under applicable provisions of the Code) of the area median income;

(c) the prospective homebuyer must not have owned a home as a principal residence during the past three years (except in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Code);

(d) the acquisition cost of the residence must not exceed 90% (110%, in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Code) of the average area purchase price applicable to the residence; and

(e) no part of the proceeds of the qualified indebtedness may be used to acquire or replace an existing mortgage (except in certain cases permitted under applicable provisions of the Code).

To obtain additional information on the Program, including the boundaries of current targeted areas, as well as the current income and purchase price limits (which are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy), please contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; telephone (512) 475-0277.

The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; (512) 475-0277. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.

This notice is published in satisfaction of the requirements of §25 of the Code and Treasury Regulation §1.25-3T(j)(4) issued thereunder regarding the public notices prerequisite to the issuance of mortgage credit certificates and to maintaining a list of participating lenders.

TRD-201305951
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 13, 2013

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by ONEBEACON SPECIALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Philadelphia, Pennsylvania.

Application for incorporation in the State of Texas by PEOPLE'S TRUST INSURANCE COMPANY OF TEXAS, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201306024
Norma Garcia
Chief Clerk
Texas Department of Insurance
Filed: December 18, 2013

Texas Lottery Commission

Instant Game Number 1634 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1634 is "BONUS CASHWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1634 shall be $3.00 per Ticket.

1.2 Definitions in Instant Game No. 1634.

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 - One of the symbols which appears under the Latex Overprint on the front of the Ticket. Each Play Symbol is printed in symbol font in black ink in positive. The possible black Play Symbols

are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and "blackened square" SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1634 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
▓	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $5.00, $10.00, or $20.00.

G. Mid-Tier Prize - A prize of $100 or $500.

H. High-Tier Prize - A prize of $5,000 or $50,000.

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 (1634), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1634-0000001-001.

K. Pack - A Pack of "BONUS CASHWORD" Instant Game Tickets contain 125 Tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS CASHWORD" Instant Game No. 1634 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 "BONUS CASHWORD" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 141 (one hundred forty-one) possible Play Symbols. The player must scratch the YOUR LETTERS and BONUS play areas. The player must use the YOUR LETTERS and BONUS LETTERS Play Symbols to form words in the BONUS CASHWORD puzzle. If a player, using YOUR LETTERS and BONUS LETTERS Play Symbols, reveals at least three (3) to ten (10) complete words in the BONUS CASHWORD puzzle, the player wins the corresponding PRIZE in the PRIZE LEGEND. A complete word must contain at least three (3) letters. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS CASHWORD puzzle. Only letters within the BONUS CASHWORD puzzle that are matched with the YOUR LETTERS and BONUS LETTERS Play Symbols can be used to form a complete "word". Words within words are not eligible for a prize. Using the word STONE as an example, all the YOUR LETTERS Play Symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". There will be only one prize per Ticket. 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. One hundred forty-one (141) possible Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Play Symbols in this game do not have Play Symbol Captions;

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;

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 141 (one hundred forty-one) possible 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 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 141 (one hundred forty-one) possible 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. Each Ticket consists of a YOUR LETTERS area, a BONUS LETTERS area and one BONUS CASHWORD Puzzle Grid.

E. Each word will appear only once per Ticket on the BONUS CASHWORD Puzzle Grid.

F. Each letter will only appear once per Ticket in the YOUR LETTERS play area and BONUS LETTERS play area.

G. Each BONUS CASHWORD Puzzle Grid will contain the following: (a) 4 sets of 3-letter words, (b) 5 sets of 4-letter words, (c) 3 sets of 5-letter words, (d) 3 sets of 6-letter words, (e) 1 set of 7-letter words, (f) 2 sets of 8-letter words and (g) 1 set of 9-letter words.

H. All BONUS CASHWORD Puzzle Grids will have an equal chance of winning a prize.

I. There will be a minimum of three (3) vowels in the YOUR LETTERS and BONUS LETTERS play areas combined.

J. The length of words found in the BONUS CASHWORD Puzzle Grid will range from three (3) to nine (9) letters.

K. Only words from the approved word list will appear in the BONUS CASHWORD Puzzle Grid.

L. None of the prohibited words will appear horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS area (including the BONUS area). In addition, when all rows of the YOUR LETTERS (including the BONUS area) are joined together into a single continuous row of letters (first row, followed by second row, etc.), none of the prohibited words will appear in either the forward or reverse direction.

M. You will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS play area that matches a word in the BONUS CASHWORD Puzzle Grid.

N. No one (1) letter, with the exception of vowels, will appear more than nine (9) times in the BONUS CASHWORD Puzzle Grid.

O. No Ticket will match eleven (11) words or more.

P. WINNING TICKETS: Each Ticket may only win one (1) prize.

Q. WINNING TICKETS: Three (3) to ten (10) completed words will be revealed as per the prize structure.

R. NON-WINNING TICKETS: Sixteen (16) to eighteen (18) YOUR LETTERS will open at least one (1) letter in the BONUS CASHWORD Puzzle Grid. At least one (1) of the two (2) BONUS letters will open one (1) or more positions on the CASHWORD Puzzle Grid.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of $3.00, $5.00, $10.00, $20.00, $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 $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 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of $5,000 or $50,000, 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 "BONUS CASHWORD" 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 "BONUS CASHWORD" 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 "BONUS CASHWORD" 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 therefor, 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 therefor, 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 therefore. 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 30,000,000 Tickets in the Instant Game No. 1634. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1634 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	3,360,000	8.93
$5	4,320,000	6.94
$10	600,000	50.00
$20	360,000	83.33
$100	54,000	555.56
$500	12,485	2,402.88
$5,000	75	400,000.00
$50,000	50	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.45. 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.

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. 1634 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. 1634, 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-201306023
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 18, 2013

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Public Utility Commission of Texas

Corrected Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on December 10, 2013, for an amendment to certificated service area boundaries within Upton County, Texas.

Docket Style and Number: Joint Application of AEP Texas North Company and Southwest Texas Electric Coop, Inc. to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Upton County. Docket Number 42078.

The Application: AEP Texas North Company (AEP TNC) and Southwest Texas Electric Coop, Inc. (SWTEC) filed an application for a service area boundary change to allow SWTEC to provide service to a specific customer located within a certified service area of AEP TNC. AEP TNC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than January 10, 2014, 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 comments should reference Docket Number 42078.

TRD-201306004
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 2013

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On December 17, 2013, Greater Harris County 9-1-1 Emergency Network (Applicant) filed an application to amend a service provider certificate of operating authority (SPCOA) Number 60789. Applicant seeks a change in type of provider to include facilities-based 9-1-1 network services.

The Application: Application of Greater Harris County 9-1-1 Emergency Network for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 42092.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477, no later than January 3, 2014. 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 42092.

TRD-201306000
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 2013

Notice of Application for Sale, Transfer or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 9, 2013, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §39.158 (Vernon 2007 & Supp. 2013) (PURA).

Docket Style and Number: Application of Calpine Corporation Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 42073.

The Application: Calpine Corporation (Calpine) has filed an application for approval of the proposed purchase of all the general and limited partnership interests in Guadalupe Power Partners, LP (GPP LP) from MinnTex Power Holdings LLC and MinnTex GO LLC (the proposed purchase hereinafter referred to as the Transaction).

After the Transaction, the combined generation ownership of Calpine and its affiliates and subsidiaries will exceed one percent (1%) of the total capacity in the Electric Reliability Council of Texas (ERCOT) power region. Calpine and its affiliates and subsidiaries will own approximately 10.7% of the installed capacity within ERCOT, therefore, the Transaction will not result in a violation of the installed capacity share limitations pursuant to §39.154 of PURA.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (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 correspondence should refer to Docket Number 42073.

TRD-201306008
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 2013

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on December 12, 2013, to amend a certificate of convenience and necessity for a proposed transmission line in Bailey and Parmer Counties, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed 115-kV Transmission Line within Bailey and Parmer Counties (Bailey to Curry), Docket Number 41921.

The Application: The application of Southwestern Public Service Company (SPS) is designated as the Bailey County Substation to Curry County Substation Transmission Line Project. The facilities include construction of a new 115-kV transmission line connecting the existing Bailey County Substation in Bailey County, Texas to the existing Curry County Substation in Curry County, New Mexico. This application only covers the transmission line from the Bailey County Substation to the Texas-New Mexico state line. The transmission line will be constructed utilizing primarily single-pole steel structures. The proposed transmission line was identified by the Southwest Power Pool as needed for reliability to address low voltage violations at the Bailey County Substation during system intact conditions. The total estimated cost for the project ranges from approximately $17.7 million to $21.8 million depending on the route chosen.

The proposed project is presented with eight alternate routes consisting of a combined 79 segments and is estimated to be approximately 23 to 28 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

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. The deadline for intervention in this proceeding is January 27, 2014. 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 41921.

TRD-201306009
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 2013

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on December 13, 2013, to amend a certificate of convenience and necessity for a proposed transmission line in Hale and Floyd Counties, Texas.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend its Certificate of Convenience and Necessity for the Proposed Antelope-Elk Energy Center to White River 345-kV Transmission Line in Hale and Floyd Counties, Docket Number 42063.

The Application: The application of Sharyland Utilities, L.P. is designated as the Antelope-Elk Energy Center to White River 345-kV Transmission Line Project. The facilities include construction of a new single circuit 345-kV line on double-circuit capable structures. The proposed transmission line will connect the Golden Spread Electric Cooperative, Inc. Antelope-Elk Energy Center, in Hale County, to Sharyland's proposed White River Station in Floyd County. The total estimated cost for the project ranges from approximately $142,167,000 to $158,120,000 depending on the route chosen.

The proposed project is presented with twenty-one (21) alternate routes and is estimated to range from 50.42 miles to 57.86 miles (approximately 55 miles) in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

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. The deadline for intervention in this proceeding is January 27, 2014. 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 42063.

TRD-201305970
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 16, 2013

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Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

(Editor's Note: On December 12, 2013, the Supreme Court of Texas filed Misc. Docket No. 13-9171, Order Approving Forms for Expedited Foreclosure Proceedings, in the Texas Register office. In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the forms are not included in the print version of the Texas Register. The forms are available in the on-line version of the December 27, 2013, issue of the Texas Register.)

Misc. Docket No. 13-9171

ORDER APPROVING FORMS FOR EXPEDITED FORECLOSURE PROCEEDINGS

ORDERED that:

1. Pursuant to the Act of May 27, 2013, 83rd Leg., R.S. (HB 2978) and section 22.018 of the Texas Government Code, the Supreme Court of Texas approves the following set of forms for use in expedited foreclosure proceedings under Texas Rule of Civil Procedure 736.

2. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this order to each elected member of the Legislature; and

d. submit a copy of the order for publication in the *Texas Register.*

3. These forms may be changed in response to comments received on or before January 31, 2014. Any interested party may submit written comments to Martha Newton, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or rulescomments@txcourts.gov.

Dated: December 12, 2013

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Nathan L. Hecht, Chief Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

____

Don R. Willett, Justice

____

Eva M. Guzman, Justice

____

Debra H. Lehrmann, Justice

____

Jeffrey S. Boyd, Justice

____

John P. Devine, Justice

____

Jeffrey V. Brown, Justice

TRD-201305907
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: December 12, 2013

♦ ♦ ♦

Orders Adopting Amendments to Texas Rules of Civil Procedure, Texas Rules of Appellate Procedure, and the Form of the Appellate Record

(Editor's Note: On December 13, 2013, the Supreme Court of Texas filed Misc. Docket No. 13-9165, Order Adopting Texas Rule of Civil Procedure 21c and Amendments to Texas Rules of Civil Procedure 4, 21, 21a, 45, 57, and 502; Texas Rules of Appellate Procedure 6, 9, and 48; and the Supreme Court Order Directing the Form of the Appellate Record, in the Texas Register office. In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the rules are not included in the print version of the Texas Register. The rules are available in the on-line version of the December 27, 2013, issue of the Texas Register.)

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9165

ORDER ADOPTING TEXAS RULE OF CIVIL PROCEDURE 21c AND AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE

4, 21, 21a, 45, 57, AND 502; TEXAS RULES OF APPELLATE PROCEDURE 6, 9, AND 48; AND THE SUPREME COURT ORDER DIRECTING THE FORM OF THE APPELLATE RECORD

ORDERED that:

1. Pursuant to section 22.004 of the Texas Government Code, and in accordance with Misc. Docket No. 12-9206, as amended by Misc. Docket Nos. 13-9092 and 13-9164, Order Requiring Electronic Filing in Certain Courts, the Supreme Court of Texas adopts Rule of Civil Procedure 21c and amends Rules of Civil Procedure 4, 21, 21a, 45, 57, and 502 and Rules of Appellate Procedure 6, 9, and 48.

2. Pursuant to Texas Rule of Appellate Procedure 34.4, the Supreme Court orders that the appellate record be in the form attached as Appendix C.

3. By order dated August 16, 2013, in Misc. Docket No. 13-9128, the Court proposed the adoption of Rule of Civil Procedure 21c and amendments to Rules of Civil Procedure 4, 21, 21a, and 502; Rules of Appellate Procedure 6 and 9; and Appendix C to the Rules of Appellate Procedure. The Court also invited public comment. Following public comment, the Court made revisions to the rules and to the appendix. This order incorporates those revisions and contains the final version of the rules and appendix, effective January 1, 2014.

4. These rules supersede all local rules and templates on electronic filing, including all county and district court local rules based on e-filing templates; the justice court e-filing rules, approved in Misc. Docket No. 07-9200; the Supreme Court e-filing rules, approved in Misc. Docket No. 11-9152; the appellate e-filing templates, approved in Misc. Docket 11-9118; and local rules of courts of appeals based on those templates.

5. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this order to each elected member of the Legislature; and

d. submit a copy of the order for publication in the *Texas Register.*

Dated: December 13th, 2013.

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Nathan L. Hecht, Chief Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

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Eva M. Guzman, Justice

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Debra H. Lehrmann, Justice

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Jeffrey S. Boyd, Justice

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John P. Devine, Justice

____

Jeffrey V. Brown, Justice

IN THE COURT OF CRIMINAL APPEALS

Misc. Docket No. 13-003

ORDER ADOPTING AMENDMENTS TO THE TEXAS RULES OF APPELLATE PROCEDURE

ORDERED that:

1. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Rules of Appellate Procedure 6, 9, 37, 48, 68, 70, 71, and 73, Appendix C, Appendix F: Application for a Writ of Habeas Corpus and Appendix G; Appendix E: Order Directing the Form of the Appellate Record in Criminal Cases and Appendix H: Order Regarding Court of Appeals Clerk Preparing Record to Send to the Court of Criminal Appeals is repealed, effective January 1, 2014.

2. Pursuant to Texas Rule of Appellate Procedure 34.4, the Court of Criminal Appeals orders that the appellate record be in the form attached as Appendix C.

3. By order dated September 18, 2013, in Misc. Docket No. 13-2, the Court proposed the adoption of Rules of Appellate Procedure 6, 9, 68, and 73, the Appendix: Application for Writ of Habeas Corpus; Rule 34.4 and Appendix C; and Appendix G. The Court also invited public comment. Following public comment, the Court made revisions to the rules and to the appendix. This order incorporates those revisions and contains the final version of the rules and appendix, effective January 1, 2014.

4. These rules supersede all local rules of the courts of appeals on electronic filing.

5. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this order to each elected member of the Legislature; and

d. submit a copy of the order for publication in the *Texas Register.*

SIGNED AND ENTERED this 11th day of December, 2013.

Sharon Keller, Presiding Judge

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Michael Keasler, Judge

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Lawrence E. Meyers, Judge

____

Barbara Hervey, Judge

____

Tom Price, Judge

____

Cathy Cochran, Judge

____

Paul Womack, Judge

____

Elsa Alcala, Judge

____

Cheryl Johnson, Judge

____

TRD-201305937
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: December 13, 2013

♦ ♦ ♦

Upper Rio Grande Workforce Development Board

Request for Proposals - Child Care Training Services in the Upper Rio Grande Workforce Development Area

#PY14-RFP-263-100

Workforce Solutions Upper Rio Grande is committed to providing high quality training to individuals who care for children in child care centers, group day homes, registered family homes and relative care. Training sessions are intended to enhance the overall quality of care available throughout the Workforce Solutions Upper Rio Grande region.

Objectives of child care training are:

- To increase the skill level of child care professionals;

- To provide child care training that addresses the needs of eligible child care professionals in the region;

- To avoid duplication of training by collaborating with and using other training resources throughout the region; and

- To use effective trainers who are cognizant of the learning styles of adults.

Download the Request for Proposals at http://www.urgjobs.com/contractors-vendors/open/.

PROPOSAL SUBMISSION DEADLINE: Friday, January 17, 2014, 5:00 p.m. MST.

Other Key dates:

Friday, January 3, 2014, at 3:00 p.m. MST - Technical Assistance Q&A Deadline

Friday, January 17, 2014, at 5:00 p.m. MST - Proposal Submission Deadline

January 20-24, 2014 - Evaluation of Proposals

January 27, 2014 - Selection of Proposals

February 1, 2014 - Anticipated Start Date

Contact: Upper Rio Grande Workforce Development Board, ATTN: Muriel Thomas-Borders, Contracts Administrator, 300 E. Main, Suite 800, El Paso, Texas 79901, Phone (915) 887-2220/Fax: (915) 351-2790, Email: muriel.borders@urgjobs.org.

TRD-201306005
Joseph G. Sapien
Project Manager
Upper Rio Grande Workforce Development Board
Filed: December 17, 2013

♦ ♦ ♦

Workforce Solutions Brazos Valley Board

Public Comment for Update to the Targeted Occupations List

The Workforce Solutions Brazos Valley Board seeks public comment on an update to the Targeted Occupations list for the time period December 15, 2013 to January 15, 2014. The Targeted Occupations list is used to provide Workforce Investment Act training for eligible customers to achieve self-sufficient wages. A copy of this may be reviewed at the Workforce Solutions office located at 3991 East 29th, Bryan, Texas 77805 between 8:00 a.m. to 5:00 p.m., Monday through Friday, for the period December 15, 2013 to January 15, 2014.

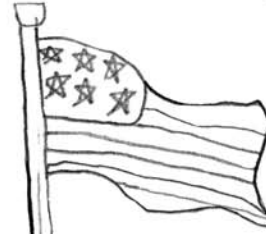
Workforce Solutions Brazos Valley Board is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas (800) 735-2989; TDD (800) 735-2988; (Voice) TTY (979) 595-2819.

TRD-201305930
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: December 13, 2013

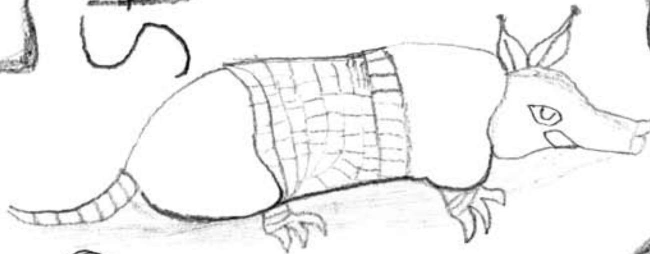
♦ ♦ ♦

Moises Cardozo
7th Grade

Texas
Big tex
Taco's
coyotes
Javelina
bobcats
coyotes
Bluebonnet
Longhorn



Collard Peccory
mocking Bird
blue bonnet
coyotes
coyotes
TEXAS
mocking bird
coyotes
Bobcats
BoBcats Javelina
monarch Butterfly



Longhorn coyotes
Bobcat
Javelina
coyotes
Best
coyotes

mocking bird
Javelina

Bobcats
Longhorn
Bobcats
coyotes
Pleurocoelus
Bobcats
mocking Bird
Bobcats
coyote
Texas

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 38 (2013) is cited as follows: 38 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 "38 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 38 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)*

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Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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