TEXAS REGISTER

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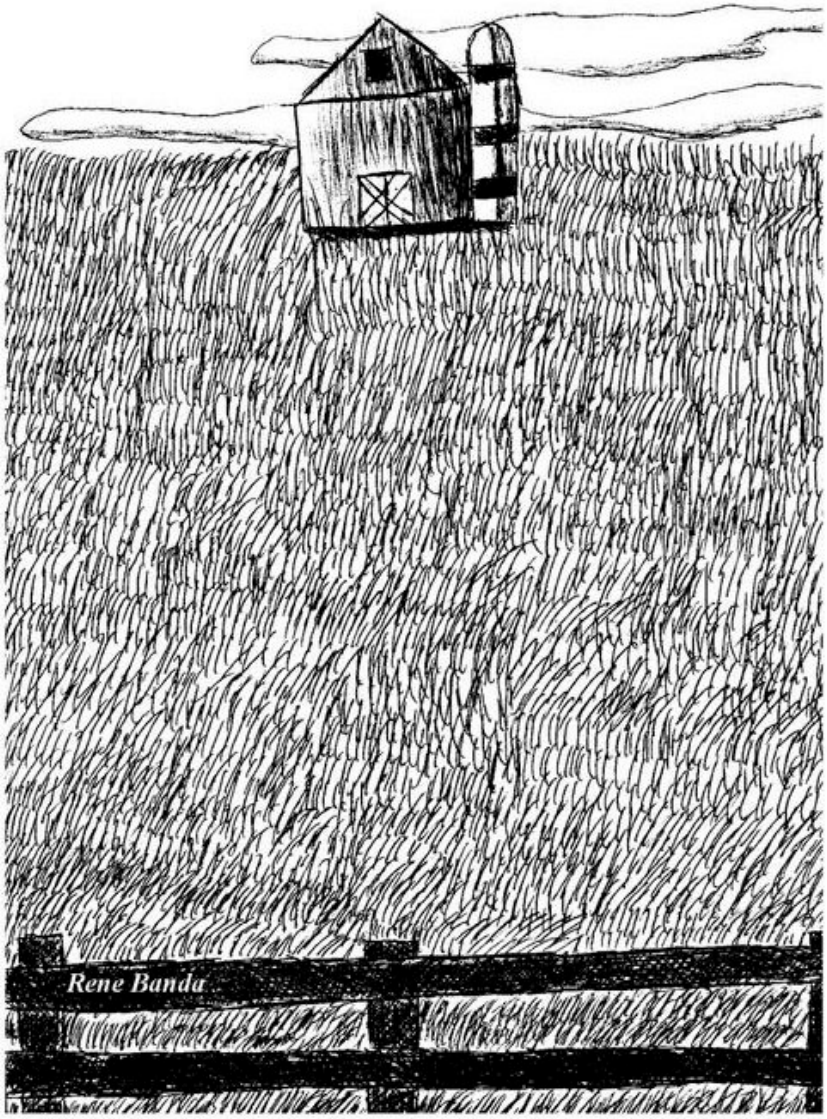

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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IN ADDITION

Texas Department of Transportation

Texas Veterans Commission

Open Meetings

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

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1156-GA

Requestor:

The Honorable Joseph Deshotel

Chair, Committee on Business & Industry

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether Local Government Code section 505.152 authorizes an economic development corporation to fund certain entertainment projects (RQ-1156-GA)

Briefs requested by November 6, 2013

RQ-1157-GA

Requestor:

The Honorable Lois W. Kolkhorst

Chair, Committee on Public Health

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the governing board of a junior college district may consider factors beyond those listed in Education Code subsection 130.0032(d) to set tuition rates for students who reside outside the district (RQ-1157-GA)

Briefs requested by November 11, 2013

RQ-1158-GA

Requestor:

The Honorable Joe C. Pickett

Chair, Committee on Homeland Security & Public Safety

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a school district may authorize an employee or trustee to carry and use a concealed handgun at any meeting of a governmental entity or on the premises of school property where a sporting event or interscholastic event is taking place (RQ-1158-GA)

Briefs requested by November 11, 2013

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

TRD-201304798
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 23, 2013

♦ ♦ ♦

Devin McQueen
10th Grade

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

The Office of the Secretary of State proposes to revise Chapter 81, Subchapters F and G, concerning funding of primary elections and joint primary elections. Sections 81.101, 81.103, 81.105 - 81.111, 81.115, 81.116, 81.119, 81.120, 81.123 - 81.125, 81.127 - 81.132, 81.148, 81.152, 81.153, 81.155 and 81.157 are being amended. Section 81.112 and §81.134 are being repealed and replaced with new sections. The proposed amendments, new sections and repeals concern the financing of the 2014 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The revisions to Chapter 81, Subchapters F and G, are being proposed for clarification purposes.

Section 81.101 is also being amended to strike subsection (g) pursuant to language being removed from the General Appropriations Act, 83rd Legislature, 2013.

Section 81.112 is proposed for repeal and replaced to accommodate candidate filing information being submitted to the Secretary of State pursuant to House Bill 3103, 83rd Legislature, 2013. Section 81.134 is repealed and replaced to clarify the legal fee reimbursement process. The proposed language in §81.134 does not change the type of litigation the Secretary of State will reimburse or the process; it simply provides clarification.

The proposed amendments, repeals and new sections are necessary for the proper and efficient conduct of the 2014 primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

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

Keith Ingram has also determined that, for each year of the first five years the proposed amendments, repeals and new sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the proper conduct of the 2014 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small or micro-businesses. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

Written comments of the proposal may be submitted to the Office of the Secretary of State, Keith Ingram, Director of Elections, P.O. Box 12060, Austin, Texas 78711. Comments may also be sent via email to: elections@sos.texas.gov. For comments submitted electronically, please include "Proposed 2014 Primary Rules" in the subject line. Comments must be received no later than twenty (20) days from the date of publication of the proposal in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed rules. Questions concerning the proposed rules may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

SUBCHAPTER F. PRIMARY ELECTIONS

1 TAC §§81.101, 81.103, 81.105 - 81.112, 81.115, 81.116, 81.119, 81.120, 81.123 - 81.125, 81.127 - 81.132, 81.134

The amendments and new sections are proposed under the Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

No other sections are affected by the proposal.

§81.101. Primary and Runoff Election Cost Estimate; Receipt of State Funds.

(a) This subchapter applies to the use and management of all primary funds.

(b) Approval by the Secretary of State (SOS) of a primary cost estimate [~~Primary Election Cost Estimate~~] does not relieve the chair, any employee paid from the primary fund, or the county election officer, of their responsibility to comply with administrative rules issued by the SOS, or with any statute governing the use of primary funds.

(c) The SOS shall provide a primary cost estimate [~~Primary Election Cost Estimate~~] to each county chair based on 75% of the final approved costs less non-state appropriated financing sources (e.g., filing fees) for the most recent comparable election(s) as determined by the SOS. In order to receive the primary estimate payment, the chair must submit to the SOS a primary cost estimate [~~Primary Election Cost Estimate~~] via the SOS online primary finance system.

(d) If data is not available to create a pre-populated cost estimate or if the chair wishes to amend the pre-populated estimate, the chair may enter the appropriate data in the SOS online primary finance

system. The primary estimate payment will be based on 75% of the approved estimated costs less the estimated filing fees.

(e) If a statewide Runoff is conducted, the SOS shall provide a runoff cost estimate [~~Primary Runoff Cost Estimate~~] to each county chair based on 75% of the final approved costs less nonstate appropriated financing sources (e.g., filing fees) for the most recent comparable election(s) as determined by the SOS. In order to receive the runoff estimate payment, the chair must submit to the SOS a runoff cost estimate [~~Primary Runoff Cost Estimate~~] via the SOS online primary finance system[~~, unless otherwise approved by the SOS~~].

(f) If data is not available to create a pre-populated cost estimate or if the chair wishes to amend the pre-populated estimate, the chair may enter the appropriate data in the SOS online primary finance system [~~costs~~] less the estimated filing fees.

~~[(g) Pursuant to the General Appropriations Act, 82nd Legislature, 2011, counties may not be reimbursed for amounts that exceed the costs to conduct a joint primary election. Accordingly, any additional costs incurred due to the fact that county parties do not use joint polling places or do not use joint voting system equipment will not be reimbursed.]~~

(g) [~~(h)~~] Section 173.031 of the Texas Election Code [~~House Bill 1789, 82nd Legislature, 2011,~~] provides for direct payment from the SOS to a county of a population of 100,000 or more who conducts a primary election under an election services contract. It is the county's prerogative and responsibility to request direct payment from the state. The state is not responsible for revenue due to the county held by the county chair, such as candidate filing fees.

(h) [~~(i)~~] A payment may not be made directly to the county unless the county chair submits the necessary data to the SOS through a primary [~~Primary~~] or runoff election cost estimate [~~Runoff Election Cost Estimate~~] or a final primary election cost report [~~Final Primary Election Cost Report~~].

(i) [~~(j)~~] For purposes of Subchapters F and G of this chapter of the Texas Administrative Code, "county election officer" refers to the county clerk, county election administrator, or county tax[-]assessor-collector, depending on the county.

§81.103. Bank Account for Primary-Fund Deposits and Expenditures.

(a) The county chair shall establish and maintain a bank account for the sole purpose of depositing and expending primary funds; any interest earned in such an account becomes part of the primary fund.

(b) Payments issued by the Comptroller of Public Accounts will be payable to the county party chair, not the individual's name, preferably in the form of direct deposit. Direct deposit forms may be obtained from the Comptroller of Public Accounts.

(c) The county chair, or any employee paid from the primary fund, shall not commingle primary funds with any other fund or account.

(d) Each check issued from a primary-funds account must include the following statement on its face: "VOID AFTER 180 DAYS."

(e) The county chair shall complete bank reconciliations on a monthly basis.

(f) After all primary expenditures have been paid, the primary bank account may [~~must~~] be retained with a sufficient minimum balance, generally $50. All bank account information must be transferred to the incoming county chair in accordance with §81.108 of this title (relating to Transfer of Records to New County Chair).

(g) Revenue received for a primary may not be used to pay expenses for a previous primary.

§81.105. Payee of Checks from Primary-Fund Account Restricted.

(a) Except as provided by this section, an individual, who is authorized to draft primary-fund checks, shall make checks payable to an entity or a person. An individual, who is authorized to draft primary-fund checks, may draft a check payable to "cash" or "bearer" only to establish a petty-cash fund, for county chair seminar travel reimbursement, personal loans to the primary fund to cover eligible expenses approved by the SOS, and county chair compensation consistent with §81.119 of this chapter (relating to County Chair's Compensation).

(b) An individual authorized to draft primary-fund checks shall not make checks payable to the county party as contributions or to election judges for reimbursement for payments to election clerks.

§81.106. Deposits.

(a) The county chair, or an authorized agent of the county chair, shall:

(1) deposit all filing fees, contributions, and miscellaneous receipts into the primary fund; and

(2) maintain an itemized list detailing the source of all funds deposited into the primary fund including, but not limited to, all candidate filings.

(b) The SOS will verify the itemized list of candidate filings against the data reported pursuant to House Bill 3103, 83rd Legislature, 2013, and §81.112 of this chapter (relating to List of Candidates and Filing Fees).

§81.107. Primary-Fund Records.

(a) The county chair shall preserve all records relating to primary-election expenses until the later of:

(1) 22 months following the primary elections; or

(2) the conclusion of any relevant litigation or official investigation.

(b) In order to receive approval of a final cost report, the county chair shall transmit copies of receipts, bills, invoices, contracts, competitive bids, petty-cash receipts for items and services [~~over $500~~] and copies of all monthly bank statements, electronic bookkeeping records (i.e., Quicken or Quickbooks) or check register, and any other related materials documenting primary-fund expenditures. Purchase requisitions are not considered receipts and may not be remitted as such. The SOS reserves the right to request all receipts and related documentation.

(c) Unless otherwise provided by the SOS, not later than July 1 of the year in which the primary elections occur, the county chair shall:

(1) comply with all final cost reporting requirements;

(2) return all unexpended and uncommitted primary funds.

(d) If the chair does not file a final cost report, the matter [~~their files~~] will be reported to the Attorney General's Office for [~~prosecution of~~] misappropriation of funds in accordance with §81.113 of this chapter [~~title~~] (relating to Misuse of State Funds).

§81.108. Transfer of Records to New County Chair.

(a) The [~~Once the county chair has submitted and received final approval of the final report, the~~] chair shall transfer in an orderly manner to his or her successor or the appropriate county committee all primary-election records, including financial records listed under §81.107 of this chapter [~~title~~] (relating to Primary-Fund Records), required by law to be maintained or within the 30th day after the date the

term of office of a new county chair begins, whichever comes first (in accordance with Texas Election Code §171.028).

(b) Texas Election Code §171.028 [~~House Bill 2959, 82nd Legislature, 2011,~~] provides a criminal penalty for failure to transfer records to the new county chair.

(c) If a vacancy occurs in the office of county chair, the county executive committee shall appoint an individual to serve as the custodian of primary-election records until a new county chair is appointed or elected.

(d) If the final cost report has not been finalized at the time the records are transferred or a vacancy occurs, it is the responsibility of the incoming chair or the appointed custodian and the outgoing chair to determine how best to complete the primary finance process, including the disbursement of the county chair compensation.

(e) Payments issued by the Comptroller of Public Accounts will be payable to the county party chair, not the individual's name, as described in §81.103(b) of this chapter (relating to Bank Account for Primary-Fund Deposits and Expenditures). Therefore, it is the responsibility of the individual with access to the primary fund established pursuant to §81.102 of this chapter (relating to Primary Funds Defined) and §81.103 of this chapter to ensure final payment(s) from the primary fund are issued properly to close-out the financing of the 2014 Primary.

§81.109. Political-Party Costs not Payable with Primary Funds.

(a) Pursuant to §173.001 of the Texas Election Code, only expenses necessary for and directly related to the conduct of primary elections are payable from primary funds.

(b) Political expenses and expenses for any activity forbidden by statute or rule are not payable from the [~~primary costs subject to~~] primary fund [~~reimbursement~~]. Examples of non-payable expenses include, but are not limited to, the following:

(1) expenses incurred in connection with a convention of a political party;

(2) any food or drink items;

(3) stationery not related to the conduct of the primary election;

(4) costs associated with voter-registration drives or get-out-the-vote campaigns;

(5) election notices, except for public testing announcements;

(6) early voting costs, except for ballots and early voting ballot board costs;

(7) a public building used as a polling place or central counting station if the building is normally open for business during the time of use;

(8) election worker compensation to attend training;

(9) costs for training material available through the SOS;

(10) duties a county election officer is statutorily required to perform as well as salaries of county personnel during regular business hours;

(11) voting by mail kits and postage related to mail ballots;

(12) purchases of MBBs/PEBs or other voting system items transferable to other elections;

(13) voting booths and ballot boxes owned by the county.[~~; or~~]

[~~(14) mileage.~~]

§81.110. Fidelity Bond Purchase.

(a) An individual with responsibilities that include the receipt or expenditure of primary funds may purchase a fidelity bond with money from the primary fund.

(b) An individual purchasing a bond under this section shall base the amount of the bond on the anticipated total amount of primary funds that the individual will collect and disburse from November [~~December~~] 1 before the primary elections to the last day of the month in which the final primary election occurs. The amount used for the purpose of determining the amount of the bond shall not exceed $50,000, unless a higher amount is approved by the SOS.

§81.111. Interest on Start-up [~~Start Up~~] Loan to Open Primary Fund is Not Reimbursable.

A county chair may acquire a start-up [~~start up~~] loan to defray the cost of the primary elections [~~Primary Election~~], prior to receiving reimbursement from the state. A county chair may not use primary funds, which are subsequently approved by the SOS, to pay interest on loans used to defray operating expenses incurred prior to the receipt of such funds.

§81.112. List of Candidates and Filing Fees.

(a) Generally.

(1) Submission of accepted application. Pursuant to §172.029 of the Texas Election Code (the "Code"), for each general primary election, all state and county chairs shall electronically submit information about each candidate who files with the chair an application for a place on the ballot, including an application for the office of a political party, and whose application has been reviewed and accepted for a place on the ballot in accordance with §141.032 of the Code.

(2) Method of submission. The chair shall submit candidate information through an electronic submission service prescribed by the SOS. The SOS shall maintain the submitted information in an online database, in accordance with §172.029(b) of the Code. The SOS is not responsible for the accuracy of the information submitted by the chair; the SOS is responsible only for providing the electronic submission service, displaying the information publicly on its website, and maintaining the online database.

(3) Information required for submission. The electronic submission service will notate the types of information that must be inputted for a complete submission of candidate information. However, the chair must submit any and all information on the candidate's application for which there is an applicable entry field on the electronic submission service.

(4) Public display of information. The SOS will publicly display on its website a limited portion of the information submitted by the chair. For candidates for public office, the SOS will publicly display, via its website, the candidate's name, mailing address, and office sought, along with the office's corresponding precinct, district or place. For candidates for the office of a political party, the website will publicly display the name of the chair and, if applicable, the corresponding numeric identifier.

(b) Candidates Filing by Regular Filing Deadline.

(1) Submission deadline. A chair shall submit each candidate's information not later than 24 hours after the chair completes the review of the candidate's application and accepts the application for a place on the ballot. By not later than 5:00 p.m. on the 81st day before general primary election day, the chair shall submit information for all candidates who filed on or before the regular filing deadline.

(2) Notification of submission. Upon submission of information for all candidates who filed on or before the regular filing deadline, the chair shall notify the applicable officials that candidate information has been submitted for all candidates. In accordance with §172.028 and §172.029 of the Code, notification shall be made to either: the applicable county chairs, if the submitting chair is a state chair; or the applicable county clerk and state chair, if the submitting chair is a county chair. Notification may be sent by email, regular mail, or personal delivery, so long as it arrives by no later than the 81st day before general election primary day.

(c) Candidates Filing by Extended Filing Deadline.

(1) Removal of candidate. Pursuant to §172.057 of the Code, a chair shall immediately remove a candidate's information from the electronic submission service if the candidate withdraws, dies, or is declared ineligible on or before the first day after the date of the regular filing deadline.

(2) Submission of new candidate. If a candidate files an application with the chair for an office sought by a withdrawn, deceased, or ineligible candidate, and the candidate files an application that complies with the applicable requirements during the extended filing period, the chair shall immediately notify the SOS of the candidate's filing.

(3) Notification. Pursuant to §172.056(b) of the Code, the chair shall notify the county chairs, the county clerk, or the state chair, as applicable, that a candidate filed an application that complied with the applicable requirements during the extended filing period. Notification shall be made by email, regular mail, or personal delivery.

(4) Court order. If a court orders a candidate's name to be placed on the ballot or removed from the ballot, the chair shall immediately notify the SOS.

§81.115. Requirement for Competitive Bids for Services or Products.

(a) This section does not apply to expenditures of $2,000 or less. (Note: A large purchase may not be divided into small lot purchases to circumvent the dollar limits established by this section. For example, expenditures for computer equipment to a single vendor that total more than $2,000 are subject to the competitive bid requirement and may not be split between printers/scanner/computers.)

(b) The [~~Unless prior approval from the SOS is obtained, the~~] county chair must purchase all services and products using competitive bids from no less than three sources. [~~If purchase is through the Texas Procurement and Support Services (TPASS), cooperative purchasing programs for state contract purchasing for the State of Texas bids are not required.~~] Proper documentation must be submitted with the final cost report to indicate the type of procurement service used and the source for those services.

(c) The county chair must document or otherwise provide an explanation regarding the lack of available bids from vendors (sole source). This documentation or explanation must be submitted with the final primary election cost report [~~Final Primary Election Cost Report~~].

(d) If the county chair contracts with the county election officer who has a term contract for election supplies or services or utilizes the Texas Cooperative Purchasing Program, then competitive bids are not required. [~~for term-contract supplies or services if the county entered the term contract pursuant to regular county purchasing rules. If a term contract is utilized, a letter explaining the use of the term contract must be provided. The letter must be signed by the county election officer and the county purchasing agent stating that supplies were purchased for the primary election from a vendor with which they have a term contract. The letter must be submitted with the Final Primary Election Cost Report.~~]

§81.116. Estimating Voter Turnout.

(a) The county chair shall use the formula set out in the following figure, with necessary modifications as determined by the chair, to determine the estimated voter turnout for each precinct for the 2014 [~~2012~~] primary elections. [~~If a county chair receives allocated funds based on the pre-populated Primary Election Cost Estimate, it is not required or necessary to submit an estimation of voter turnout.~~] This [~~general~~] formula is a guideline and must be adjusted if the local political situation indicates a higher voter turnout than that derived by the formula.

Figure: 1 TAC §81.116(a)

(b) After estimating the voter turnout for each precinct, the county chair shall use the guidelines set forth in §§81.117, 81.124, and 81.125 of this title (relating to the Number of Election Workers per Polling Place, Number of Ballots per Voting Precinct, and Number of Direct Record Electronic (DRE) Units or Precinct Ballot Counters per Voting Precinct) to determine the necessary personnel, supplies, and equipment for each precinct (i.e., ballots, election judges and clerks, voting devices, or machines).

(c) After estimating the need for personnel, supplies, and equipment for each precinct, the county chair shall combine all precinct data to determine the total countywide estimate.

(d) The county chair may use the estimate calculated under subsection (c) of this section to determine the estimated cost of the election.

§81.119. County Chair's Compensation.

(a) Pursuant to §173.004 of the Texas Election Code, a county chair may receive compensation for administering primary elections. (Note: In calculating the county chair's compensation, [~~ballot reprints,~~] legal fees and contracted services[~~, programming errors, reprogramming costs or similar corrective measures~~] will not be included in the formula for determining the county chair's compensation. [~~Additionally, costs for contracted services, including, but not limited to, voting system usage fees, will be deducted from the total primary election costs when calculating the county chair's compensation.~~)]

(b) The SOS shall not authorize payment under this section until the county party's final cost report [~~Final Primary Election Cost Report~~] has been received, including the necessary supporting documentation required in §81.107 of this chapter [~~title~~] (relating to Primary-Fund Records), and approved by the SOS. The SOS shall notify the county chair of the approval via email. The chair may view[~~, including~~] the approved costs by line item in the online primary finance system.

(c) After all other expenses have been paid and the final cost report has been approved by SOS, the county chair shall be paid with a check drawn on the county's primary-fund account.

(d) The SOS may deny compensation to county chairs who file delinquent final-cost reports.

§81.120. Compensation for Election-Day Workers.

(a) Except as provided by subsection (b) of this section, the compensation paid to polling-place judges, clerks, early-voting-ballot board members, or persons working at the central counting station for the general-primary and primary-runoff elections shall be equal to the hourly rate paid by the county for such workers in county elections up to $8.00 per hour from the primary fund. All [~~and all~~] workers must attend a training class certified by the SOS. Online[~~, online~~] pollworker training classes are available on the SOS website.

(b) The county chair may pay technical support personnel at the central counting station (appointed under Texas Election Code §§127.002, 127.003, or 127.004) compensation which is more than $8.00 per hour, but costs may not exceed those paid to county staff for comparable work.

(c) Except as provided by this section, a judge or clerk may be paid only for the actual time spent on election duties performed in the polling place or central counting station. If an election worker elects to donate his or her compensation to the county party, signed documentation referencing that fact, by the election worker and chair, must be placed in the primary records.

(d) The county chair may allow one election worker from each polling place up to one hour before election day to annotate the precinct list of registered voters.

(e) The county chair is authorized to pay members of the early-voting-ballot board.

(1) Members of the early voting ballot board may only be compensated for the actual number of hours worked up to $8.00 per hour from the primary fund.

(2) Additionally, members may reconvene to process provisional or late ballots. The provisional ballot/late counting process must be completed not later than the 7th day after the primary or [~~primary~~] runoff primary elections.

(f) Compensation for the election judge or clerk who delivers and picks up the election [~~records, equipment, and unused~~] supplies on election day may not exceed $15 per polling place location.

(g) Except as provided by subsection (f) of this section the county chair may not pay an election-day worker for travel time, delivery of supplies, or attendance at the precinct convention.

§81.123. Administrative Personnel and Overall Administrative Costs Limited.

(a) "Administrative Personnel" means a non-election-day worker.

(b) The employment of administrative personnel is not required for the conduct of the primary elections.

(c) Pursuant to §81.114 of this chapter [~~title~~] (relating to Conflicts of Interest), no member of the county chair's family may be paid an administrative salary from primary funds.

(d) If administrative personnel are utilized [~~required for the conduct of the primary election~~], salaries or wages for such personnel are payable from the primary fund for a period beginning no earlier than November 1, 2013 [~~2011~~], and ending no later than the last day of the month in which the primary election [~~last~~] or runoff primary election, if applicable, is held.

(e) If the county chair contracts with third parties or the county election officer for election services, the overall administrative personnel costs to be submitted to the SOS for reimbursement cannot include administrative expenses provided by third parties or a county election officer. (Administrative personnel costs include, but are not limited to, polling location services, ballot ordering, and secretarial services.)

(f) The SOS may disallow full payment for administrative personnel if it is determined that the contracting county election officer substantially performed the conduct of the election.

(g) Other administrative costs chargeable to the primary fund are items such as administrative personnel, office rental, telephone and utilities, office furniture and equipment rental, computer purchase, office supplies, [~~postage, ballot reprogramming and reprinting costs,~~] bank fees, election law books, and other miscellaneous expenses.

(h) The 83rd Legislature did not increase funding for primary elections; county [~~Although Senate Bill 100, 82nd Legislature, 2011, increased the filing period and moved the runoff to a later date, additional funds were not appropriated. County~~] chairs are encouraged to budget administrative costs accordingly.

(i) In addition to the limitations set forth in the Texas statutes and Subchapters F and G of this chapter of the Texas Administrative Code, including but not limited to §§81.127, 81.128, and 81.129 of this chapter [~~title~~] (relating to Office Equipment and Supplies, Telephone and Postage Charges, and Office Rental), the funding caps illustrated in Figure: 1 TAC§81.123(i) apply to the total administrative expenses a county chair may charge to the primary fund.
Figure: 1 TAC §81.123(i) (No change.)

(j) County chairs may request through the online primary finance system compensation for eligible administrative costs beyond the limitations set forth in Figure: 1 TAC §81.123(i). After [~~after~~] the SOS concludes it has received a sufficient number of final cost reports and sufficient [~~to determine if additional~~] funding is available, the SOS will distribute amendment payments that are deemed reasonable. [~~If the SOS is able to reach such a conclusion, it will notify the county chairs that amended reports may be filed.~~]

§81.124. Number of Ballots per Voting Precinct.

(a) The county chair shall determine the minimum number of ballots to be furnished to each polling place based on the estimated voter turnout formula established pursuant to §81.116 of this chapter [~~title~~] (relating to Estimating Voter Turnout). The county chair shall not distribute to a polling place fewer ballots than the amount indicated by the formula provided by §81.116 of this chapter [~~title~~].

(b) If the chair determines that more ballots than the minimum are necessary, he or she may order a maximum number of ballots up to an amount that is equal to the number of registered voters in the precinct.

(c) In no event should a polling place ballot supply be limited so as to impede the voting process or jeopardize voting rights.

§81.125. Number of Direct Record Electronic (DRE) Units or Precinct Ballot Counters per Voting Precinct.

(a) The county chair shall use the table set out in the following figure to determine the number of precinct ballot counters and DRE units allowable for each precinct.
Figure: 1 TAC §81.125(a)

(b) If a county chair determines that the number of precinct ballot counters and/or DRE units authorized under the formula is inadequate, he or she must acquire [~~obtain~~] permission from the SOS to obtain additional machines, counters, or devices.

(c) Pursuant to federal and state law, there must be at least one accessible voting unit in each precinct. If the county has insufficient accessible voting units to allow each party to conduct a separate primary in all county election precincts, then each party will need to consolidate county election precincts in accordance with §42.009 of the Texas Election Code in order to accommodate the number of accessible voting units that can be allocated to each party by the county in accordance with §51.035 of the Texas Election Code. Alternatively, the parties, with the agreement of a majority of the full membership of county commissioners court and the county election officer, may conduct a joint primary under §172.126 of the Texas Election Code. [~~If the county has only one accessible unit per precinct, the parties are encouraged to share that unit in a joint polling place. Sharing a polling place~~

and sharing an accessible voting unit only is not considered a formal joint election pursuant to §172.126 of the Texas Election Code. Due to limited state funds, if the county does not have a sufficient number of accessible voting units for each party to lease independently, then the costs to lease additional accessible voting units may not be fully reimbursed by the state primary fund. In addition, county chairs must adhere to the requirements of the General Appropriations Act, 82nd Legislature, 2011 and §81.101(e) of this title (relating to Primary and Runoff Election Cost Estimate; Receipt of State Funds), which preclude reimbursement for expenses in excess of those that would have been incurred had the parties held a joint primary.]

(d) In precincts that are conducting a limited joint election for purposes of sharing a polling place and an accessible voting [a Direct Record Electronic] unit, the presiding election judge from the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election shall deliver the device(s) [DRE device] containing the vote totals to the general custodian. The presiding judge of the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election may designate the presiding judge or clerk of the other party to deliver the device(s) containing the vote totals to the general custodian [ballot box and/or DRE device].

§81.127. Office Equipment and Supplies.

(a) Rental of office equipment is not required in order to conduct primary elections.

(b) The county chair may lease office equipment necessary for the administration of the primary elections for a period beginning November 1, 2013 [2011], and ending not later than the last day of the month in which the [last] primary election or runoff election primary, if applicable, is held.

(c) The county party may not rent or lease equipment in which the party, the county chair, or a member of the county chair's family has a financial interest. (See definition of "family" at §81.114(b) of this chapter [title] (relating to Conflicts of Interest).)

(d) The county chair or party shall rent equipment from an entity that has been in business for at least 18 months and has at least three other bona fide clients and on file with the corporation department of the SOS or locally.

(e) The purchase of office supplies must be reasonable and/or necessary for the administration of the primary election to be payable from the primary fund. (This includes, but is not limited to, the purchase of two paperback copies of the Texas Election Code.)

(f) The county chair or party may be reimbursed for the cost of incidental supplies used in connection with the primary election. (Examples of reasonable incidental supplies include paper, toner, and staples.)

(g) The county chair may not use primary funds to purchase any single office-supply item or equipment valued at over $1,500. These items become a part of the Party Primary Office and are to be transferred to the next county chair.

(h) The county chair may not pay notary public expenses from the primary fund.

(i) Computer serial numbers must be reported to SOS to ensure the asset can be tracked from one election to the next.

(j) Any computer purchased with primary funds is to be used for primary related functions. It is not considered the property of the party chair, rather the property of the county party, and must be transferred to the incoming party chair when a new chair takes office.

(k) A computer purchased with primary funds shall be used for two primary election cycles before a new computer may be purchased using primary funds.

§81.128. Telephone and Postage Charges.

(a) The SOS shall reimburse necessary telephone and postage costs incurred with respect to the administration of the primary elections beginning no earlier than November 1, 2013 [2011] and ending no later than the last day of the month in which the [last] primary election or runoff primary election, if applicable, is held.

(b) In counties with fewer than 150 primary election day polling places, the county party may be reimbursed for the lease of no more than two telephone lines.

(c) In counties with 150 or more primary election day polling places, the county party may be reimbursed for the lease of no more than four telephone lines.

§81.129. Office Rental.

(a) The rental of office space is not required for the conduct of the primary elections.

(b) The SOS shall reimburse necessary office space rental expenses incurred with respect to the administration of the primary elections for a period beginning no earlier than November 1, 2013 [2011], and ending not later than the last day of the month in which the [last] primary election or runoff primary election, if applicable, is held.

(c) If the rental of office space is necessary, the county party shall rent office space in a regularly rented commercial building. Office rent shall not exceed the fair market rate for comparable office space [currently-rented] in the same area.

(d) Unless such services are required in accordance with the lease agreement, no payment may be made with primary funds for janitorial services, parking, or signage.

(e) The county party may not rent or lease office space in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest. (See definition of "family" at §81.114(b) of this chapter [title] (relating to Conflicts of Interest).)

(f) If the party leases space for the purpose of the primary only, the county chair shall transmit a copy of the three competitive bids obtained as well as the lease agreement to the SOS, along with a copy of the final cost report [Final Primary Election Cost Report]. (Note: If the party maintains a lease, unrelated to the conduct of the primary, the cost of that lease will not be reimbursed in excess of 30% of the monthly rental cost by the state as a primary expense.)

§81.130. Payment for Use of County-Owned Equipment.

(a) §123.033 of the Texas Election Code provides for the rental rate that a county may charge for the use of its equipment. (The rental rates $5 for each unit of tabulating equipment and $5 for each complete unit which makes up a voting device [DRE].)

(b) In addition to subsection (a) of this section, the county primary fund may be used to pay the actual expenses incurred by the county in transporting, preparing, programming, and testing the necessary equipment, as well as for staffing the central counting station.

(c) The county chair shall submit all calculations for amounts charged for the use of county-owned and non-county-owned equipment to the SOS for review with the final cost report [Final Primary Election Cost Report].

(d) The county chair shall not use primary funds to pay expenses related to the use of non-county-owned [non county-owned]

equipment, including, but not limited to, ballot boxes and voting booths pursuant to §51.035 of the Texas Election Code, without approval from the SOS.

(e) Pursuant to §51.035 of the Texas Election Code, counties may not charge the county parties for use of county-owned voting booths or ballot boxes; however, the primary fund may pay the actual expenses incurred by the county in transporting the equipment to and from the polling places if the county provides that service.

§81.131. Contracting with the County Election Officer.

(a) The SOS has prepared a Primary Election Services Contract and a Joint Primary Election Service Contract (the "Model Contract"). Copies of the appropriate Model Contract may be obtained from the SOS.

(b) The county chair may use the Model Contract when executing an agreement for election services between the county executive committee and the county elections officer. (Contractible election services are listed in Subchapter B of Chapter 31 of the Texas Election Code.)

(c) The Model Contract may be revised as necessary to accommodate the specific agreement between the county chair and county election officer; however, activities not required by law are not payable with primary [~~finance~~] funds. Accordingly, those activities should be identified in the contract, including a stipulation as to whether the county chair or the county election officer will be responsible for the cost.

(d) Before the county chair may make final payment, the county election officer must submit to the county chair an accounting of the actual costs incurred in the performance of the election services contract. This must also be reported in the online primary finance system prescribed by the SOS. The county chair may accept the data entered in the online primary finance system as an accounting of the actual costs incurred in the performance of the election services contract. Otherwise, a copy must be included with the final cost report [~~Final Primary Election Cost Report~~].

(e) The SOS may only pay actual costs incurred by the county and payable under provisions of the Texas Election Code, an election-services contract, or these administrative rules. Costs prohibited by this chapter that appear in the election service contract are not reimbursable with primary funds and must be articulated as such in the contract.

[~~(f) A contract may not allow for reimbursement for training of election workers or providing materials published by the SOS.~~]

(f) [~~(g)~~] Salaries of personnel regularly employed by the county may not be paid from or reimbursed to the county from the primary fund even if the employee used their vacation time to perform the duties.

(g) [~~(h)~~] A county election officer may not contract for the performance of any duty or service that he or she is statutorily obligated to perform.

[~~(i) Costs associated with an election services contract are not counted toward the administrative limits established under §81.123 of this title (relating to Administrative Personnel and Overall Administrative Costs Limited).~~]

(h) [~~(j)~~] Pursuant to §31.098 of the Texas Election Code, if authorized in the contract, county election officers who contract or conduct joint primaries must pay all bills for items they order on behalf of the parties, and seek reimbursements from the parties. Conversely, if a contract provides that the contracting authority (the county political party) is to pay the claims of third persons, then the county political party is responsible for payment directly to the claimant.

(i) County chairs are authorized to make deposits to the county election officer for contract election services prior to services being delivered consistent with §31.100 of the Texas Election Code.

§81.132. Cost of Early Voting to Be Paid by the County.

(a) Pursuant to §173.003 of the Texas Election Code, the only expense to be paid from primary funds for early voting is ballot costs and the early voting ballot board.

(b) The county shall pay for voting-by-mail kits including, but not limited to, postage, early-voting workers, and all other costs incurred that are related to early voting.

(c) The county chair shall not include expenses related to early voting in a primary-election-services joint resolution, county election services contract or a primary cost report. [~~(Note: Expenses related to the early-voting-ballot board are payable from the primary fund.)~~]

§81.134. Legal Expenses.

(a) The party chair (all references to "party chair" in this section refer to both the state chair and the county chair) may contact the SOS Elections Division for advice and assistance in election matters in accordance with §31.004 of the Texas Election Code. (Attorneys with the Elections Division may be reached toll-free by calling 1-800-252-2216. There is no charge for this service.)

(b) The SOS shall not provide primary-fund reimbursement for legal expenses arising as a result of the negligent or wrongful acts of the party chair or a member of the state or county executive committee, or the failure of the party chair or a member of the state or county executive committee to comply with the Texas Election Code, the Texas Administrative Code, or advice provided by the Elections Division in accordance with §31.004.

(c) In addition to any other requirements or limitations under this section and Chapter 173 of the Texas Election Code, the SOS shall not provide primary-fund reimbursement for legal expenses unless the party chair complies with the following preconditions before any legal expenses are incurred subject to appropriation by the Texas Legislature:

(1) The party chair requests in writing by mail, fax, or email to the Director of the Elections Division of the SOS to retain legal counsel the cost of which shall may be paid for with primary funds and the Director approves such request for the expenditure of primary funds in writing.

(2) The request shall include the style and cause number of the lawsuit for which the party chair seeks to retain legal counsel, the name of the attorney he or she wishes to retain, a brief summary of the facts that are the subject of the lawsuit, the attorney's hourly rate, and an estimate of the legal expenses necessary for legal services rendered in defense of the party chair, on behalf of the chair, the executive committee, and the party.

(3) The SOS shall not reimburse legal expenses if the county chair fails to notify the SOS of litigation within thirty (30) business days following the receipt of service of process.

(d) By failing to obtain prior written approval as provided in subsection (c) of this section, the party chair, on behalf of the chair, the executive committee, and the party, waives any right to primary-fund reimbursement for any legal costs or expenses incurred.

(e) Subject to appropriation by the Texas Legislature, notwithstanding anything to the contrary in this chapter, and only if prior written approval is obtained as set forth in subsection (c) of this section, the SOS may provide primary-fund reimbursement for legal fees and expenses incurred by the party chair only for a lawsuit commenced against the chair which seeks to include a candidate's name on the Pri-

mary Election ballot after the chair either rejected the candidate's application or declared the candidate ineligible or which seeks to exclude a candidate's name from the Primary Election ballot after the chair declined to do so.

(f) The party chair seeking reimbursement for legal expenses shall provide to the SOS copies of all invoices related to legal expenses, along with all relevant pleadings, docket sheets, judgments and orders in the case, and any additional information requested by the SOS prior to approval or rejection of legal fee reimbursement from the primary fund.

(g) The SOS shall review all submitted documentation and invoices for legal expenses and make a determination as to the compensability and reasonableness of the legal fees and expenses. Upon SOS approval and subject to appropriation by the Texas Legislature, the SOS shall reimburse legal expenses the lesser of the hourly rate submitted or the hourly rate reflected in the State Bar of Texas--Hourly Rates Report at the time the final invoice for reimbursement of legal expenses is submitted.

(h) All legal invoices, pleadings, correspondence, and any additional information requested by the SOS submitted to the SOS for reimbursement are subject to the Public Information Act (Chapter 552, Texas Government Code), and the party chair is advised not to submit any documents that are subject to attorney-client or work product privilege.

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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Wroe Jackson
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 463-5650

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1 TAC §81.112, §81.134

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

The repeals are proposed under the Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

No other sections are affected by the proposal.

§81.112. List of Candidates and Filing Fees.

§81.134. Legal Expenses.

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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SUBCHAPTER G. JOINT PRIMARY ELECTIONS

1 TAC §§81.148, 81.152, 81.153, 81.155, 81.157

The amendments are proposed under the Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

No other sections are affected by the proposal.

§81.148. Appointment of Various Election Officials.

(a) Upon receipt of the lists of names of election judges and clerks from each county chair not later than the second Monday in December, the county election officer shall select co-judges, co-alternate judges, and appoint clerks (if applicable) for each precinct. (These selections are made in accordance with §172.126(c) of the Texas Election Code and §81.152 of this title (relating to Estimating Voter Turnout for Joint Primaries).)

(b) The county election officer shall determine the total number of election workers required and select from the party chairs' lists the individuals to be appointed as co-judges, members of the early voting ballot board, and presiding judge and clerks of central counting station [~~personnel~~]. The county election officer shall ensure party balance in these selections.

(c) If the total number of individuals (presiding judge plus election clerks) serving on the early voting ballot board or at the central counting station is an odd number, the county election officer shall appoint an additional member from the party whose candidate for governor received the highest number of votes in the county in the most recent gubernatorial general election.

§81.152. Estimating Voter Turnout for Joint Primaries.

(a) Each county chair shall estimate voter turnout for each precinct using the formula set out in the following figure.
Figure: 1 TAC §81.152(a)

(b) The county election officer shall combine the turnout estimates provided by each party chair for each joint-primary precinct.

(c) The county election officer shall enter this information in Section B of the Joint Primary Resolution.

§81.153. Delivery of Election Records and Supplies.

(a) In joint precincts using an electronic voting system in which only one ballot box or only one voting [~~Direct Record Electronic (DRE)~~] unit is used, the co-judge from the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election shall deliver the election supplies, including the voting unit [~~DRE device~~] containing the vote totals. (Note: A county election officer may use separate ballot boxes for each party when using electronic voting systems, if applicable.)

(b) The co-judge of the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election may designate the other co-judge or a clerk to deliver the ballot box and/or [~~DRE~~] device containing the vote totals.

(c) In a jurisdiction using paper ballots, each co-judge shall deliver their party's ballot box and election returns.

§81.155. Returning Surplus Funds.

Immediately following final payment of necessary expenses for conducting the joint primary elections (but no later than July 1), the county chair shall remit any surplus in the primary fund account to the SOS. (The county chair shall remit the surplus regardless of whether state funds were requested by the chair. If the chair does not file a final cost report, the matter [~~their files~~] will be reported to the Attorney General's Office in accordance with §81.113 of this chapter [~~title~~] (relating to Misuse of State Funds).)

§81.157. Joint-Primary Contract with the County Election Officer.

(a) Before the county chair may make final payment, the county election officer must submit to the county chair an accounting of actual costs incurred in performance of the election-services contract for the joint-primary election. This must also be reported in the online primary finance system prescribed by the SOS. The county chair may accept the data entered in the online primary finance system as an accounting of the actual costs incurred in the performance of the election services contract. Otherwise, a copy must be included with the final cost report [~~Final Primary Election Cost Report~~].

(b) The SOS may only reimburse actual costs incurred by the county and payable pursuant to provisions of the Texas Election Code, a joint primary contract, or an administrative rule. Costs prohibited by this chapter that appear in the election service contract are not reimbursable with primary funds.

[~~(c) The SOS may only reimburse actual costs incurred by the county and payable pursuant to provisions of the Texas Election Code, a joint primary contract, or an administrative rule.~~]

(c) [~~(d)~~] If the joint elections agreement requires the county elections officer to directly pay the costs associated with the joint election, then the county chair shall remit the total amount of state funds forwarded to the county chair pursuant to the contracted items as indicated on the primary cost estimate [~~Section B of the Primary Election Final Cost Estimate~~] to the county election officer no later than the fifth day after receipt of the funds.

[~~(e) The cost estimate may not provide for reimbursement for training of election workers or for materials provided by the SOS.~~]

(d) [~~(f)~~] The county may not reimburse regular pay for personnel normally employed by the county from primary-election funds[~~, regular pay for personnel normally employed by the county~~].

(e) [~~(g)~~] The joint resolution for the primary elections may not provide for any salary or compensation for the county election officer for the performance of any statutory duty or service. [~~(Note: Joint Primary Election Agreements do not count against the administrative salary limits set out under §81.123 of this title (relating to Administrative Personnel and Overall Administrative Costs Limited).)~~]

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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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 32. TEXAS MEDICAID WELLNESS PROGRAM

1 TAC §354.1416

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1416, concerning Eligibility Criteria.

Background and Justification

The Texas Medicaid Wellness Program is a whole-person care management service that supports Medicaid clients' individual health needs and challenges. The program serves clients receiving Medicaid through the fee-for-service system who are not in another Medicaid waiver program. The majority of the clients served are children under the age of 21 receiving Social Security Income (SSI) Medicaid.

The Texas Medicaid Wellness Program focuses on three main components: client self-management, provider practice/delivery system design, and technological support. Under client self-management, a client becomes an informed and active participant in the management of his or her physical and mental health conditions and co-morbidities. Under the provider practice/delivery system design approach, medical home providers take an active role in helping their patients make informed health care decisions. Finally, the foundation for the success of the program includes technology, such as the use of predictive modeling, to identify potential program patients and providers.

Historically, all clients who are dually eligible for Medicare and Medicaid have been excluded from the Texas Medicaid Wellness Program. This rule amendment will allow fee-for-service dual-eligible members under the age of 21 to participate in the program.

Section-by-Section Summary

The proposed amendment to §354.1416(b)(1)(A) changes the current exclusion of all dual eligible members to exclude only those dual eligible members who are age 21 and older from eligibility criteria for the Texas Medicaid Wellness Program.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five-years the proposed rule will be in effect, enforcing or administering the rule will result in an anticipated fiscal impact of cost savings to state government. However, participation in the program is voluntary and HHSC currently does not know how many newly eligible persons will participate in the Texas Medicaid Wellness Program. Consequently, HHSC lacks data to estimate the cost savings to the Medicaid program. Local governments will not incur additional costs.

Local Employment Impact

HHSC has determined that the rule will not affect a local economy or local employment.

Small and Micro-business Impact Analysis

HHSC has determined that the rule would have no adverse economic effect on small businesses or micro businesses because the same providers currently providing services will continue to provide services after the proposal is implemented.

Public Benefits and Costs

Chris Traylor, Chief Deputy Commissioner, has determined that, for each year of the first five years the rule will be in effect, the public benefit expected as a result of adopting the proposed rule is that enforcing the rule will result in better management of high-cost and high-risk members of the Medicaid population.

Greta Rymal, Deputy Executive Commissioner for Financial Services, anticipates that, for each year of the first five years the rule will be in effect, there will not be an economic cost to persons who are required to comply with the rule.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Lupita Villarreal, Texas Medicaid Wellness Program Specialist, P.O. Box 85200 mail-code H-312; Austin, Texas 78708; by fax to (512) 730-7452 or by e-mail to lupita.villarreal@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033 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 authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment implements Texas Government Code, Chapter 531, and affects Texas Administrative Code, Title 1, §354.1416. No other statutes, articles, or codes are affected by this proposal.

§354.1416. Eligibility Criteria.

(a) The Texas Medicaid Wellness Program serves people with disabilities who receive Medicaid services and people who receive Temporary Assistance for Needy Families (TANF) who:

(1) Receive medical services through fee-for-service;

(2) Are able, or have a caregiver who is able, to respond actively to health information and care coordination activities; and

(3) Are identified by the Health and Human Services Commission (HHSC) and the Texas Medicaid Wellness Program vendor as being high-cost and/or high-risk due to chronic illness or condition.

(b) Texas Medicaid Wellness Program client population exclusions:

(1) Medicaid clients that are programmatically excluded from the Texas Medicaid Wellness Program:

(A) Dual Eligible client populations <u>age 21 and older</u> that are eligible for Medicare and Medicaid services;

(B) Clients with Third Party Insurance;

(C) Clients in a Medicaid waiver program;

(D) Clients in a managed care program;

(E) Clients in a Medicare pilot;

(F) Clients in a hospice program; or

(G) Clients in institutional or community-based long term care service programs (except previously enrolled Texas Medicaid Wellness Program clients in a skilled nursing facility less than 60 consecutive days in a 12 month period); and

(2) Undocumented aliens.

(c) Texas Medicaid Wellness Program client disenrollment:

(1) Clients enrolled in the Texas Medicaid Wellness Program can opt-out of the program at any time.

(2) Clients may be disenrolled from the Texas Medicaid Wellness Program for the following reasons:

(A) Loss of Medicaid eligibility: clients that regain Medicaid eligibility are automatically re-enrolled into the Texas Medicaid Wellness Program during their first month of renewed eligibility; or

(B) The client is unresponsive to, fails to participate in, or cannot be reached for interventions by the Texas Medicaid Wellness Program vendor. HHSC's contract with the Texas Medicaid Health Wellness Program vendor will specify the number of attempts that the vendor must make to reach a client before disenrollment.

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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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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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), proposes to amend §3.36, concerning specialty examination fees applicable to state banks, bank affiliates and service providers, and bank holding companies, among others.

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 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. The specialty examination fee under the Texas Banking Act is addressed in this proposal. A proposal to increase the fee for examination of state trust companies, by amending §17.22, appears elsewhere in this issue of the *Texas Register.* Another regulatory function that no longer adequately supports the cost of operations is the applications process for banks, trust companies, and money services businesses. Proposals to amend §15.2, concerning application fees for banks, §21.2, concerning application fees for trust companies, and §33.27, concerning license fees for money services businesses, also appear elsewhere in this issue of the *Texas Register.*

Existing §3.36(h) specifies 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 proposed 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 proposed 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 proposed rate of $110 per examiner hour may have to be revisited in two or three years.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule as amended is in effect, there will be fiscal implications for state government (but not for local government) as a result of enforcing or administering the rule. The increased fee revenue from specialty examinations is required to partially offset the department's projected budget deficit for fiscal year 2014 and subsequent years. Mr. Bacon estimates that the proposed fee increase in §3.36(h) will generate an additional $197,000 in revenue for each year of the first five-year period the proposed rule is in effect.

Mr. Bacon also has determined that for each year of the first five-year period the amended section as proposed will be in effect, the public benefit anticipated as a result of the amendments will be better matching of the actual cost of regulation with the service provided, for the purpose of achieving economic self-sufficiency for trust and specialty examination functions within the department.

For each year of the first five years that the amended rule will be in effect, there will be economic costs to persons required to comply with the amended rule as proposed. There will be adverse economic effect on small businesses or micro-businesses, and no differences in the cost of compliance on a per hour basis for small businesses as compared to large businesses.

Because the proposed fee is hourly, the annual cost of compliance for each state bank will depend on a number of considerations. Generally, the larger the institution or trust department, the more hours required for an examination, but other factors make this generalization unhelpful. A bank trust department administering complex trusts may require more hours in an examination than would be required for a similarly sized bank with a trust department administering only individual retirement accounts with conventional financial assets, for example. Further, the frequency of examination will vary according to the composite rating assigned to the bank, see Commissioner Policy Memorandum Number 1004. In general, more frequent examinations are performed on higher risk institutions. A highly rated bank trust department may only be examined once every 18 months, a moderately rated bank once every 12 months, and a poorly rated or higher risk bank once every six months.

Currently there are 39 state banks with trust departments or other activities subject to examination based on the hourly fee. In conducting its analysis, the department determined an average annualized cost of compliance separately based on historical costs of trust and other specialty examinations for these banks. Two of these banks are micro-businesses, and 17 (including the two micro-businesses) are considered small businesses, as those terms are defined in Government Code, §2006.001. The remaining 22 banks are large businesses. The department determined that the average annual cost of compliance for each year of the first five years that the amended rule will be in effect is $500 for a state bank that is a micro-business, $700 for a state bank that is a small business, and $8,450 for a bank that is a large business. To possibly reduce the adverse economic effect on smaller institutions, the proposed amendments to §3.36(h) will grant discretion to the banking commissioner to charge a lesser amount than the proposed $110 per hour fee in connection with a specific examination or investigation, for equitable reasons.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 2, 2013. Comments should be addressed to General Counsel, Legal Division, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amended section is proposed under 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.

Finance Code, §§31.105 - 31.107, 201.105, 202.005, 203.007, and 204.003, are affected by the proposed amended section.

§3.36. Annual Assessments and Specialty Examination Fees.

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

(h) Specialty examination fees.

(1) (No change.)

(2) The fee for an examination under this subsection will be calculated at a [~~uniform~~] rate not to exceed $110 [~~of $600~~] per examiner hour, to recoup [~~per day to cover the cost of the examinations including~~] the salary expense of examiners plus a proportionate share of department overhead allocable to the examination function. The banking commissioner in the exercise of discretion may lower the [~~uniform~~] rate in connection with a specific examination or investigation for equitable reasons, without the prior approval of the finance commission.

(3) (No change.)

(i) (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 October 18, 2013.

TRD-201304676
A. Kaylene Ray
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Finance Commission of Texas
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For further information, please call: (512) 475-1300

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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), proposes to amend §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.

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 proposal. Proposals to amend §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.* Another fee that needs adjustment is the fee charged for examination of trust companies and for special examinations and investigations pertaining to banks, and proposals to adjust those fees, by amending §3.36 and §17.22, also appear elsewhere in this issue of the *Texas Register.*

Existing §15.2 specifies fees applicable to corporate applications filed with the department by banks and others pursuant to the Texas Banking Act. The proposed 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.

Proposed amendments to §15.2 will 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 proposed for adjustment have been in place since 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). Existing §15.3 specifies certain applications eligible for reduced fees and expedited processing, and proposed amendments to §15.3 are for the purpose of conforming §15.3 to the substantive amendments proposed for §15.2.

The proposed fees are as indicated in the proposed revisions, although a few proposals 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), proposed 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 proposed 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, proposed amendments to paragraph (12) would directly incorporate the expedited fee, which is proposed to increase from $500 to $1,000.

Because the application listed in §15.2(b)(13) is proposed to be combined with §15.2(b)(12), paragraph (13) is proposed 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 is proposed to increase to $10,000.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be fiscal implications for state government (but not for local government) as a result of enforcing or administering the rules. The increased fee revenue from applications is required to partially offset the department's projected budget deficit for fiscal year 2014 and subsequent years. Mr. Bacon estimates that the proposed fee adjustments to §15.2 will generate an additional $185,000 in revenue for each year of the first five-year period the proposed rules are in effect.

Mr. Bacon also has determined that for each year of the first five-year period the amended sections as proposed will be in effect, the public benefit anticipated as a result of the amendments will be better matching of the actual cost of regulation with the service provided, for the purpose of achieving economic self-sufficiency for application processing within the department.

For each year of the first five years that the amended sections will be in effect, there will be economic costs to persons required to comply with the amended sections as proposed. There will be an adverse economic effect on small businesses or micro-businesses, although the proposal has been modified to reduce the effect as described further in the following paragraphs. There will be differences in the cost of compliance for small businesses as compared to large businesses.

Certain fee increases do not apply to and will not be paid by regulated institutions. Approximately $54,000 of the projected increase in annual revenue is attributable to anticipated fees collected from applicants that will not be within the regulated industry at the time the application is filed, e.g., an applicant for a new bank charter, for conversion to a state bank charter, or for a foreign bank license. Whether these increased fees will be imposed on small businesses or micro-businesses cannot be determined.

In determining whether the amended sections as proposed would have an adverse economic effect on small businesses and micro-businesses within the regulated industry, the department performed an analysis of the fees collected during the last five years from regulated entities currently under the department's supervision. Filing entities were categorized as micro-business, small business, or large business, and the department evaluated the effect that the proposed filing fees would have had on each entity. The department then determined the average pro forma increase in filing fees separately for banks, trust companies, and money services businesses by size category. Results were then extrapolated to determine the average annual cost effect on a typical state bank in each category. The analysis assumes that the type and frequency

of notices and applications to be filed over the next five years, and the size of institutions that will be filing those notices and applications, will generally resemble the filings made over the last five years and the size of the institutions that made those filings.

As of August 31, 2013, there were 283 Texas state-chartered banks. Of these 283 state banks, 223 or 78.8% are small businesses (banks with less than 100 employees or less than $6 million in annual gross receipts), and 83 or 29.3% are micro-businesses (banks with 20 or fewer employees) as those terms are defined in Government Code, §2006.001. The department's analysis determined that the average annual economic cost for each year of the first five years that the amended sections will be in effect is $314 for a bank classified as a micro-business, $371 for a bank classified as a small business, and $1,216 for a bank classified as a large business.

Only state banks that actually engage in corporate transactions that require a notice or application to the department will be obligated to comply, although all state banks will be subject to the amended sections as proposed. The larger banks have a greater incidence of filings than do small businesses and micro-businesses, which will serve to impose a greater share of increased fees on large banks. To further reduce the adverse economic effect on small businesses and micro-businesses, the fee structure is proposed to be tiered with respect to an application for conversion, based on total assets, and with respect to an application for merger or share exchange, based on total combined assets. The conversion fee would remain at $5,000 for an applicant with total assets of less than $100 million, and would increase to $10,000 for an applicant with total assets of $100 million or more but less than $500 million, $15,000 for an applicant with total assets of $500 million or more but less than $1 billion, and $25,000 for an applicant with total assets of $1 billion or more. The fee for a merger or share exchange is proposed to increase to $7,500 for combined assets of less than $1 billion, or $15,000 for combined assets of $1 billion or more.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 2, 2013. Comments should be addressed to General Counsel, Legal Division, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amended sections are proposed under Finance Code, §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.

Finance Code, §§32.003, 32.101, 32.103, 32.202 - 32.204, 32.302, 32.401, 32.405, 32.502, 33.002, 34.102 - 34.103, 35.0071, 202.001, 202.004, 204.101, and 204.201, and 7 TAC §§3.41, 3.44, 3.91, 3.93, 15.41, 15.42, 15.81, 15.103 - 15.106, 15.108, 15.121, and 15.122, are affected by the proposed amended sections.

§15.2. Filing and Investigation Fees [~~and Cost Deposits~~].

(a) (No change.)

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

(1) $15,000 [~~$5,000~~] for an application for bank charter pursuant to Finance Code, §32.003, provided that the department will not require a filing fee for an application for a bank charter to be located in a low or moderate income area and where no other depository institution operates a branch or home office;

(2) a fee [~~$5,000~~] for an application for conversion to a state bank charter pursuant to Finance Code, §32.502, and §15.108 of this title (relating to Conversion of a Financial Institution into a State Bank), based on total assets as follows, except that the listed fee may be reduced by 50% if the [~~or $2,500 for an expedited~~] application is eligible for expedited treatment [~~if permissible~~] pursuant to §15.103 of this title (relating to Expedited Filings):[~~;~~]

(A) $5,000 for an applicant with total assets of less than $100 million;

(B) $10,000 for an applicant with total assets of $100 million or more but less than $500 million;

(C) $15,000 for an applicant with total assets of $500 million or more but less than $1 billion; or

(D) $25,000 for an applicant with total assets of more than $1 billion;

(3) a fee [~~$4,000~~] for an application to authorize a merger or share exchange (including an interstate transaction) pursuant to Finance Code, §32.302, and §15.104 of this title (relating to Application for Merger or Share Exchange), based on total combined assets as follows:

(A) $7,500 for a merger or share exchange with combined assets of less than $1 billion, or $4,000 if the [~~$2,500 for an expedited~~] application is eligible for expedited treatment [~~if permissible~~] pursuant to §15.103 of this title; or

(B) $15,000 for a merger or share exchange with combined assets of $1 billion or more, or $7,500 if the application is eligible for expedited treatment pursuant to §15.103 of this title;

(4) $2,000 [~~$2,500~~] for each request to authorize an additional merger if more than one affiliated merger is to occur simultaneously;

(5) $5,000 [~~$4,000~~] for an application to authorize a purchase of assets exceeding three times the amount of the bank's unimpaired capital and surplus (including an interstate transaction) pursuant to Finance Code, §32.401, and §15.105 of this title (relating to Application for Authority to Purchase Assets of Another Financial Institution), or $2,500 if the [~~$2,000 for an expedited~~] application is eligible for expedited treatment [~~if permissible~~] pursuant to §15.103 of this title;

(6) $2,500 [~~$1,000~~] for an application to authorize the sale of assets exceeding three times the amount of unimpaired capital and surplus (including an interstate transaction) pursuant to Finance Code, §32.405, and §15.106 of this title (relating to Application for Authority to Sell Assets);

(7) $2,000 [~~$1,500~~] for an application to establish a branch office (including an interstate transaction) pursuant to Finance Code, §32.203, and §15.42 of this title (relating to Establishment and Closing of a Branch Office), or $1,000 if the [~~$500 for an expedited~~] application is eligible for expedited treatment [~~if permissible~~] pursuant to §15.3 of this title (related to Expedited Filings), provided that the department

will not require a filing fee for an application for a new branch office to be located in a low or moderate income area and where no other depository institution operates a branch or home office;

(8) $2,000 [~~$1,500~~] for an application to relocate a branch office pursuant to §15.42(j) [~~§15.42(k)~~] of this title, or $1,000 if the application is eligible for expedited treatment pursuant to §15.3 of this title, provided that the department will not require a filing fee for an application for a branch office to be relocated in a low or moderate income area and where no other depository institution operates a branch or home office;

(9) $1,000 [~~$500~~] for a subsidiary notice letter pursuant to Finance Code, §34.103, plus an amount up to an additional $3,500 if the banking commissioner notifies the applicant that additional information and analysis is required;

(10) $10,000 [~~$5,000~~] for an application regarding acquisition of control pursuant to Finance Code, §33.002, and §15.81 of this title (relating to Application for Acquisition or Change of Control of State Bank), or $5,000 [~~$2,500 for an expedited application~~] if the applicant has previously been approved to control another state bank and no material changes in the applicant's circumstances have occurred since the prior approval;

(11) $500 [~~$200~~] for a notice to change the home office to an existing branch office while retaining the existing home office as a branch office pursuant to Finance Code, §32.202, and §15.41(a) of this title (relating to Written Notice or Application for Change of Home Office);

(12) $2,000 [~~$1,500~~] for an application to relocate the home office pursuant to Finance Code, §32.202, and §15.41(b) of this title, or $1,000 if the application is eligible for expedited treatment pursuant to §15.3 of this title, provided that the fee is $5,000 for an application to relocate the home office of a to-be-acquired charter without significant business activities;

(13) $500 for a notice regarding establishment of an office pursuant to §3.91 of this title (relating to Loan Production Offices), or §3.93 of this title (relating to Deposit Production Offices) [~~$500 for an application to relocate the home office a short distance of one mile or less with no abandonment of the community pursuant to Finance Code, §32.202, and §15.41(b) of this title~~];

(14) $5,000 [~~$3,000~~] for an application for a foreign bank branch or agency license pursuant to Finance Code, §204.101, and §3.41(a) of this title (relating to Applications, Notices and Reports Related to Foreign Bank Branches and Agencies);

(15) $1,000 [~~$500~~] for the statement of registration of a foreign bank representative office pursuant to Finance Code, §204.201, and §3.44(b) of this title (relating to Statements of Registration, Notices and Filings Related to Foreign Bank Representative Offices);

(16) $300 for an application to amend a bank charter (certificate of formation) [~~(articles of association)~~] pursuant to Finance Code, §32.101;

(17) $2,500 [~~$1,500~~] for an application to authorize a reverse stock split subject to the substantive provisions of §15.122 of this title (relating to Amendment of Certificate [~~Articles~~] to Effect a Reverse Stock Split);

(18) $2,000 [~~$500~~] for filing a copy of an application to acquire a bank or bank holding company pursuant to Finance Code, §202.001;

(19) $1,000 [~~$500~~] for filing a copy of an application to acquire a nonbank entity pursuant to Finance Code, §202.004;

(20) $100 for a request for a "no objection" letter to use a name containing a term listed in Finance Code, §31.005;

(21) $1,000 [~~$500~~] for an application to authorize acquisition of treasury stock pursuant to Finance Code, §34.102, and §15.121 of this title (relating to Acquisition and Retention of Shares as Treasury Stock);

(22) $1,000 [~~$500~~] for a request to authorize an increase or reduction in capital and surplus pursuant to Finance Code, §32.103; and

(23) $500 for an application for release from a final removal or prohibition order pursuant to Finance Code, §35.0071.

(c) (No change.)

(d) Investigative fees and costs. An applicant for a bank charter or conversion to a state bank [~~or limited banking association~~] shall pay an investigation fee of $10,000 [~~$5,000~~] once the application has been accepted for filing. If required by the banking commissioner, an applicant under another type of application or filing listed in subsection (b) of this section shall pay the reasonable investigative costs of the department incurred in any investigation, review, or examination considered appropriate by the department, calculated as provided by §3.36(h) of this title (relating to Annual Assessments and Specialty Examination Fees). Such investigation fee or costs must be paid by the applicant upon written request of the department. Failure to timely pay the investigation fee or a bill for investigative costs constitutes grounds for denial of the submitted or accepted filing.

(e) - (f) (No change.)

§15.3. Expedited Filings.

(a) An eligible bank may file an expedited filing according to forms and instructions provided by the department solely for the following matters, together with the fee required by §15.2 of this title (relating to Filing and Investigation Fees):

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

(b) (No change.)

[~~(c) The sole filing fee for an expedited filing is $500.~~]

(c) [~~(d)~~] The department shall notify the applicant on or before the 15th day after receipt of the application if expedited filing treatment is not available under this section. Such notification of denial must be in writing and must indicate the reason why expedited treatment is not available. Notification is effective when mailed by the department and is not subject to appeal.

(d) If expedited filing treatment is denied, the applicant shall submit any additional fee required by §15.2 of this title on or before the fifth business day after receipt of the notice.

(e) (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 October 18, 2013.

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A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: December 13, 2013
For further information, please call: (512) 475-1300

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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), proposes to amend §17.22, concerning trust company examination and investigation fees, and §17.23, concerning trust company call reports.

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 proposal. A proposal 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.* Another regulatory function that no longer adequately supports the cost of operations is the applications process for banks, trust companies, and money services businesses. Proposals to amend §15.2, concerning application fees for banks, §21.2, concerning application fees for trust companies, and §33.27, concerning license fees for money services businesses, also appear elsewhere in this issue of the *Texas Register.*

Existing §17.22 provides that the fee for examination of trust companies is 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). The rate provided by proposed §17.22(a) is expressed as 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 proposed addition of a 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 proposed 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 proposed rate of $110 per examiner hour may have to be revisited in two or three years.

Proposed amendments to §17.23 will 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 proposed amendments to §17.23 are for the purpose of making conforming changes.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules as amended are in effect, there will be fiscal implications for state government (but not for local government) as a result of enforcing or administering the rules. The increased fee revenue from trust company examinations is required to partially offset the department's projected budget deficit for fiscal year 2014 and subsequent years. Mr. Bacon estimates that the proposed fee increase in §17.22 will generate an additional $157,000 in revenue for each year of the first five-year period the proposed rule is in effect.

Mr. Bacon also has determined that for each year of the first five-year period the amended section as proposed will be in effect, the public benefit anticipated as a result of the amendments will be better matching of the actual cost of regulation with the service provided, for the purpose of achieving economic self-sufficiency for trust company supervision within the department.

For each year of the first five years that the amended rules will be in effect, there will be economic costs to persons required to comply with the amended rule as proposed. There will be adverse economic effect on small businesses or micro-businesses, and no differences in the cost of compliance on a per hour basis for small businesses as compared to large businesses.

Because the proposed fee is hourly, the annual, additional cost of compliance for each trust company will depend on a number of considerations. Generally, the larger the institution, the more hours required for an examination, but other factors make this generalization unhelpful. A trust company administering complex trusts may require more hours in an examination than would be required for a similarly sized trust company administering only individual retirement accounts with conventional financial assets, for example. Further, the frequency of examination will vary according to the composite risk rating assigned to the trust company, see Commissioner Policy Memorandum Number 1004. In general, more frequent examinations are performed on higher risk institutions. Non-exempt trust companies (those authorized to do business with the public) may be examined once every 18

months if highly rated, once every 12 months if its ratings are moderate, or once every six months if rated poorly, i.e., considered a higher risk institution. Exempt or family trust companies (those not authorized to do business with the public) are generally examined once every 24 months unless inactive, i.e., not operating, in which case an examination is scheduled at least once every 36 months.

Currently there are 41 state-chartered trust companies, all classified as small businesses. In conducting its analysis, the department determined an average annualized cost of compliance separately based on historical costs of examinations for 20 exempt trust companies, all of which are considered micro-businesses, and for 21 non-exempt trust companies, 12 of which are micro-businesses. The department determined that the average annual cost of compliance for each year of the first five years that the amended rules will be in effect is $1,100 for an exempt trust company (micro-business), $6,250 for a nonexempt trust company classified as a micro-business, and $6,700 for a nonexempt trust company classified as a small business. As previously noted, no trust company is classified as a large business. To possibly reduce the adverse economic effect on smaller institutions, the proposed amendments to §17.22 will grant discretion to the banking commissioner to charge a lesser amount than the proposed $110 per hour fee in connection with a specific examination or investigation, for equitable reasons.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 2, 2013. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@banking.state.tx.us.

The amended sections are proposed under 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.

Finance Code, §§181.104 - 181.107, are affected by the proposed amended sections.

§17.22. Examination and Investigation Fees.

(a) Calculation of fees. A trust company shall pay to the department a fee for examination, whether a regular or special examination, or for an investigation in connection with an application, calculated at a [~~uniform~~] rate not to exceed $110 [~~of $600~~] per examiner hour [~~per day~~], to recoup the salary expense of examiners plus a proportionate share of the department's overhead allocable to the examination or investigation function. The banking commissioner in the exercise of discretion may lower the [~~uniform~~] rate in connection with a specific examination or investigation for equitable reasons, without the prior approval of the finance commission.

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

(e) Examination frequency. In general, the frequency of examination by the department of a state trust company under Finance Code, §181.105, will be determined in the manner described by Commissioner Policy Memorandum Number 1004.

§17.23. Call Reports.

(a) (No change.)

(b) Reporting requirements of trust companies.

(1) Public trust companies. Each trust company that transacts business with the public shall file four call reports annually with the banking commissioner. Such call reports must be filed with the banking commissioner no later than April 30, July 31, and October 31 of each year, and by January 31 of the subsequent year.

(2) Family trust companies. Each trust company that is exempt pursuant to Finance Code, §182.011 and §182.012, and §21.24 of this title (relating to Exemptions for Trust Companies Administering Family Trusts), shall file an annual call report with the banking commissioner no later than January 31 of each year relating to the preceding calendar year.

(3) Call report forms. The call report forms, the instructions for completing the reports and the accompanying materials will be furnished by the banking commissioner to all trust companies subject to this subsection, or may be obtained upon request from the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294. The banking commissioner may make such modifications and additions to call report form and contents under this subsection as considered necessary in the discretionary discharge of the banking commissioner's duties. A trust company must submit all information requested on the call report form.

(c) - (d) (No change.)

(e) Lobby notice and publication for public trust companies. The latest call report filed with the banking commissioner pursuant to subsection (b) of this subsection or a Notice of Call Report Availability must be posted in the lobby of each trust company that transacts business with the public at a point accessible to the public. A trust company is not required to publish its call report in a newspaper or other media unless specifically directed to do so by the banking commissioner. A trust company required to publish its call report by the banking commissioner shall publish the report in a newspaper or other medium of general circulation as directed by the banking commissioner.

(f) (No change.)

(g) Reports containing significant errors and penalties for failure to file or for filing a report with false or misleading information.

(1) Public trust companies. A trust company that transacts business with the public which fails to make, file, or submit a timely call report or a special call report [~~or fails to timely file a call report or special call report~~] as required by this section is subject to a penalty not exceeding $500 a day to be collected by the attorney general on behalf of the banking commissioner.

(2) Family trust companies. Failure of a trust company that is exempt pursuant to Finance Code, §182.011 and §182.012, and §21.24 of this title [~~does not transact business with the public~~] to make, file, or submit a timely call report or a special call report [~~or fails to timely file a call report or special call report~~] as required by this section is grounds for revocation of its exempt status.

(3) Corrections. Any trust company which makes, files, submits or publishes a call report or special call report which contains a significant error, shall file a corrected call report within 20 days from the date of request. For purposes of this subsection, a significant error refers to any difference in the report of condition and/or supporting schedules equating to 5.0% or more of total assets, provided the amount is greater than $50,000, or any difference in the report of income and/or supporting schedules equating to 5.0% or more of total operating income, provided the amount is greater than $5,000. Any trust company which makes, files, submits or publishes a false or misleading call report or special call report is subject to an enforcement action pursuant to Finance Code, §§185.001, et seq.

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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A. Kaylene Ray
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1300

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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), proposes to amend §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.

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 proposal. Proposals to amend §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.* Another fee that needs adjustment is the fee charged for examination of trust companies and for special examinations and investigations pertaining to banks. Proposals to adjust those fees, by amending §3.36 and §17.22, also appear elsewhere in this issue of the *Texas Register.*

Existing §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 proposed 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.

Proposed amendments to §21.2 will 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 proposed for adjustment 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 proposed fees are as indicated in the proposed revisions, although a few proposals need additional explanation for clarity. Existing §21.2(b)(10) and (11) both relate to an office relocation and are proposed to be combined in one paragraph. Existing paragraph (12), which also relates to trust company offices, would be renumbered as §21.2(b)(11).

Proposed §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 proposed to be $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 existing §21.2(b)(21), is proposed for removal, and the remaining paragraphs (22) and (23) will be 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 is proposed to increase to $10,000.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be fiscal implications for state government (but not for local government) as a result of enforcing or administering the rule. The increased fee revenue from applications is required to partially offset the department's projected budget deficit for fiscal year 2014 and subsequent years. Mr. Bacon estimates that the proposed fee adjustments to §21.2 will generate an additional $11,000 in net revenue (revenue from increased fees net of the revenue decrease from repeal of the call report fee) for each year of the first five-year period the proposed rule is in effect.

Mr. Bacon also has determined that for each year of the first five-year period the amended section as proposed will be in effect, the public benefit anticipated as a result of the amendments will be better matching of the actual cost of regulation with the service provided, for the purpose of achieving economic self-sufficiency for application processing within the department.

For each year of the first five years that the amended section will be in effect, there will be economic costs to persons required to comply with the amended section as proposed. There will be an adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses because every trust company under the department's jurisdiction is a small business as that term is defined in Government Code, §2006.001.

Certain fee increases do not apply to and will not be paid by regulated institutions. Approximately $6,300 of the projected increase in annual revenue is attributable to anticipated fees collected from applicants that will not be within the regulated industry at the time the application is filed, e.g., an applicant for a new trust company charter or for conversion to a state trust company. Whether these increased fees will be imposed on small businesses or micro-businesses cannot be determined.

In determining whether the amended section as proposed would have an adverse economic effect on micro-businesses within the regulated industry, the department performed an analysis of the fees collected during the last five years from regulated entities currently under the department's supervision. Filing entities were categorized as micro-business, small business, or large business, and the department evaluated the effect that the proposed filing fees would have had on each entity. The department then determined the average pro forma increase in filing fees separately for banks, trust companies, and money services businesses by size category. Results were then extrapolated to determine the average annual impact on a typical state trust company in each category. The analysis assumes that the type and frequency of notices and applications to be filed over the next five years, and the size of institutions that will be filing those notices and applications, will generally resemble the filings made over the last five years and the size of the institutions that made those filings.

Currently there are 41 state-chartered trust companies, all of which are small businesses, and 32 (78%) of those are micro-businesses, as those terms are defined in Government Code, §2006.001. The department determined that the average annual economic cost (increased fees net of savings from repeal of the call report fee) for each year of the first five years that the amended section will be in effect is $243 for a trust company classified as a micro-business and $319 for a trust company classified as a small business. As previously noted, no trust company is classified as a large business.

Only state trust companies that actually engage in corporate transactions that require a notice or application to the department will be obligated to comply, although all trust companies will be subject to the amended section as proposed. The larger trust companies have a greater incidence of filings than do micro-businesses, which will serve to impose a greater share of fee revenue on the larger institutions.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 2, 2013. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amended section is proposed under 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.

Finance Code, §§181.107, 182.003, 182.012, 182.013, 182.101, 182.103, 182.202, 182.203, 182.302, 182.401, 182.405, 182.502, 183.001, 183.002, 184.102, 184.103, 184.301, 184.302, and 185.0071, and 7 TAC §§21.3, 21.24, 21.31, 21.41, 21.42, 21.63, 21.64, 21.91, and 21.92, are affected by the proposed amended section.

§21.2. Filing and Investigation Fees.

(a) (No change.)

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

(1) $10,000 [~~$5,000~~] for an application for trust company charter pursuant to Finance Code, §182.003;

(2) $5,000 for an application for conversion of exempt trust company to non-exempt pursuant to Finance Code, §182.011(d);

(3) $7,500 [~~$4,000~~] for an application to authorize a merger or share exchange pursuant to Finance Code, §182.302, and §21.64 of this title (relating to Application for Merger or Share Exchange), or $4,000 [~~$2,500~~] for an [~~expedited~~] application accepted for expedited treatment [~~if permissible~~] pursuant to §21.63 of this title (relating to Expedited Filings);

(4) $2,000 [~~$2,500~~] for each request to authorize an additional merger if more than one affiliated merger is to occur simultaneously;

(5) $5,000 [~~$4,000~~] for an application to authorize a purchase of assets pursuant to Finance Code, §182.401, if the purchase price exceeds an amount equal to three times the sum of the trust company's equity capital less intangible assets;

(6) $2,500 [~~$1,000~~] for an application to authorize the sale of substantially all assets pursuant to Finance Code, §182.405;

(7) $1,000 [~~$500~~] for a subsidiary notice letter pursuant to Finance Code, §184.103(c), plus an amount up to an additional $3,500 if the banking commissioner notifies the applicant that additional information and analysis is required;

(8) $10,000 [$5,000] for an application regarding acquisition of control pursuant to Finance Code, §183.002, or $5,000 [$2,500 for an expedited application] if the applicant has previously been approved to control another trust company and no material changes in the applicant's circumstances have occurred since the prior approval;

(9) $500 [$200] for a notice to change home office with no abandonment of existing office pursuant to Finance Code, §182.202(c), and §21.41(a) of this title (relating to Written Notice and Application for Change of Home Office);

(10) $2,000 [$1,500] for an application to relocate the home office with abandonment of existing office pursuant to Finance Code, §182.202(d), and §21.41(b) of this title, or $1,000 for an application accepted for expedited treatment pursuant to §21.3 of this title (related to Expedited Filings) [except as otherwise provided in paragraph (11) of this subsection];

[(11) $500 for an application by an eligible trust company to relocate the home office with abandonment of existing office pursuant to §21.3 of this title (relating to Expedited Filings);]

(11) [(12)] $500 [$200] for a notice of additional office pursuant to Finance Code, §182.203(a), and §21.42 of this title (relating to Establishment, Relocation and Closing of an Additional Office), plus an additional $1,500 [$1,300] if the banking commissioner notifies the applicant pursuant to Finance Code, §182.203(b), and §21.42(c) of this title that additional information and analysis is required;

(12) $500 for an application for release from a final removal or prohibition order pursuant to Finance Code, §185.0071;

(13) $300 for an application to amend a trust company charter (certificate of formation) [(articles of association)] pursuant to Finance Code, §182.101;

(14) $2,500 [$1,500] for an application to authorize a reverse stock split subject to the substantive provisions of §21.92 of this title (relating to Amendment of Certificate [Articles] to Effect a Reverse Stock Split);

(15) (No change.)

(16) $1,000 [$500] for an application to authorize acquisition of treasury stock pursuant to Finance Code, §184.102, and §21.91 of this title (relating to Acquisition and Retention of Shares as Treasury Stock);

(17) $1,000 [$500] for an application to authorize an increase or reduction in capital and surplus pursuant to Finance Code, §182.103;

(18) $2,500 [$1,000] for an application by an existing [for] trust company for exemption pursuant to Finance Code, §182.012, and §21.24 of this title (relating to Exemptions for Trust Companies Administering Family Trusts);

(19) $2,500 [$1,000] for an application for authority to accept deposits pursuant to Finance Code, §§182.101, 184.301, and 184.302, and §21.31 of this title (relating to Notice to Engage in Trust Deposits);

(20) (No change.)

(21) $10,000 for an application to convert from a trust institution to a state trust company pursuant to Finance Code, §182.502; and

(22) $500 for a request to the banking commissioner to exempt an acquisition of control transaction from the requirements of Finance Code, §183.001, pursuant to Finance Code, §183.001(d)(4), which fee will be applied to a subsequent application for approval of an acquisition of control if the exemption is denied.

[(21) $100 for required filing of a statement of condition and income pursuant to Finance Code, §181.107;]

[(22) $5,000 for an application to convert from a trust institution to a state trust company pursuant to Finance Code, §182.502; and]

[(23) $300 for an application to exempt an acquisition of control transaction from the requirements of Finance Code, §183.001, pursuant to Finance Code, §183.001(d)(4), which fee shall be applied to a subsequent application for approval of an acquisition of control if the exemption is denied.]

(c) (No change.)

(d) Investigative fees and costs. An applicant for a trust company charter, conversion from an exempt trust company to a non-exempt trust company or limited trust association, or conversion of a trust institution to a state trust company shall pay an investigation fee of $10,000 [$5,000] once the application has been accepted for filing. If required by the banking commissioner, an applicant under another type of application or filing listed in subsection (b) of this section shall pay the reasonable investigative costs of the department incurred in any investigation, review, or examination considered appropriate by the department, calculated as provided by §17.22(a) of this title (relating to Examination and Investigation Fees). Such investigation fee or costs must be paid by the applicant upon written request of the department. Failure to timely pay the investigation fee or a bill for investigative costs constitutes grounds for denial of the submitted or accepted filing.

(e) - (f) (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.

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A. Kaylene Ray
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1300

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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), proposes new Chapter 24, §§24.1, 24.2 and 24.3, concerning cemetery brokers. The proposed chapter will provide 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.

Proposed new Chapter 24 would implement 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 would provide that a cemetery broker must pay a $100 registration fee and file a written statement on a form promulgated by the department. It also would establish the timeframe in which the department must process registrations, and states that registration may not be transferred.

New §24.2 would require 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 would also require a new cemetery broker registration if 25% of the ownership or control of a cemetery broker organization changes.

New §24.3 would establish what information must be presented to consumers about filing complaints, as well as when and how to provide it. The proposed 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 proposed Chapter 24, but are anticipated to be implemented by a future rule.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period that proposed new Chapter 24 is in effect, there will likely be no fiscal implications for local government as a result of enforcing or administering the proposed new rules. It is anticipated that implementation of the registration process can be accomplished with current resources. However, as H.B. 52 created an entirely new regulatory framework pertaining to entities not previously regulated, the precise fiscal impact for state government as a result of administering proposed Chapter 24 is unknown. The department has no data regarding the number of cemetery brokers operating in Texas, nor the number of consumers who purchase plots through brokers, and cannot determine how many complaints it is likely to receive. Therefore the department cannot reliably predict its costs to administer the new rules. Entities required to register under Health and Safety Code §711.0381 will incur a $100 fee to register, and a $100 annual administration fee thereafter, pursuant to §711.046(d). This section authorizes the department to charge a reasonable fee, not to exceed $100, to cover the costs of filing and maintaining the registration and administering Chapter 711. The proposed fees will enable the department to recover its costs in registering and regulating the entities. Because these rules do not establish examination procedures or examination fees, as authorized by Health and Safety Code §711.083 and §711.084, no additional fiscal impact results from these rules. However, further rulemaking to implement the examination provisions of H.B. 52 will be proposed in the future.

Ms. Newberg also has determined that, for each year of the first five years Chapter 24 is in effect, the public benefit anticipated as a result of the adoption of the proposed chapter will be reduction of fraud and increased consumer protection against problems resultant from unrecorded sales of burial plots by cemetery brokers. The legislature noted that there has been a recent increase in online cemetery plot sales that have sold the same right of burial to more than one consumer. By implementing H.B. 52, Chapter 24 will reduce such incidents by requiring registration and permitting examination of sales records.

For each year of the first five years that the rules will be in effect, there will be minimal economic costs to persons required to comply with the rules as proposed. Persons required to comply with Chapter 24 will incur a $100 registration fee, pay $100 annually, and must provide a written consumer complaint notice to purchasers of cemetery burial plots.

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

To be considered, comments on proposed Chapter 24 must be submitted no later than 5:00 p.m. on December 2, 2013. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

New Chapter 24 is proposed under Health and Safety Code §711.012 and §711.082 which authorize the commission to adopt rules to enforce and administer Subchapter C-1 and §711.0381.

Health and Safety Code §§711.0381, 711.046, 711.048, and 711.049 are affected by the proposed new Chapter 24.

§24.1. Registration.

(a) To register as a cemetery broker, a person must file with the Texas Department of Banking (the department) a statement that complies with Texas Health and Safety Code §711.046, and pay a $100 registration fee. The statement must be filed on a form promulgated by the department.

(b) The department shall notify each registrant within 45 days either that the statement is complete and accepted for registration, or that the statement is deficient. If the statement is deficient, the department shall specify the additional information that is required.

(c) Registration as a cemetery broker is not transferable.

§24.2. Responsibilities After Registration.

(a) No later than January 31 of every year, a registered cemetery broker must pay a $100 administration fee.

(b) A registered cemetery broker must notify the department in writing not later than the 60th day after the date any of the information filed during registration changes.

(c) A new cemetery broker registration must be filed if:

(1) 25 percent or more of the ownership of a cemetery broker changes; or

(2) the power to directly or indirectly vote 25 percent or more of the outstanding voting interests of a cemetery broker changes.

(d) A registered cemetery broker must notify the department in writing at least 30 days before ceasing operations as a cemetery broker. The notice must include:

(1) the effective date of the closing; and

(2) a signed declaration that no broker transactions remain pending, and that the cemetery broker has satisfied all outstanding customer obligations.

§24.3. Consumer Complaints.

(a) Definitions.

(1) "Consumer" includes both the transferor and transferee of the exclusive right of sepulture in a plot.

(2) "Consumer complaint" means a written complaint received by a registered cemetery broker regarding the sale or transfer of the exclusive right of sepulture in a plot. The term includes a written complaint received either directly from a consumer or through the department. The term does not include an oral complaint.

(b) Information about filing a consumer complaint.

(1) A registered cemetery broker must provide consumers with written notice about how to file a consumer complaint. The notice must be provided when the consumer enters into an agreement with the cemetery broker.

(2) The notice must state that consumer complaints concerning a cemetery broker transaction involving the exclusive right of sepulture in a plot should be directed to the Texas Department of Banking. The notice must include the department's physical address, toll free telephone number, and website address, and be in the language in which the transaction is conducted.

(3) If a cemetery broker maintains a website, the consumer complaint notice must also be posted prominently on the website. The notice must state that consumer complaints concerning a cemetery broker transaction involving the exclusive right of sepulture in a plot should be directed to the Texas Department of Banking. The notice must include the department's physical address and toll free telephone number.

(c) Responding to a consumer complaint.

(1) Unless directed otherwise by the department, within 30 days of receipt of a consumer complaint, a cemetery broker must respond to the complaint in writing, and send a copy of the written response to the department.

(2) The written response to a consumer complaint must:

(A) list all actions the cemetery broker has taken and plans to take, including a corresponding timeline, to resolve the consumer complaint; or

(B) explain why no corrective action is required, and refer to any supporting legal authority.

(3) The cemetery broker must document the steps taken to resolve the consumer complaint, and must retain this documentation with the records required to be kept under Health and Safety Code §711.0381(g).

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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A. Kaylene Ray
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1300

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CHAPTER 33. MONEY SERVICES BUSINESSES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to repeal §33.21, concerning how to renew a license; and amend §33.27, concerning what fees must be paid to get and maintain a license. The repeal of §33.21 is proposed 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 proposed 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 should be repealed.

The proposed amendments to §33.27 will revise references to license renewal to conform to H.B. 2134 and, in addition, will 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 proposal. Proposals to amend §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.* Another fee that needs adjustment is the fee charged for examination of trust companies and for special examinations and investigations pertaining to banks, and proposals to adjust those fees, by amending §3.36 and §17.22, also appear elsewhere in this issue of the *Texas Register.*

Existing §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 proposed 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.

Proposed amendments to §33.27 will 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 must be increased to better match actual cost of regulation with the service provided. The application fee for a money transmission license is proposed to increase from $2,500 to $10,000, the fee for a temporary money transmission license is proposed to increase from $1,500 to $2,500, and the application fee for a currency exchange license is proposed to increase from $2,500 to $5,000. In addition, the application fee for a change of control is proposed to increase from $600 to $1,000, and the fee for a request for prior determination of control is proposed to increase from $300 to $500.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed repealed and amended rules are in effect, there will be fiscal implications for state government (but not for local government) as a result of enforcing or administering the rules. The increased fee revenue from applications is required to partially offset the department's projected budget deficit for fiscal year 2014 and subsequent years. Ms. Newberg estimates that the proposed fee adjustments to §33.27 will generate an additional $102,700 in revenue for each year of the first five-year period the proposed rule is in effect.

Ms. Newberg also has determined that, for each year of the first five years the repealed and amended rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is better matching of the actual cost of regulation with the service provided, for the purpose of achieving economic self-sufficiency for application processing within the department.

For each year of the first five years that the repealed and amended sections will be in effect, there will be economic costs to persons required to comply with the amended section as proposed. There will be an adverse economic effect on small businesses or micro-businesses, although the proposal has been modified to reduce the effect as described further in the following paragraphs. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

As of August 31, 2013, there were 135 money services business licensees. Of these 135 licensees, 97 (71.9%) are small businesses and 70 (51.9%) are micro-businesses, as those terms are defined in Government Code, §2006.001.

The most significant fee increases will not apply to and will not be paid by regulated money services businesses. An estimated $101,500 (98.8%) of the projected increase in annual revenue is attributable to anticipated fees collected from new applicants for a license that will not be within the regulated industry at the time the application is filed. The extent to which these increased fees will be borne by small businesses or micro-businesses cannot be determined. However, two licenses are available under the Money Services Act, a license for money transmission or a license for currency exchange. Because each of the 39 current licensees engaged solely in currency exchange activities is a micro-business, as that term is defined in Government Code, §2006.001, a reasonable assumption can be made that future applicants for a currency exchange license may also constitute micro-businesses. Accordingly, the proposed fee increase for a currency exchange license is substantially less than the proposed fee increase for a money transmission license, in order to reduce the adverse economic effect on micro-businesses.

The remaining projected increase in average annual revenue of $1,200 is based on an estimate that an average of two applications for change of control and two requests for prior determination of control will be filed each year of the first five-year period that the amended section will be in effect. The acquiror is the person or entity that files an application for change of control and will be required to pay the fee, proposed to increase from $600 to $1,000. An existing licensee may be the party seeking a prior determination of control on behalf of a new or proposed investor, and this filing fee is proposed to increase from $300 to $500.

To be considered, comments on the proposed repealed and amended sections must be submitted no later than 5:00 p.m. on December 2, 2013. Comments should be addressed to General Counsel, Legal Division, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

7 TAC §33.21

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

The repeal of §33.21 is proposed under Finance Code, §151.102(a), which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151.

Finance Code, §151.207, is affected by the proposed repeal.

§33.21. How Do I Renew My License?

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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A. Kaylene Ray
General Counsel
Texas Department of Banking
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7 TAC §33.27

The amendment of §33.27 is proposed under 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 proposed 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).

Finance Code, §§151.202 - 151.205, 151.207, 151.302 - 151.306, 151.502 - 151.505, and 151.605, are affected by the proposed amended section.

§33.27. What Fees Must I Pay to Get and Maintain a License?

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

(d) What fees must I pay to obtain a new license?

(1) You must pay a non-refundable $10,000 [~~$2,500~~] application fee to obtain a new money transmission license or a non-refundable $5,000 application fee to obtain a currency exchange license. You may also be required to pay the following additional fees:

(A) - (C) (No change.)

(2) To apply for a temporary money transmission license authorized under Finance Code, §151.306, you must pay a non-refundable $2,500 [~~$1,500~~] temporary license application fee in addition to the fees required under paragraph (1) of this subsection.

(3) (No change.)

(e) What fees must I pay to maintain [~~renew~~] my license?

(1) If you hold a currency exchange license, you must pay an annual license [~~renewal~~] fee of $500.

(2) If you hold a money transmission license, you must pay an annual license [~~renewal~~] fee of $1,500.

(f) What fees must I pay in connection with a proposed change of control of my money transmission or currency exchange business?

(1) You must pay a non-refundable $1,000 [~~$600~~] fee at the time you file an application requesting approval of your proposed change of control.

(2) You must pay a non-refundable $500 [~~$300~~] fee to obtain the department's prior determination of whether a person would be considered a person in control and whether a change of control application must be filed. If the department determines that a change of control application is required, the prior determination fee will be applied to the fee required under paragraph (1) of this subsection.

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

(g) (No change.)

(h) What fees must I pay for an examination?

(1) You must pay an annually assessed examination fee (annual assessment). The amount of the fee is based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on the most recent annual [~~renewal~~] report you have filed with the department. You must pay the annual assessment specified in the following table:
Figure: 7 TAC §33.27(h)(1) (No change.)

(2) (No change.)

(3) If you are a new license holder and have not yet filed your first annual [~~renewal~~] report required under Finance Code, §151.207(b)(2), you must pay an examination fee of $75 per hour for each examiner and all associated travel expenses. Your subsequent annual assessments will be calculated in accordance with paragraph (1) of this subsection.

(4) - (5) (No change.)

(i) How and when do I need to pay for the fees required by this section?

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

(3) You must pay the annual [~~renewal~~] license fee required under subsection (e) of this section at the time you file your completed annual [~~renewal~~] report. Additionally:

(A) You must pay the fee by ACH debit, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the fee and the date the department will initiate payment of the fee by ACH debit[~~, which will be July 1 of each year or, if July 1 is a holiday, the last business day immediately preceding July 1~~]; and

(B) if the department does not receive both your completed annual [~~renewal~~] report and license [~~renewal~~] fee by the specified deadline [~~July 1~~], you must pay a late fee of $100 per day for each business day after the deadline [~~July 1~~] that the department does not receive your completed annual [~~renewal~~] report and license [~~renewal~~] fee. You must pay this fee immediately upon receipt of the department's written invoice.

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

(j) (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.

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A. Kaylene Ray
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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) proposes amendments to 7 TAC Chapter 53, §53.1, concerning Establishment and Operation of Additional Offices; §53.2, concerning Types of Additional Offices; and §53.5, concerning Loan Offices and Administrative Offices.

In general, the purpose of the proposed amendments is to conform rules to existing business practices, and clarify existing rules.

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

Mr. Foster has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the proposed amendments will be to clarify existing rules. There will be no adverse economic effect on individuals, small businesses, or micro businesses.

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

The amendments are proposed 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 proposed amendments are contained in Texas Finance Code, Title 3, Subtitle B.

§53.1. Establishment and Operation of Additional Offices.

Except for those additional offices set forth in the alternative procedures established in §53.5 of this chapter [~~title (relating to Loan Offices and Administrative Offices)~~], no association shall establish or maintain an office other than its home office without the prior written approval of the commissioner. An association's home office means the place where an association has its headquarters and from where all of its operations are directed. An authorized or approved office of an association means the place where the business of the association is conducted, and with the prior written consent of the commissioner may include facilities ancillary thereto for the extension of the association's services to the public. Any authorized or approved office of an association shall also mean, with the prior written consent of the commissioner, separate quarters or facilities to be used by the association for the purpose of performing service functions in the efficient conduct of its business[~~, but which service functions do not include the acceptance of loan applications or the payment or withdrawal on savings accounts~~]. All offices of an association which are located outside the county of the domicile of its home office shall display a sign which is suitable to advise the public of the type of additional office which is located therein [~~(such as branch, loan, or agency office)~~] and the location of the home office of such association.

§53.2. Types of Additional Offices.

Subject to the provisions of §§53.1 - 53.5 of this chapter [~~title (relating to Additional Offices)~~], the following types of additional offices may be established and maintained by a savings association:[~~:~~]

(1) Branch offices at which the association[~~, through its regularly employed personnel,~~] may transact any business that could be done in the home office;[~~:~~]

(2) Loan production offices (loan offices) at which the association, may transact business, as provided by §53.5(a) of this chapter, [~~through its regularly employed personnel, may receive and process applications for loans and contracts and manage or sell real estate owned by the association~~] but at which no other business of the association is transacted; [~~carried on.~~]

(3) Mobile facilities at which the association[~~, through its regularly employed personnel,~~] may transact any business of the association that could be done in the home office. A [~~except that loans, other than loans to borrowers on the security of their savings account shall not be approved at such facility and a~~] detailed record of the transactions at such facility shall be maintained;[~~:~~]

(4) Administrative offices at which the association[~~, through its regularly employed personnel,~~] may transact administrative functions of the association, as provided by §53.5(b) of this chapter, but at which no other business of the association is transacted. Such office may be located separate and apart from the location of any other facility of the association. [~~No savings deposits or loan applications may be accepted at an administrative office.~~] All original records of the association shall be present and maintained at all times at the home office of the association;[~~:~~]

(5) Courier/messenger service to transport items relevant to the association's transactions with its customers, including courier services between financial institutions; and

(6) Deposit production offices at which the association may transact business, as provided by §53.5(c) of this chapter, but at which no other business of the association is transacted.

§53.5. Loan Production Offices (Loan Offices), [~~and~~] Administrative Offices, and Deposit Production Offices.

(a) Loan Production Offices (Loan Offices). A savings association may, to the extent authorized by its board of directors, establish or maintain loan offices or loan production offices with the authority to take loan applications; originate; approve or make a credit decision; [~~or~~] accept payments on loans; and manage or sell real estate owned by the association, unless such activity conflicts with state or federal law. A savings association shall notify the commissioner in writing prior to the opening or closing of a loan office or loan production office. Upon receipt of written consent by the commissioner [~~such notification~~], the establishment of such office shall be deemed an approved loan office or loan production office of the savings association. A loan office or loan production office is not a branch.

(b) Administrative Offices. A savings association may, to the extent authorized by its board of directors, establish or maintain administrative offices of the association. No [~~Such an office may be located separate and apart from the location of any other facility of the association; however, no~~] savings deposits or loan applications may be accepted at an administrative office. A savings association shall notify the commissioner in writing prior to the opening or closing of an administrative office. Upon receipt of written consent by the commissioner [~~such notification~~], the establishment of such office shall be deemed an approved administrative office of the association.

(c) Deposit Production Offices. A savings association may, to the extent authorized by its board of directors, establish or maintain a deposit production office of the association. Such an office may solicit

deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. However, the deposit production office may not receive deposits or pay withdrawals, or make loans to a savings association customer; and all such deposit or withdrawal activity must be performed by the savings association customer either in person at the main office, branch office, or by mail, electronic transfer, or similar transfer method. A savings association shall notify the commissioner in writing prior to the opening or closing of a deposit production office. Upon receipt of written consent by the commissioner, the establishment of such office shall be deemed an approved deposit production office of the association. A deposit production office is not a branch.

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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Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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CHAPTER 75. APPLICATIONS
SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.31, 75.32, 75.34

The Finance Commission of Texas (the Commission) proposes amendments to 7 TAC Chapter 75, Subchapter C, §75.31, concerning Establishment and Operations of Additional Offices; §75.32, concerning Types of Additional Offices; and §75.34, concerning Loan Offices and Administrative Offices.

In general, the purpose of the proposed amendments is to conform rules to existing business practices, and clarify existing rules.

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

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

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

The amendments are proposed 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 proposed amendments are contained in Texas Finance Code, Title 3, Subtitle C.

§75.31. Establishment and Operations of Additional Offices.

(a) (No change.)

(b) An authorized or approved office of a savings bank shall be the place where the business of the savings bank is conducted, and with the prior written consent of the commissioner may include facilities ancillary thereto for the extension of the savings bank's services to the public. Any authorized or approved office of a savings bank shall also mean, with the prior written consent of the commissioner, separate quarters or facilities to be used by the savings bank for the purpose of performing service functions in the efficient conduct of its business[~~, but which service functions do not include the acceptance of loan applications or the payment or withdrawal on savings accounts~~].

(c) All offices of a savings bank which are located outside the county of the domicile of its home office shall display a sign which is suitable to advise the public of the type of additional office which is located therein [~~(such as branch, loan, or agency office)~~] and the location of the home office of such savings bank.

§75.32. Types of Additional Offices.

Subject to the provisions of §§75.31 - 75.36, 75.38, 75.39, and 75.41 of this chapter [~~§§75.31 - 75.41 of this title (relating to Applications)~~], the following types of additional offices may be established and maintained by a savings bank:

(1) branch offices at which the savings bank[~~, through its regularly employed personnel,~~] may transact any business that could be done in the home office;

(2) loan production offices (loan offices) at which the savings bank, may transact business, as provided by §75.34(a) of this chapter, [~~through its regularly employed personnel, may receive and process applications for loans and contracts and manage or sell real estate owned by the institution~~] but at which no other business of the savings bank is transacted;

(3) mobile facilities at which the savings bank[~~, through its regularly employed personnel,~~] may transact any business of the institution which could be done in the home office. A [~~except that loans, other than loans to borrowers on the security of their savings account shall not be approved at such facility and a~~] detailed record of the transactions at such facility shall be maintained;

(4) administrative offices at which the savings bank[~~, through its regularly employed personnel,~~] may transact administrative functions of the institution, as provided by §75.34(b) of this chapter. Such office may be located separate and apart from the location of any other facility of the savings bank[~~. No savings deposits or loan applications may be accepted at an administrative office~~]; [~~and,~~]

(5) courier/messenger service to transport items relevant to the bank's transactions with its customers, including courier services between financial institutions; and[~~,~~]

(6) deposit production offices at which the savings bank may transact business, as provided by §75.34(c) of this chapter, but at which no other business of the savings bank is transacted.

§75.34. Loan Production Offices (Loan Offices), [~~and~~] Administrative Offices, and Deposit Production Offices.

(a) Loan Production Offices (Loan Offices). A savings bank may, to the extent authorized by its board of directors, establish or maintain loan offices or loan production offices [~~that only service or originate (but do not approve) loans~~] with the authority to take loan

applications; originate; approve or make a credit decision; [~~or~~] accept payments on loans; or manage or sell real estate owned by the institution, unless such activity conflicts with state or federal law. A savings bank shall notify the commissioner in writing prior to the opening or closing of a loan office or loan production office. Upon receipt of written consent from the commissioner [~~such notification~~], the establishment of such office shall be deemed an approved loan office or loan production office of the bank. A loan office or loan production office is not a branch.

(b) Administrative Offices. A savings bank may, to the extent authorized by its board of directors, establish or maintain administrative offices of the bank. No [~~Such an office may be located separate and apart from the location of any other facility of the bank; however, no~~] savings deposits or loan applications may be accepted at an administrative office. A savings bank shall notify the commissioner in writing prior to the opening or closing of an administrative office. Upon receipt of written consent from the commissioner [~~such notification~~], the establishment of such office shall be deemed an approved administrative office of the bank.

(c) Deposit Production Offices. A savings bank may, to the extent authorized by its board of directors, establish or maintain a deposit production office of the bank. Such an office may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. However, the deposit production office may not receive deposits or pay withdrawals, or make loans to a savings bank customer, and all such deposit or withdrawal activity must be performed by the savings bank customer either in person at the main office, branch office, or by mail, electronic transfer, or similar transfer method. A savings bank shall notify the commissioner in writing prior to the opening or closing of a deposit production office. [~~A savings bank may use the services of, and compensate, persons not employed by the savings bank in its deposit production activities.~~] Upon receipt of written consent from the commissioner [~~such notification~~], the establishment of such office shall be deemed an approved deposit production office of the bank. A deposit production office is not a branch.

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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CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.73

The Finance Commission of Texas (the Commission) proposes amendments to 7 TAC Chapter 77, Subchapter A, §77.73, concerning Investment in Banking Premises and Other Real Estate Owned.

In general, the purpose of the proposed amendments is to conform rules to existing business practices, and clarify existing rules.

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

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

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

The amendments are proposed 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 proposed amendments are contained in Texas Finance Code, Chapter 93.

§77.73. Investment in Banking Premises and Other Real Estate Owned.

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

(c) Real [~~If real~~] estate acquired for the future expansion of a [~~the~~] savings bank's facilities [~~is~~] not improved and occupied as banking facilities within five (5) [~~three~~] years from the date of its acquisition shall be sold[~~, the savings bank shall sell~~] or otherwise disposed [~~dispose~~] of. Existing bank facilities shall be sold or otherwise disposed of within five (5) years of the date the real estate ceases to be used for banking purposes. The [~~such property; provided that the~~] commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection [~~a period of one year or more~~].

(d) - (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.

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TRD-201304745
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: December 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), on behalf of the Office of Consumer Credit Commissioner, proposes amendments to §§88.101, 88.102, 88.103, 88.107, 88.201, 88.202, and 88.305, concerning Consumer Debt Management Services. The proposed changes affect rules contained in Subchapter A, concerning Registration Procedures; Subchapter B, concerning Annual Requirements; and Subchapter C, concerning Operational Requirements.

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 proposal 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 is proposed for addition 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 proposal 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 proposed 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 proposing for deletion 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."

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

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by registrants required to comply with the rules and will be more easily enforced. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §§88.101 - 88.103, 88.107

These amendments are proposed 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 proposed amendments are contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.101. Definition.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 394, Subchapter C, have the same meanings as defined in Chapter 394. The following term, when used in this chapter, will [~~shall~~] have the following meaning, unless the context clearly indicates otherwise. Principal party--All adult individuals with a substantial relationship to the proposed debt management services business of the applicant. Individuals with a substantial relationship to the proposed debt management services business of the applicant include:

(1) corporate officers, including [~~to include~~] the Chief Executive Officer or President, the Chief Financial Officer or Treasurer, and those with substantial responsibility for debt management services operations or compliance with the Finance Code;

(2) shareholders owning 10% or more of the outstanding voting stock; or

(3) owners, trustees, or governing persons of other organizational entities applying for registration under this chapter.

§88.102. Filing of New Application.

(a) An application for issuance of a new debt management services provider registration must be submitted as prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. Applications may be submitted electronically by Internet or e-mail, or by mail.

(b) The application must include the following required forms and filings. All questions must be answered.

(1) Application for Registration of Debt Management Services Provider.

(A) Required names and addresses. An applicant for a debt management services provider registration must provide the following:

(i) the applicant's name;

(ii) all other names under which the applicant conducts business;

(iii) a physical street address for the applicant's principal business address and that location's telephone number;

(iv) the address of each location in this state at which the applicant will provide debt management services, or if the applicant will have no such location, a statement to that effect;

(v) all other business addresses of the applicant in this state;

(vi) the e-mail [~~electronic mail~~] address of the applicant's responsible person listed in subparagraph (B) of this paragraph; and

(vii) the applicant's primary Internet website address.

(B) Responsible person. The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(C) Authentication. An officer must authenticate the application.

(2) Application Questionnaire for Debt Management Services Provider. All applicable questions must be answered.

(3) Disclosure of Owners and Principal Parties of Debt Management Services Provider.

(A) Detailed ownership and for-profit affiliate disclosure of nonprofit or tax exempt organizations. If the applicant is a nonprofit or tax exempt organization, a detailed description of the ownership interest of each officer, director, agent, or employee of the applicant must be provided. Any member of the immediate family of an officer, director, agent, or employee of the applicant, in a for-profit affiliate or subsidiary of the applicant, or in any other for-profit business entity that provides services to the applicant or to a consumer in relation to the applicant's debt management services business must also be provided.

(B) Ownership disclosure. The section inquiring about owners requires an answer based upon the applicant's entity type. If an individual's interest in an entity is community property, then spouses with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, then a statement authenticating that fact must be provided.

(i) All entity types. All applicants must disclose the name and home address of each officer and director of the applicant and each person that holds at least a 10% ownership interest in the applicant.

(ii) Corporations. All shareholders holding 5% or more voting stock must be named. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be provided that describes each level of ownership and management. This narrative or diagram must include the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(iii) Other organizations. The owners, trustees, or governing persons must be named.

(4) Statutory Agent Disclosure. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must list a Texas address for legal service. If the statutory agent is an individual, the address must be a residential address.

(5) Surety bond or insurance. An applicant must file with the commissioner either:

(A) a Surety Bond in the prescribed form:

(i) At initial application:

(I) A provider that receives and holds money paid by or on behalf of a consumer for disbursement to the consumer's creditors must provide a bond in the amount of:

(-a-) $50,000, if the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is less than $50,000 or if the provider does not have any trust account history for Texas consumers;

(-b-) $100,000, if the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is $50,000 or more; or

(II) A provider that does not receive and hold money paid by or on behalf of a consumer for disbursement to the consumer's creditors must provide a bond in the amount of $50,000.

(ii) At annual renewal:

(I) A provider that receives and holds money paid by or on behalf of a consumer for disbursement to the consumer's creditors must provide a bond:

(-a-) in an amount that is equivalent to or exceeds the average daily balance, but is not less than $25,000, if the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is less than $100,000;

(-b-) in the amount of $100,000, if the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is $100,000 or more; or

(II) A provider that does not receive and hold money paid by or on behalf of a consumer for disbursement to the consumer's creditors must provide a bond in the amount of $50,000; or

(B) evidence of insurance meeting the requirements of Texas Finance Code, §394.206 and clauses (i) - (iii) of this subparagraph, as follows:

(i) a fidelity insurance policy, in the aggregate amount of $100,000, that provides coverage for:

(I) employee dishonesty;

(II) depositor's forgery;

(III) computer fraud; and

(ii) a professional liability insurance policy in the aggregate amount of $100,000.

(iii) The fidelity insurance policy and the professional liability insurance policy must cover losses sustained by a Texas resident that are attributable to a debt management service or a debt management services agreement. Both the fidelity insurance policy and the professional liability insurance policy must contain a loss payee clause or rider stating that any loss or claim arising out of an action which occurred within the scope of Texas Finance Code, Chapter 394 may be payable in favor of the State of Texas.

(6) Assumed name certificates. For any applicant that does business under an assumed name as that term is defined in Texas Business and [&] Commerce Code, §71.002 [~~Chapter 71~~], the applicant must provide all assumed names used.

(7) Debt management services agreement. The applicant must provide a blank copy of the written debt management services agreement as described in Texas Finance Code, §394.209.

(8) Accreditation organizations. The applicant must provide the names and contact information for:

(A) the independent, third-party accreditation organization of the provider; and

(B) the accreditation organization or program that certifies the provider's credit counselors.

§88.103. Processing of Application.

(a) Initial review. The agency will respond to incomplete applications within 14 calendar [~~15 working~~] days of receipt [~~stating that the application is complete and accepted for filing or~~] stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when [~~it~~]:

(1) it conforms to the rules and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed with the commissioner within 30 days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) Hearing. Whenever an application is denied, the applicant has 30 days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 9 [~~§9.1 et seq.~~] of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. The commissioner will inform the applicant in writing of the reasons for denial. Upon the final denial of an application, the annual fee will be refunded to the applicant. The investigation fee will be forfeited.

(f) Processing time.

(1) The commissioner will ordinarily approve or deny a registered provider application within a maximum of 60 days after the date of filing of a completed application.

(2) [~~Exceptions.~~] The commissioner may take more time where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time period in paragraph (1) of this subsection.

§88.107. Fees.

(a) New registrations. A $250 nonrefundable [~~non-refundable~~] investigation fee is assessed each time an application for a new registration under this chapter is filed.

(b) Registration amendments. A fee of $25 must be paid each time a registered provider amends a registration by changing the assumed name of the registered provider, inactivating an active registration, or relocating the registered provider location.

(c) Registration duplicates. The fee for a registration duplicate is $10.

(d) Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §88.103 of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, attorney's fees, or investigative costs, if applicable.

(e) Annual assessments. An annual fixed fee not to exceed [~~of~~] $430 is required for each registered debt management services provider.

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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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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SUBCHAPTER B. ANNUAL REQUIREMENTS

7 TAC §88.201, §88.202

These amendments are proposed 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 proposed amendments are contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.201. Annual Renewal.

Not later than February 1, a registered debt management services provider may renew its registration by providing the following:

(1) an annual report, according to §88.202 of this title (relating to Annual Report);

(2) the fees required by §88.107(e) of this title (relating to Fees); and

(3) any other information required by the commissioner.

§88.202. Annual Report.

(a) Each authorized debt management services provider must file an annual report under this section and must comply with all instructions from the commissioner relating to submitting the report.

(b) Each year, at the time of annual renewal, an authorized debt management services provider must file with the commissioner, in a form prescribed by the commissioner, a report that contains the following:

(1) the information required by Texas Finance Code, §394.205;

(2) a list of all owners and principal parties, including any change in ownership that occurred during the preceding calendar year; and

(3) information regarding the provider's credit counselors, including the number of credit counselors employed at the time the annual report is prepared, and the accreditation organization or program that certifies the provider's counselors.

(c) Upon request by the commissioner, the provider must provide any other information the commissioner deems relevant concerning the provider's business and operations during the preceding calendar year [~~for the registered location of the provider in this state where business is conducted under this chapter~~].

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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Leslie L. Pettijohn
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Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

7 TAC §88.305

These amendments are proposed 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 proposed amendments are contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.305. Prohibited Acts and Practices.

It is not a prohibited practice for a provider to, as an incidental consequence of managing the trust account and debt obligations, pay an obligation for a consumer that the consumer does not have a sufficient deposit to cover, when [~~and~~] no fee is associated with the payment. A payment under these conditions does not constitute lending money to the consumer under Texas Finance Code, §394.212(3).

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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Leslie L. Pettijohn
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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER D. POWERS OF CREDIT UNIONS

7 TAC §91.401

The Credit Union Commission (the Commission) proposes amendments to §91.401 concerning Purchase, Lease, or Sale of Fixed Assets. The amendments modernize language related to fixed asset investment limitations and clarify the documents required to accompany an application requesting a waiver or modification of the fixed asset investment limits.

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

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

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

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

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code, §124.351, which sets out permitted investments for credit unions.

The specific section affected by the proposed amendments is Texas Finance Code, §123.110.

§91.401. Purchase, Lease, or Sale of Fixed Assets.

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

(1) Fixed Assets--real property, premises, furniture, fixtures and equipment.

(2) Furniture, fixtures, and equipment--all office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment, including capitalized leases of such items.

(3) Immediate family member--a spouse or other family member living in the same household.

(4) Premises--any office, service center, parking lot, or other facility where the credit union transacts or intends to transact business. It also includes capitalized leases, leasehold improvements, and remodeling costs to existing premises.

(5) Real property--land and anything growing on, attached to, or erected on it that is acquired and intended primarily for the credit union's own use in conducting business. It does not include any real property which may be conveyed to the credit union in satisfaction of debts previously contracted in the course of business, nor any real estate that the credit union purchases at sale on judgments, decrees, mortgage or deed of trust foreclosures under a security agreement held by the credit union.

(6) Senior Management Employee--the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above) and the chief financial officer.

(b) Fixed Asset Investment Limitations. A credit union may purchase fixed assets or enter into a contract for the purchase or lease of fixed assets primarily for its own use in conducting business if the aggregate of all such investments does not exceed the lesser of 70% of the credit union's net worth [~~retained earnings~~] or six percent of total assets.

(c) Restrictions.

(1) A credit union shall not purchase real estate (land or buildings) for the principal purpose of engaging in real estate rentals or speculation.

(2) A credit union bidding at a foreclosure or similar sale shall not bid a larger amount than is necessary to satisfy the debts and costs owed the credit union.

(d) Transactions with insiders. Without the prior approval of a disinterested majority of the board of directors recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the commissioner, a credit union may not directly or indirectly:

(1) sell or lease an asset of the credit union to a director, committee member, or senior management employee, or immediate family members of such individual; or

(2) purchase or lease an asset in which a director, committee member, senior management employee, or immediate family members of such individual has an interest.

(e) Use requirement. If real property or leasehold interest is acquired and intended, in good faith, for use in future expansion, the credit union must partially satisfy the "primarily for its own use in conducting business" requirement within five years after the credit union makes the investment.

(f) Waiver. The commissioner may, upon written application, waive or modify any of the limitations or restrictions placed on the investment of fixed assets.

(g) Written application. A credit union requesting a waiver or modification of the fixed asset investment limits, shall submit statements and reports required by the commissioner, including but not limited to:

(1) a description of the proposal's cost, usage, location, and method of financing;

(2) a statement of the business reasons for making the investment and the economic advantages and disadvantages relating to the proposed investment;

(3) evidence in the form of financial statements with supporting assumptions that the increase in operating expenses caused by the project can be supported after accounting for the current level of expenses and dividend commitments; and

(4) the credit union's latest balance sheet, income statement, [~~and~~] loan delinquency report, and a budget reflecting the new fixed asset.

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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TRD-201304740
Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.405

The Credit Union Commission (the Commission) proposes amendments to §91.405 concerning Records Retention and Preservation. The amendments eliminate an outdated example of effective certificates or licenses to operate under programs of various government agencies, specifically, a certificate to act as issuing agent for the sale of United States savings bonds.

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

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

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

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

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code, §124.351, which sets out permitted investments for credit unions.

The specific section affected by the proposed amendments is Texas Finance Code, §123.110.

§91.405. Records Retention and Preservation.

(a) General. Every credit union shall keep records of its transactions in sufficient detail to permit examination, audit and verification of financial statements, schedules, and reports it is required to file with the Department or which it issues to its members. Credit union accounts, books and other records shall be maintained in appropriate form and for the minimum periods prescribed by this section. The retention period for each record starts from the last entry or final action date and not from the inception of the record.

(b) Manner of maintenance. Records may be maintained in whatever manner, or format a credit union deems appropriate; provided, however, the records must clearly and accurately reflect the information required, provide an adequate basis for the examination and audit of the information, and be retrievable easily and in a readable and useable format. A credit union may contract with third party service providers to maintain records required under this part.

(c) Permanent retention. It is recommended that the following records be retained permanently in their original form:

(1) charter, bylaws, articles of incorporation, and amendments thereto; and

(2) currently effective certificates or licenses to operate under programs of various government agencies[~~, such as a certificate to act as issuing agent for the sale of United States savings bonds~~].

(d) Ten year retention. Records which are significant to the continuing operation of the credit union must be retained until the expiration of ten years following the making of the record or the last entry thereon or the expiration of the applicable statute of limitations, whichever is later. The records are:

(1) minutes of meetings of the members, the board of directors, and board committees;

(2) journal and cash record;

(3) general ledger and subsidiary ledgers;

(4) for active accounts, one copy of each individual share and loan ledger or its equivalent;

(5) comprehensive annual audit reports including evidence of account verification; and

(6) examination reports and official correspondence from the department or any other government agency acting in a regulatory capacity.

(e) Five year retention. The following records must be retained until the expiration of five years following the making of the record or the last entry thereon or the expiration of the applicable statute of limitations, whichever is later:

(1) records related to closed accounts including membership applications, joint membership agreements, payable on death agreements, signature cards, share draft agreements, and any other account agreements; loan agreements; and

(2) for an active account, any account agreement which is no longer in effect.

(f) Other records. Subject to applicable law, any other type of document not specifically delineated in this rule may be destroyed after five years or upon expiration of an applicable statute of limitations, whichever is longer.

(g) Data processing records. Provisions of this section apply to records produced by a data processing system. Output reports that substitute for standard conventional records or that provide the only support for entries in the journal and cash record should be retained for the minimum period specified in this rule.

(h) Protection and storage of records. A credit union shall provide reasonable protection from damage by fire, flood and other hazards for records required by this section to be preserved and, in selection of storage space, safeguard such records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(i) Records destruction. The board of directors shall adopt a written policy authorizing the destruction of specified records on a continuing basis upon expiration of specified retention periods.

(j) Records preservation. All state chartered credit unions are required to maintain a records preservation program to identify and store vital records in order that they may be reconstructed in the event the credit union's records are destroyed. Storage of vital records is the responsibility of the board but may be delegated to the responsible person(s). A vital records storage center should be established at some location that is far enough from the credit union office to avoid the simultaneous loss of both sets of records in the event of a disaster. Records must be stored every calendar quarter within 30 days following quarter-end at which time records stored for the previous quarter may be destroyed. Stored records may be in any form which can be used to reconstruct the credit union's records. This includes machine copies, microfilm, or any other usable copy. The records to be stored shall be for the most recent month-end and are:

(1) a list of all shares and/or deposits and loan balances for each member's account. Each balance on the list is to be identified by an account name or number. Multiple balances of either shares or loans to one account shall be listed separately;

(2) a financial statement/statement of financial condition which lists all the credit union's assets and liability accounts;

(3) a listing of the credit union's banks, insurance policies and investments. This information may be marked "permanent" and updated only when changes are made.

(k) Records preservation compliance. Credit unions that have some or all of their records maintained by an off-site data processor are considered to be in compliance so long as the processor meets the minimum requirements of this section. Credit unions that have in-house ca-

pabilities shall make the necessary provisions to safeguard the backup of data on a continuing basis.

(l) Reproduction of records. A credit union shall furnish promptly, at its own expense, legible, true and complete copies of any record required to be kept by this section as requested by the department.

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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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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SUBCHAPTER K. RESIDENTIAL MORTGAGE LOAN ORIGINATORS EMPLOYED BY A CUSO

7 TAC §§91.2000 - 91.2007

(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 Credit Union Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Credit Union Commission (the Commission) proposes the repeal of 7 TAC Chapter 91, Subchapter K, §§91.2000 - 91.2007, relating to Residential Mortgage Loan Originators Employed by a CUSO.

The repeal is proposed as a result of provisions enacted in the 83rd Session of the Legislature (2013) that were contained within Senate Bill 1004. The provisions repealed Texas Finance Code, §15.024, and included amendments to Texas Finance Code, §§156.101, 158.104, and 180.002, relating to rulemaking, examination, investigation, inspection and enforcement for residential mortgage loan originator employees of credit union subsidiary organizations. The amendments transferred responsibility for the regulation of these persons from the Credit Union Commissioner and the Credit Union Commission to the Texas Department of Savings and Mortgage Lending and the Texas Finance Commission. Therefore, the need for Chapter 91, Subchapter K has been eliminated.

Stacey McLarty, General Counsel, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government.

Ms. McLarty has also determined that for each year of the first five years the proposed repeal is in effect, the public benefits anticipated will be greater clarity and ease of use of the rules in the chapter. There will be no effect on small or micro businesses as a result of repealing the rules. There is no economic cost anticipated to credit unions or individuals if the rules are repealed.

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

The repeal is proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and Texas Finance Code, §15.024 (repealed), which had authorized the Commission to adopt rules regarding residential mortgage loan servicer employees of credit union subsidiary organizations.

The specific sections affected by the proposed repeal are Texas Finance Code, §§15.024, 156.101, 158.104, and 180.002.

§91.2000. Definitions and Licensing.
§91.2001. Books and Records; Examinations; Reimbursement of Travel Costs.
§91.2002. Complaints and Investigations.
§91.2003. Enforcement Action.
§91.2004. Mortgage Call Reports.
§91.2005. Loan Status Form.
§91.2006. Required Disclosures.
§91.2007. False, Misleading, or Deceptive Practices.

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 October 21, 2013.

TRD-201304742
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 837-9236

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER G. STRATEGIC PLANNING AND GRANT PROGRAMS RELATED TO EMERGING RESEARCH AND/OR RESEARCH UNIVERSITIES

19 TAC §5.121, §5.122

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §5.121 and §5.122 relating to Strategic Planning and Grant Programs Related to Emerging Research and/or Research Universities. The intent of these amendments is to incorporate into existing rules changes and provisions enacted by Senate Bill 215, 83rd Texas Legislature, Regular Session. The amendments will change the deadline for submission of strategic research plans.

Dr. Stacey Silverman, Interim Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Silverman has also determined that there is no benefit to the public for the first five years the amendments are in effect as a result of administering the amended sections. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 51, Subchapter G, §51.358, which states that governing board of each institution of higher education designated as a research university or emerging research university under the Texas Higher Education Coordinating Board's accountability system shall submit to the Coordinating Board, in the form and manner prescribed by the Coordinating Board, a detailed, long-term strategic plan documenting the strategy by which the institution intends to achieve recognition as a research university or enhance the university's reputation as a research university, as applicable.

The amendments affect the Texas Education Code, §51.358.

§5.121. Definitions.

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

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

~~[(7) Statutory four-year review--The periodic review of the role and mission statements, the table of programs, and all degree and certificate programs offered by the public institutions of higher education, as described in the Texas Education Code §61.051(e).]~~

§5.122. Submission of a Strategic Plan for Achieving Recognition as a Research University.

The governing board of each research or emerging research university shall submit the strategic plan to the Coordinating Board by April 1, 2010, and subsequent updated reports will be due every five years in April [~~one year after each institution's statutory four-year review~~].

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 October 18, 2013.

TRD-201304668
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 23, 2014
For further information, please call: (512) 427-6114

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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

19 TAC §§9.182 - 9.184

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§9.182 - 9.184 concerning academic associate degree and certificate programs. The intent of these amendments is to incorporate into existing rules changes and provisions enacted by Senate Bill 497, 83rd Texas Legislature, Regular Session.

The amendments are to incorporate into existing rules a provision that requires public institutions of higher education to limit the number of semester credit hours required for students to complete in order to be awarded an associate's degree to the minimum number of semester credit hours required by the Southern Association of Colleges and Schools, unless the institution determines there is a compelling academic reason for requiring additional semester credit hours in order to award the degree. "Compelling academic reason" is defined in a proposed amendment to Chapter 9, Subchapter A, §9.1 as "A justification for an associate's degree program consisting of more than 60 semester credit hours. Acceptable justifications may include, but are not limited to, programmatic accreditation requirements, statutory requirements, and requirements for licensure/certification of graduates." The proposed amendment to §9.1 was published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5180). Reference to Texas Education Code, §61.051(e)(f), which has been repealed, was eliminated from §9.182 in defining where in statute the Board is given authority to adopt policies, enact regulations, and establish rules for the coordination of postsecondary certificate and associate degree programs eligible for state appropriations. Language has also been added that requires an institution of higher education to provide written documentation describing the compelling academic reason, such as programmatic accreditation requirements, statutory requirements, or licensure/certification for a proposed academic associate program that exceeds 60 semester credit hours. Language requiring the Coordinating Board to review the documentation provided by the public institutions of higher education submitted on academic associate degree programs exceeding the 60-hour limit for determination of approval or denial has also been included. Language stating that the approval of academic associate degree programs is automatic has been replaced with language stating that the programs shall be approved. Language describing the notification process which a public institution of higher education must follow when proposing a new academic associate degree program was amended to mirror the current Coordinating Board policy relating to the approval of bachelor and master degrees in 19 TAC §5.44. The amended rules will affect entering students enrolling in public institutions of higher education on or after the 2015 fall semester.

Dr. Stacey Silverman, Interim Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the reduction in the

number of semester credit hours required for students to complete in order to be awarded an academic associate degree to the minimum number of semester credit hours required by the Southern Association of Colleges and Schools, unless the institution determines there is a compelling academic reason for requiring additional semester credit hours in order to award the degree. The benefits of administering the sections would increase the standardization of associate degree program completion requirements for public colleges in the state. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the Coordinating Board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon it by the legislature.

The amendments affect the Texas Education Code, §61.05151.

§9.182. Authority.

The Texas Education Code, §§61.003, [~~61.051(e) - (f),~~] 61.0513, 61.053, 61.054, 61.055, 61.061, 61.062(c) - (d), 61.075, 130.001(b)(3) - (4), 130.003(e)(1), (2), (3) [~~130.003(e)(1)(2)(3)~~] and (7) and 135.04, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of postsecondary certificate and associate degree programs eligible for state appropriations.

§9.183. Degree Titles, Program Length, and Program Content.

(a) (No change.)

(b) Academic associate degree programs must consist of [~~a minimum of~~] 60 SCH [~~and a maximum of 66 SCH~~].

(c) If the minimum number of semester hours required to complete a proposed academic associate's degree exceeds 60, the institution must provide detailed written documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 60-hour limit. The Coordinating Board will review the documentation provided and make a determination to approve or deny a request to exceed the 60-hour limit. Institutions of higher education must be in compliance with this subsection on or before the 2015 fall semester.

(d) [~~(c)~~] Except as provided in paragraphs (1), (2), and (3) of this subsection, academic associate degree programs must incorporate the institution's approved core curriculum as prescribed by §4.28 of this title (relating to Core Curriculum) and §4.29 of this title (relating to Core Curricula Larger than 42 Semester Credit Hours).

(1) A college may offer a specialized academic associate degree that incorporates a Board-approved field of study curriculum as prescribed by §4.32 of this title (relating to Field of Study Curricula) and a portion of the college's approved core curriculum if the coursework for both would total more than 60 [~~66~~] SCH; or

(2) A college may offer a specialized academic associate degree that incorporates a voluntary statewide transfer compact and a portion of the college's approved core curriculum if the coursework for both would total more than 60 [~~66~~] SCH.

(3) A college that has a signed articulation agreement with a General Academic Teaching Institution to transfer a specified curriculum may offer a specialized AA or AS (but not AAT) degree program that incorporates that curriculum.

§9.184. Criteria for New Academic Associate Degree Programs and Steps for Implementation.

New [~~Approval of new~~] academic associate degree programs shall be approved [~~is automatic~~] if all of the following conditions are met.

(1) (No change.)

(2) The institution proposing the program shall notify all public institutions within 50 miles of the teaching site of their intention to offer the program at least 30 days prior to submitting their request to the Coordinating Board. [~~The Coordinating Board shall post the proposed program online for public comment for a period of 30 days.~~] If no objections are received, the Coordinating Board staff shall update the institution's program inventory accordingly. If objections occur [~~to the proposed program are received by the Coordinating Board staff~~], the proposed program shall not be implemented until all objections are resolved. If the proposing institution cannot resolve the objection(s), the proposing institution may request the assistance of the Assistant Commissioner of Workforce, Academic Affairs and Research to mediate the objections and determine whether the proposing institution may implement the proposed program. The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the criteria contained in paragraph (1)(A) - (H) of this section.

(3) (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 October 18, 2013.

TRD-201304669
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 23, 2014
For further information, please call: (512) 427-6114

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER C. BUDGETS

19 TAC §13.43

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §13.43 concerning Financial Planning (Distribution of Budgets). The amendments to this section change the requirement of the institutions to file two copies of the budget with the Texas Higher Education Coordinating Board to one electronic copy.

Ms. Susan Brown, Assistant Commissioner, Coordinating Board, has determined that for each year of the first five years the amended section is in effect, there will not be a fiscal impact to the state.

Ms. Brown has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Gary W. Johnstone, Deputy Assistant Commissioner, Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752, gary.johnstone@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.061, which provides the Coordinating Board with authority to adopt rules relating to funding.

The proposed amendments affect 13 TAC Chapter 13, Financial Planning, Subchapter C, Budgets, and the Texas Education Code, §51.0051.

§13.43. Distribution of Budgets.

Copies of the current operating funds, PUF/AUF, and HEAF budget shall be furnished to the Board and Legislative Budget Board electronically and bound paper copies to [~~(two copies),~~] the Governor's Budget and Planning Office[~~, Legislative Budget Board,~~] and Legislative Reference Library by December 1 of each fiscal year. Copies shall be maintained in the institution's library.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §13.44

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §13.44 relating to Financial Planning (Salaries and Emoluments). The repeal of this section removes the requirement for submission of salary and emoluments by community colleges.

Ms. Susan Brown, Assistant Commissioner, Coordinating Board, has determined that for each year of the first five years the repeal is in effect, there will not be a fiscal impact to the state.

Ms. Brown has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the proposed repeal. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Gary W. Johnstone, Deputy Assistant Commissioner, Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752, gary.johnstone@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under the Texas Education Code, §61.061, which provides the Coordinating Board with authority to adopt rules relating to carrying out the duties with respect to public junior colleges placed upon it by the legislature.

The repeal affects 19 TAC Chapter 13, Financial Planning, Subchapter C, Budgets.

§13.44. Salaries and Emoluments.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §13.107

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §13.107, pertaining to formula funding for repeated and excess hours of undergraduate students and the limitation on formula funding for developmental and remedial courses.

Specifically §13.107(b) currently allows community colleges, public technical colleges, and public state colleges to convert contact hours to semester credit hours for the purpose of tracking funded and unfunded semester credit hours (SCH) in developmental education interventions. The rule is no longer needed due to a change in how SCH are reported on Coordinating Board Management (CBM) reports, including the CBM001, CBM004, and CBM0E1. Beginning in fall 2013, these reports require that SCH be reported with up to two decimal places, as applicable; in the past, space limitations prevented this level of specificity. The change negates the need for a conversion option because it allows for much more exact reporting and tracking of hours attempted in funded and unfunded developmental education interventions.

Ms. Susan Brown, Assistant Commissioner, Planning and Accountability, has determined that for each year of the first five years the amended section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the section.

Ms. Brown has determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from having more accuracy in how developmental education interventions are reported for funding. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Gary W. Johnstone, Deputy Assistant Commissioner, Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752, gary.johnstone@thecb.state.tx.us Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.0595, which provides the Coordinating Board with authority to adopt rules relating to funding of excess undergraduate credit hours, and Texas Education Code, §51.307, which allows the Coordinating Board to adopt rules for the administration of required and elective courses, including developmental education under the Texas Success Initiative.

The proposed amendments affect Texas Education Code, §61.0595 and §51.3062.

§13.107. Limitation on Formula Funding for Remedial and Developmental Courses and Interventions.

(a) (No change.)

~~[(b) Public community colleges, public technical colleges, or public state colleges may convert contact hours attempted in non-course-based developmental education interventions into semester credit hours to meet the requirements of subsection (a) of this section. For the purposes of this provision, 1 semester credit hour may equal no less than 9 contact hours or no more than 24 contact hours.]~~

(b) [~~(c)~~] General academic teaching institutions may not report students in developmental student success courses or developmental ESL courses as defined in §13.102(6) of this title (relating to Definitions) for formula funding. General academic teaching institutions may report a student enrolled in a developmental student success intervention or developmental ESL intervention as defined in §13.102(5) of this title for formula funding only if the following conditions are met:

(1) the student has not met state college readiness standards under Texas Education Code §51.3062;

(2) the student is not currently an international study abroad student as defined in §13.102 of this title;

(3) the student has not exceeded 18 semester credit hours of remedial and developmental courses and/or interventions related to subsection (a) of this section; and

(4) the intervention meets the course description for a developmental student success or developmental ESOL (English for Speakers of Other Languages) intervention in the Lower Division Academic Course Guide Manual (ACGM).

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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TRD-201304672

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 23, 2014
For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER P. PROFESSIONAL NURSES' STUDENT LOAN REPAYMENT PROGRAM

19 TAC §§21.500 - 21.511

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.500 - 21.511, concerning the Professional Nurses' Student Loan Repayment Program. Specifically, no funds were appropriated for any of the nursing-related financial aid programs authorized in Texas Education Code, Chapter 61, Subchapter L, during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft fresh rules for the program at that time to replace the current rules, first drafted in 1989.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The sections proposed for repeal were originally proposed under Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules concerning the Professional Nurses' Student Loan Repayment Program. Although the program is still authorized in statute, no funding was provided in the past biennium or the current biennium. If funding is provided in the future, new rules will be drafted at that time.

The repeal affects Texas Education Code, Chapter 61, Subchapter L.

§21.500. Authority and Purpose.

§21.501. Definitions.

§21.502. Eligible Lender and Holder.

§21.503. Eligible Professional Nurse.
§21.504. Eligible Student Loan.
§21.505. Advisory Committee.
§21.506. Qualifications for Student Loan Repayment.
§21.507. Priorities of Application Approval.
§21.508. Prior Conditional Approval.
§21.509. Repayment of Student Loans.
§21.510. Expanded Professional Nurses' Student Loan Repayment Program.
§21.511. Dissemination of Information.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER Q. LICENSED VOCATIONAL NURSES' STUDENT LOAN REPAYMENT PROGRAM

19 TAC §§21.530 - 21.540

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.530 - 21.540, concerning the Licensed Vocational Nurses' Student Loan Repayment Program. Specifically, no funds were appropriated for any of the nursing-related financial aid programs authorized in Texas Education Code, Chapter 61, Subchapter L, during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft fresh rules for the program at that time to replace the current rules, first drafted in 1989.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The sections proposed for repeal were originally proposed under Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules concerning the Licensed Vocational Nurses' Student Loan Repayment Program. Although the program is still authorized in statute, no funding was provided in the past biennium or the current biennium. If funding is provided in the future, new rules will be drafted at that time.

The repeal affects Texas Education Code, Chapter 61, Subchapter L.

§21.530. Authority and Purpose.
§21.531. Definitions.
§21.532. Eligible Lender and Holder.
§21.533. Eligible Nurse.
§21.534. Eligible Student Loan.
§21.535. Advisory Committee.
§21.536. Qualification for Student Loan Repayment.
§21.537. Priorities of Application Approval.
§21.538. Prior Conditional Approval.
§21.539. Repayment of Student Loans.
§21.540. Dissemination of Information.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER R. DENTAL EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.560 - 21.566

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.560 - 21.566, concerning the Dental Education Loan Repayment Program. This program was authorized in 1999 in Texas Education Code, Chapter 61, Subchapter V. Specifically, no funds were appropriated for this program for the 2012-2013 biennium or the 2014-2015 biennium. If funding is authorized in the future, it would be appropriate to draft new rules for the program.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The sections proposed for repeal were originally proposed under Texas Education Code, §61.901, which authorizes the Coordinating Board to adopt rules concerning the Dental Education Loan Repayment Program.

The repeal affects Texas Education Code, Chapter 61, Subchapter V.

§21.560. Authority and Purpose.

§21.561. Definitions.

§21.562. Dissemination of Information.

§21.563. Priorities of Application Acceptance.

§21.564. Eligible Education Loan.

§21.565. Eligible Dentists.

§21.566. Repayment of Education Loans.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER X. LOAN REPAYMENT PROGRAM FOR SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

19 TAC §§21.730 - 21.737

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§21.730 - 21.737, concerning the Loan Repayment Program for Speech-Language Pathologists and Audiologists. The proposed new sections would codify new legislation resulting from the passage of Senate Bill 620, 83rd Legislature, Regular Session. These provisions create a student loan repayment program for speech-language pathologists and audiologists who are employed by Texas public school districts, as well as faculty of communicative disorders programs at Texas institutions of higher education. Funds will be available for this program only if gifts, grants, or donations are received.

Section 21.730 states the authority for the program and the purpose of the program, which is to alleviate the acute shortage of licensed speech-language pathologists and audiologists employed by Texas public schools by providing student loan repayment assistance to qualified professionals.

Section 21.731 states that the Board shall disseminate program information to officials at institutions of higher education that have communicative disorders programs and at appropriate state agencies and associations.

Section 21.732 provides definitions.

Section 21.733 states preliminary eligibility requirements for applicants to be considered for participation in the program.

Section 21.734 describes priorities for conditional approval of applications.

Section 21.735 describes eligibility requirements for loan repayment awards at the end of the service period.

Section 21.736 describes eligibility requirements for education loans to be repaid.

Section 21.737 describes the method of disbursing awards, the maximum award amounts, and the maximum number of years allowed for participation in the program.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be that administrative rules for the Loan Repayment Program for Speech-Language Pathologists and Audiologists will be established for public viewing and comment. The program may result in decreased costs to Texas public school districts, which currently either pay significantly higher amounts for contract services in order to meet mandated requirements for children needing the special speech and hearing services, or incur significant costs for fees and administrative hearings associated with non-compliance. Additionally, certain Texas public school children who otherwise may not have access to the special services may gain access to the services. Providing the loan repayment incentive to faculty may allow for an increased number of students to enroll in and graduate from communicative disorders programs in Texas.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment, unless nursing faculty are recruited or retained locally as a result of the program implementation.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.9819, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§61.9811 - 61.9819.

The amendments affect the Texas Education Code, §§61.9811 - 61.9819.

§21.730. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 61, Subchapter II, Repayment of Certain Speech-Language Pathologist and Audiologist Education Loans. This subchapter establishes procedures to administer the program as prescribed in the Texas Education Code, §§61.9811 - 61.9819.

(b) Purpose. The purpose of the Loan Repayment Program for Speech-Language Pathologists and Audiologists is to alleviate the acute shortage of licensed speech-language pathologists employed by Texas public schools by providing student loan repayment assistance to qualified professionals.

§21.731. Dissemination of Information.

The Board shall provide program information to officials at institutions of higher education that have communicative disorders programs and at appropriate state agencies and professional associations.

§21.732. Definitions.

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

(1) Audiologist--A person licensed as an audiologist under Chapter 401, Texas Occupations Code.

(2) Bilingual Speech-Language Pathologist or Audiologist--A speech-language pathologist or audiologist who is proficient in evaluating and providing therapy in a language other than English.

(3) Board--The Texas Higher Education Coordinating Board.

(4) Commissioner--The commissioner of higher education in Texas; the chief executive officer of the Board.

(5) Communicative Disorders Program--A graduate degree program in audiology or speech-language pathology that is accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology, or an undergraduate degree program that prepares and qualifies students for admission to a graduate degree program in audiology or speech-language pathology.

(6) Institution of Higher Education--A public or private or independent institution as defined in the Texas Education Code, §61.003.

(7) Rural School District--A Texas public school district having a majority of schools that are located in a county whose population is less than 50,000.

(8) Service Period--A period of service of at least 9 months of a 12-month academic year.

(9) Speech-Language Pathologist--A person licensed as a speech-language pathologist under Chapter 401, Texas Occupations Code.

(10) Title I schools--Schools that are eligible to receive federal funds under Title I, Part A of the Elementary and Secondary Education Act, as amended.

§21.733. Preliminary Eligibility Requirements.

To be considered for participation in the program, an applicant must:

(1) be a graduate of a communicative disorders program and must be employed as a speech-language pathologist or audiologist by a Texas public school district; or

(2) be employed as a doctoral faculty member of a communicative disorders program at an institution of higher education and must:

(A) be licensed by the Texas Board of Examiners for Speech-Language Pathology and Audiology;

(B) hold a Certificate of Clinical Competence from the American Speech-Language-Hearing Association;

(C) demonstrate past collaboration with U.S. public schools; and

(D) have participated in the supervision of students completing communicative disorders programs.

§21.734. Priorities for Conditional Approval of Applications.

(a) Annually the Commissioner shall determine an allocation for faculty recruitment, based on the availability of funds. An application deadline will be published each year on the Board's web site. The highest ranked applications will be approved conditionally in advance of the service period, until no funds remain to be reserved. After the first year of operation of the program, renewal applicants will receive priority over first-time applications unless a break in service periods has occurred. Applications from first-time applicants will be ranked according to the following criteria, in priority order.

(b) In the case of applicants working for Texas public school districts, applicants who:

(1) are full-time employees of Texas public school districts;

(2) are first-year employees of Texas public school districts;

(3) are working in rural school districts;

(4) are working in Title I schools;

(5) are bilingual.

(c) In the case of applicants serving as doctoral faculty in communicative disorders programs, applicants who:

(1) are under contract to begin a first year of employment as faculty members of communicative disorders programs at institutions of higher education that are experiencing the most acute shortages of such faculty, as evidenced by the number of vacant positions and the duration of vacancies;

(2) are under contract to begin a first year of employment as faculty members of communicative disorders programs at institutions of higher education;

(3) are under contract to continue employment for the following academic year at institutions that are experiencing the most acute shortages of such faculty, as evidenced by the number of vacant positions and the duration of vacancies.

§21.735. Eligibility for Loan Repayment Awards - End of Service Period.

To be eligible for a loan repayment award, a speech-language pathologist or audiologist must submit all required documents to the Board by the established deadline and must:

(1) In the case of employees of Texas public school districts:

(A) have completed a service period working for a Texas public school district as a speech-language pathologist or audiologist, for at least one service period;

(B) be under contract to the school district for the following academic year in that capacity;

(C) be licensed by the Texas Board of Examiners for Speech-Language Pathology and Audiology; and

(D) hold a Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

(2) In the case of doctoral faculty of communicative disorders programs:

(A) have completed at least one service period working as a faculty member of a communicative disorders program at an institution of higher education; and

(B) be under contract to the institution for the following academic year in that capacity.

§21.736. Eligible Education Loan.

An education loan eligible for repayment is one that:

(1) was obtained through an eligible lender for education costs at any public or private institution of higher education;

(2) is not a loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative; and

(3) does not have an existing service obligation.

§21.737. Loan Repayment Awards.

Eligible education loans shall be repaid under the following conditions:

(1) the annual repayment(s) award shall be disbursed directly to the holder(s)/servicer(s) of the loan(s);

(2) the annual repayment amount for speech-language pathologists or audiologists working full time, directly for a public school district may not exceed $6,000;

(3) the annual repayment amount for speech-language pathologists or audiologists who hold a doctoral degree and serve as full-time faculty in a communicative disorders program at an institution of higher education may not exceed $9,000;

(4) loan repayment awards may be prorated on the basis of part-time employment; and

(5) the speech-language pathologist or audiologist shall not receive loan repayment assistance for more than five 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.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER Y. STUDENT LOAN DEFAULT PREVENTION AND FINANCIAL AID LITERACY PILOT PROGRAM

19 TAC §§21.760 - 21.766

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§21.760 - 21.766, concerning the Student Loan Default Prevention and Financial Aid Literacy Pilot Program. The proposed new sections would codify new provisions resulting from the passage of Senate Bill 680, 83rd Legislature, Regular Session. This bill authorized a pilot program at selected postsecondary institutions that are experiencing high default rates. The program is intended to ensure that students attending the participating institutions are informed consumers with regard to all aspects of student financial aid.

Section 21.760 states the authority for the program and the purpose of the program.

Section 21.761 states that the Coordinating Board, or its successor or successors, shall administer the pilot program and may contract with one or more entities to administer the program. It also lists criteria that any contractor selected must meet.

Section 21.762 provides definitions.

Section 21.763 describes criteria for selection of participating institutions.

Section 21.764 describes the elements of consumer awareness that the pilot program must ensure.

Section 21.765 describes reporting requirements.

Section 21.766 states the ending date for the pilot project.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the new sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be: (1) administrative rules for the Student Loan Default Prevention and Financial Aid Literacy Pilot Program will be established for public viewing and comment; (2) the program may result in lower default rates for participating institutions, and more prudent borrowing and academic choices for students attending the participating institutions; and (3) if the program is successful, the practices employed may serve as a model for other institutions in the future.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.0763, which provides the Coordinating Board with the authority to adopt rules for the administration of these sections.

The new sections affect the Texas Education Code, §61.0763.

§21.760. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter C, Student Loan Default Prevention and Financial Aid Literacy Pilot Program. This subchapter establishes procedures to administer the program as prescribed in the Texas Education Code, §61.0763.

(b) Purpose. The purpose of the Student Loan Default Prevention and Financial Aid Literacy Pilot Program is to ensure that students

attending the participating postsecondary institutions are informed consumers with regard to all aspects of student financial aid.

§21.761. Administration.

The Board, or its successor or successors, shall administer the Student Loan Default Prevention and Financial Aid Literacy Pilot Program, and may contract with one or more entities to administer the program. The contractor(s) selected for this purpose must demonstrate the following:

(1) substantial experience with student borrowing for attendance at Texas postsecondary institutions;

(2) substantial experience with federal student loan cohort default rates;

(3) substantial experience with student loan default prevention initiatives;

(4) substantial familiarity with academic choices as they relate to career options for students attending Texas postsecondary institutions; and

(5) established working relationships with financial aid administrators in every sector of Texas postsecondary institutions.

§21.762. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Career schools or colleges--Texas career schools or colleges, as defined in Texas Education Code, Chapter 132, §132.001.

(3) General Academic Teaching Institutions--Texas institutions of higher education, as defined in Texas Education Code, §61.003(3).

(4) Postsecondary institutions--General academic teaching institutions, public junior colleges, private or independent institutions, or career schools or colleges, as defined in this section.

(5) Private or independent institutions of higher education--Texas institutions of higher education, as defined in Texas Education Code, §61.003(15).

(6) Program--Student Loan Default Prevention and Financial Aid Literacy Pilot Program.

(7) Public junior colleges--Texas institutions of higher education, as defined in Texas Education Code, §61.003(2).

(8) Three-year cohort federal student loan default rate--The default rate defined in 34 CFR §668.202, the Code of Federal Regulations for certain federal student loans. The percentage of a postsecondary institution's student borrowers whose Federal Family Education Loans or William D. Ford Federal Direct Loans enter a repayment status during a particular federal fiscal year (October 1 to September 30), and default or meet other specified conditions before the end of the second following federal fiscal year.

§21.763. Criteria for Selection of Participating Institutions.

(a) In selecting postsecondary institutions to participate in the program, the board shall give priority to institutions that have a three-year cohort federal student loan default rate, as reported by the United States Department of Education, that:

(1) is greater than 20%; or

(2) represents above average growth as compared to the federal student loan default rates of other postsecondary institutions in Texas.

(b) The board shall select at least one institution from each of the following categories of postsecondary educational institutions to participate in the program:

(1) general academic teaching institutions;

(2) public junior colleges private or independent institutions of higher education; and

(3) career schools or colleges.

§21.764. Consumer Awareness.

The program must ensure that the students of the participating institutions are informed consumers with regard to all aspects of student financial aid, including:

(1) the consequences of borrowing to finance the student's postsecondary education;

(2) the financial consequences of a student's academic and career choices; and

(3) strategies for avoiding student loan delinquency and default.

§21.765. Reporting Requirements.

Not later than January 1 of each year, beginning in 2016:

(1) the Board shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the outcomes of the pilot program, as reflected in the federal student loan default rates reported for the participating institutions; and

(2) each participating institution shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the outcomes of the pilot program at the institution, as reflected in the federal student loan default rate reported for the institution.

§21.766. End of Pilot Project.

The pilot project shall end on December 31, 2020.

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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General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER Z. GRADUATE NURSES' EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.800 - 21.811

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.800 - 21.811, concerning the

Graduate Nurses' Education Loan Repayment Program. Specifically, no funds were appropriated for the program during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft new rules for the program at that time to replace the current rules, first drafted in 1989.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The sections proposed for repeal were originally proposed under Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules concerning the Graduate Nurses' Education Loan Repayment Program. Although the program is still authorized in statute, no funding was provided in the past biennium or the current biennium. If funding is provided in the future, new rules will be drafted at that time.

The repeal affects Texas Education Code, Chapter 61, Subchapter L.

§21.800. Authority and Purpose.
§21.801. Definitions.
§21.802. Eligible Lender and Holder.
§21.803. Eligible Professional Nurse.
§21.804. Eligible Education Loan.
§21.805. Eligible Nursing Program.
§21.806. Advisory Committee.
§21.807. Qualifications for Education Loan Repayment.
§21.808. Prior Conditional Approval.
§21.809. Repayment of Education Loans.
§21.810. Expanded Graduate Nurses' Education Loan Repayment Program.
§21.811. Dissemination of Information.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER FF. LAW EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.1010 - 21.1017

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.1010 - 21.1017, concerning the Law Education Loan Repayment Program ("Repayment of Certain Law School Education Loans: Attorney of Nonprofit Organization Serving Indigent Persons"). This program was authorized in 2001 in Texas Education Code, Chapter 61, Subchapter X. Specifically, no funds have ever been appropriated for the program. If funding is authorized in the future, it would be appropriate to draft new rules for the program.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The rules proposed for repeal were originally proposed under Texas Education Code, §61.958, which authorizes the Coordinating Board to adopt rules concerning the Repayment of Certain Law School Education Loans: Attorney of Nonprofit Organization Serving Indigent Persons.

The repeal affects Texas Education Code, Chapter 61, Subchapter X.

§21.1010. Authority, Scope, and Purpose.
§21.1011. Definitions.
§21.1012. Priorities of Application Acceptance.
§21.1013. Eligible Organization.
§21.1014. Eligible Attorney.
§21.1015. Eligible Education Loan.
§21.1016. Repayment of Education Loans.
§21.1017. Advisory Committee.

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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Bill Franz
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Texas Higher Education Coordinating Board
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SUBCHAPTER HH. EXEMPTION PROGRAM FOR TEXAS AIR AND ARMY NATIONAL GUARD/ROTC STUDENTS

19 TAC §§21.1052 - 21.1068

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.1052 - 21.1068, concerning the Exemption Program for Texas Air and Army National Guard/ROTC. Specifically, Senate Bill 1227, 79th Texas Legislature, transferred administrative responsibilities for the program from the Coordinating Board to the State Military Forces Adjutant General beginning with the 2005 fall semester. Since this is no longer a functioning program, it is appropriate to delete the rules from those under the purview of the Coordinating Board.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the Coordinating Board's rulemaking authority will be in line with statute.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The rules proposed for repeal were originally proposed under Texas Education Code, §54.212, which provided the Coordinating Board with the authority to adopt rules concerning the Exemption Program for Texas National Guard/ROTC. Senate Bill 1227, 79th Texas Legislature, transferred administrative responsibilities for the program from the Coordinating Board to the State Military Forces Adjutant General beginning with the 2005 fall semester.

The repeal affects no current statute in the Texas Education Code.

§21.1052. Authority and Purpose.
§21.1053. Definitions.
§21.1054. Activities of the Adjutant General's Office.
§21.1055. Selection Committee.
§21.1056. Eligible Institution.
§21.1057. Eligible Student.
§21.1058. Dissemination of Information.
§21.1059. Sources of Funding.
§21.1060. Award Amounts.
§21.1061. Allocation of Exemptions among Institutions.
§21.1062. Partial Awards.
§21.1063. The Application Process.
§21.1064. The Texas Air and Army National Guard/ROTC Exemption Contract.
§21.1065. Noncompliance.
§21.1066. Probation for Participating Students.
§21.1067. Reporting Requirements.
§21.1068. Program Reviews.

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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SUBCHAPTER JJ. THE KENNETH H. ASHWORTH FELLOWSHIP PROGRAM

19 TAC §21.2004, §21.2005

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.2004 and §21.2005, concerning the Kenneth H. Ashworth Fellowship Program.

The amendments to §21.2004 emphasize the public service requirement for eligible students, both in their programs of study and in the careers they plan to pursue.

The amendments to §21.2005 set a new maximum amount for the annual scholarship award and provides the advisory committee the authority to set the award amount subject to this maximum.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner, Business and Support Services, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, §61.068, which allows the Board to accept gifts and donations from individuals and groups in order to offer programs that encourage students to attend college.

The amendments affect Texas Education Code, §61.068.

§21.2004. Eligible Students.

To qualify for an award, a student must be a Texas resident identified by the dean of his/her program of study as needing financial assistance. The student must be enrolled as a graduate student in public affairs, [~~public service or~~] public administration, or another public service degree program and intend to work in Texas in a public service capacity after completing his/her graduate studies.

§21.2005. Award Amounts.

No annual award received through this program may exceed the average statewide amount of tuition and required fees that a resident student enrolled full-time in a graduate degree program would be charged for that academic year at general academic teaching institutions. The annual award will be determined each year by the awarding committee [~~an amount set by the selection committee~~].

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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SUBCHAPTER KK. CLASSROOM TEACHER REPAYMENT ASSISTANT PROGRAM

19 TAC §§21.2020 - 21.2026

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.2020 - 21.2026, concerning the Classroom Teacher Repayment Assistance Program. Specifically, no funds have ever been appropriated for this program. If funding is made available in the future, it would be appropriate to draft new rules for the program.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The sections proposed for repeal were originally authorized in 1989 under Texas Education Code, Chapter 61, Subchapter M, §61.702.

The repeal affects Texas Education Code, Chapter 61, Subchapter M.

§21.2020. Authority, Scope, and Purpose.

§21.2021. Definitions.

§21.2022. Priorities of Application Acceptance.

§21.2023. Eligible Teacher.

§21.2024. Eligible Education Loan.

§21.2025. Repayment of Education Loans.

§21.2026. Advisory Committee.

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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SUBCHAPTER MM. DOCTORAL INCENTIVE LOAN REPAYMENT PROGRAM

19 TAC §§21.2080 - 21.2089

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.2080 - 21.2089, concerning the Doctoral Incentive Loan Repayment Program. This program was authorized in 2003 in Texas Education Code, Chapter 56, Subchapter F, §56.091. Specifically, no funds were appropriated for this program for the 2012-2013 biennium or the 2014-2015 biennium. If funding is authorized in the future, it would be appropriate to draft new rules for the program.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The rules proposed for repeal were originally proposed under Texas Education Code, §56.091, which authorizes the Coordinating Board to adopt rules concerning the Doctoral Incentive Loan Repayment Program. Although the program is still authorized in statute, no funding was provided in the past biennium or the current biennium. If funding is provided in the future, new rules will be drafted at that time.

The repeal affects Texas Education Code, Chapter 56, Subchapter F.

§21.2080. Authority, Scope, Purpose.
§21.2081. Administration.
§21.2082. Dissemination of Information.
§21.2083. Definitions.
§21.2084. Eligibility for Encumbered Funds.
§21.2085. Eligibility for Loan Repayment.
§21.2086. Priorities of Application Acceptance.
§21.2087. Eligible Education Loan.
§21.2088. Eligible Lender or Holder.
§21.2089. Repayment of Education Loans.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER OO. CHILDREN'S MEDICAID LOAN REPAYMENT PROGRAM

19 TAC §§21.2200 - 21.2207

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board proposes the repeal of §§21.2200 - 21.2207, concerning the Children's Medicaid Loan Repayment Program. Specifically, no funds have ever been appropriated for this program. If funding is made available in the future, it would be appropriate to draft new rules for the program.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The sections proposed for repeal were originally proposed under Texas Education Code, Chapter 61, Subchapter M, §61.702.

The repeal affects Texas Education Code, Chapter 61, Subchapter M.

§21.2200. Authority and Purpose.
§21.2201. Administration.
§21.2202. Dissemination of Information.
§21.2203. Definitions.
§21.2204. Provider Eligibility Requirements.
§21.2205. Eligible Education Loan.
§21.2206. Eligible Lender or Holder.
§21.2207. Repayment of Education Loans.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER SS. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.2261, §21.2264

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.2261 and §21.2264 concerning Waiver Programs for Certain Nonresident Persons.

Specifically, in §21.2261, definitions are being deleted for terms that are not relevant to the waiver programs for which the Coordinating Board has specific rulemaking authority. A definition for

"continuation award" is added and applies to the new grade point average requirement for certain waiver students receiving continuation awards, beginning fall 2014. The new provision was introduced by Senate Bill 1210, passed by the 83rd Legislature. It applies only to programs that allow nonresidents to pay the resident rate. Therefore, it does not apply to the competitive scholarship waiver (which allows recipients to pay the resident rate), but does apply to the program for general academic teaching institutions located within 100 miles of the Texas border (which allows schools to reduce nonresident rates to an amount equal to $30 above the resident rate). The removal of irrelevant definitions and inclusion of the new definition caused subsequent definitions to be renumbered.

New subsection (b)(2) is added to §21.2264 to list the new Senate Bill 1210 requirements for the 100-mile waiver program. Previous wording in §21.2264(b) was re-designated as subsection (b)(1).

New subsection (e) in §21.2264 adds the hardship provisions to the 100-mile waiver program that are required by Senate Bill 1210. Institutions must adopt a policy to allow students who failed to meet the GPA or cumulative hour restrictions to receive awards if their failure was due to the hardship conditions listed in Senate Bill 1210 or for other good cause shown.

Mr. Dan Weaver, Assistant Commissioner, Business and Support Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner, Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments to §21.2261 and §21.2264 are proposed under Texas Education Code, §54.0601, which provides the Coordinating Board with the authority to adopt rules consistent with §54.0601 and necessary to implement the section.

The amendments affect Texas Education Code, §54.0601.

§21.2261. Definitions.

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

[~~(1) Census date--The date in an academic term for which an institution is required to certify a person's enrollment in the institution for the purposes of determining formula funding for the institution.~~]

[~~(2) Child--Unless otherwise indicated, a person who is the biological or adopted child, or who is claimed as a dependent on a federal income tax return filed for the preceding year or who will be claimed as a dependent on a federal income tax return for the current year.~~]

(1) [~~(3)~~] Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Texas Higher Education Coordinating Board.

(2) Continuation Award--An exemption from tuition awarded to a student in keeping with §21.2264 of this subchapter (relating to General Academic Teaching Institutions Located within 100 Miles of the Texas Border) who has received the exemption in a previous semester.

(3) [~~(4)~~] Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(4) Excess Hours--In accordance with Texas Education Code, §54.014, for undergraduates - hours in excess of 30 more than those required for completion of the degree program in which the student is enrolled.

[~~(5) Dependent--A person who:~~]

[~~(A) is less than 18 years of age and has not been emancipated by marriage or court order; or~~]

[~~(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986.~~]

[~~(6) Financial need--An economic situation that exists for a student when the cost of attendance at an institution of higher education is greater than the resources the family has available for paying for college. In determining a student's financial need an institution must compare the financial resources available to the student to the institution's cost of attendance.~~]

(5) [~~(7)~~] General Academic Teaching Institution--As the term is defined in Texas Education Code, §61.003.

(6) [~~(8)~~] Institution or institution of higher education--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(7) [~~(9)~~] Nonresident tuition--The amount of tuition paid by a person who does not qualify as a Texas resident under Texas Education Code, Chapter 54, Subchapter B.

[~~(10) Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term would not otherwise include a step-parent.~~]

[~~(11) Public technical institute or college--The Lamar Institute of Technology or any campus of the Texas State Technical College System.~~]

[~~(12) Remain Continuously Enrolled--Continue to enroll for the fall and spring terms of an academic year. Summer enrollment is not a requirement.~~]

(8) [~~(13)~~] Resident tuition--The amount of tuition paid by a person who qualifies as a Texas resident under Texas Education Code, Chapter 54, Subchapter B.

(9) [~~(14)~~] Waiver--A program authorized by Texas statutes that allows a nonresident student to enroll in an institution of higher education and pay a reduced amount of nonresident tuition.

§21.2264. General Academic Teaching Institutions Located within 100 Miles of the Texas Border.

(a) (No change.)

(b) Eligible Persons. Any nonresident person attending an eligible institution may receive a waiver under this section if the person:[.]

(1) unless attending a public community college (for which tuition is local revenue), also meets Selective Service registration requirements or is exempt; and

(2) if receiving a continuation award in fall 2014 or later:

(A) is meeting the institution's grade point average requirement for making satisfactory academic progress towards a degree or certificate in accordance with the institution's policy regarding eligibility for financial aid, unless granted a hardship waiver by the institution in accordance with subsection (e) of this section; and

(B) if classified as an undergraduate student, has not completed a number of semester credit hours that is considered to be excessive under Texas Education Code, §54.014, unless granted a hardship waiver by the institution on a showing of good cause in accordance with subsection (e) of this section. In determining the number of hours an undergraduate has completed, semester credit hours completed include transfer credit hours that count towards the person's undergraduate degree or certificate requirements, but exclude:

(i) hours earned exclusively by examination;

(ii) hours earned for a course for which the person received credit toward the person's high school academic requirements; and

(iii) hours earned for developmental courses that the institution required the person to take under Texas Education Code, §51.3062 or under the former provisions of Texas Education Code, §51.306.

(c) - (d) (No change.)

(e) Hardship Provisions.

(1) Each institution is required to adopt a policy to allow a student who fails to maintain a grade point average as required by subsection (b)(2)(A) of this section to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(A) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(B) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(C) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(D) any other cause considered acceptable by the institution.

(2) An institution may, on a showing of good cause, permit an undergraduate to receive an exemption or waiver although he or she has completed a number of semester credit hours that is considered excessive under Texas Education Code, §54.014.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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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 (Coordinating Board) proposes amendments to §21.2271 and §21.2273 concerning the Exemption Program for Dependent Children of Persons Who Are Members of Armed Forces Deployed on Combat Duty.

Definitions are added to §21.2271 to introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014. The new provisions, which included a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding, were introduced by Senate Bill 1210, passed by the 83rd Legislature, Regular Session. The inclusion of new definitions for "continuation award" and "excess hours" caused subsequent definitions to be renumbered.

New subsection (b) under §21.2273 added the Senate Bill 1210 requirements regarding grade point average and number of completed hours. Previous wording in §21.2273 was re-designated as subsection (a).

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner for Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments to §21.2271 and §21.2273 are proposed under Texas Education Code, §54.2071(i), which provides the Coordinating Board with the authority to adopt rules consistent with §54.2071 and necessary to implement the section.

The amendment affects Texas Education Code, §54.2071.

§21.2271. Definitions.

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

(1) (No change.)

(2) Continuation Award--An exemption from tuition awarded to a student in keeping with this subchapter who has received the exemption in a previous semester.

(3) [~~(2)~~] Dependent Child--A person who is a stepchild, biological or adopted child of a person and is claimed as a dependent for federal income tax purposes in the previous tax year or will be claimed as a dependent for federal income tax purposes for the current year.

(4) Excess Hours--In accordance with Texas Education Code, §54.014, for undergraduates - hours in excess of 30 more than those required for completion of the degree program in which the student is enrolled.

(5) [~~(3)~~] Entitled to pay resident tuition--A person is entitled to pay the resident tuition rate if he or she is a nonresident but is entitled, through a waiver authorized through the Texas Education Code, Chapter 54, Subchapter D to pay the resident tuition rate. Waivers for members of the Armed Forces are located in Texas Education Code, §54.241 (formerly §54.058).

(6) [~~(4)~~] Texas Resident--A person who meets the requirements outlined in Texas Education Code, Chapter 54, Subchapter B, §54.052, to pay the resident tuition rate and therefore be classified as a resident of Texas for higher education purposes.

§21.2273. Eligibility Requirements.

(a) To qualify for an exemption under this subchapter, a person must:

(1) submit satisfactory evidence to the institution that the applicant qualifies for the exemption;

(2) not have received the exemption for more than 150 semester credit hours, including the hours for which the student is currently enrolled; [~~and~~]

(3) not be in default on a loan made or guaranteed for educational purposes by the State of Texas; and[~~.~~]

(4) unless attending a public community college (for which tuition is local revenue), provide the institution proof that the person meets Selective Service registration requirements or is exempt.

(b) If receiving a continuation award in fall 2014 or later, a person receiving a continuation award, at the beginning of the term or semester in which the award is received must also:

(1) be meeting the institution's grade point average requirement for making satisfactory academic progress towards a degree or certificate in accordance with the institution's policy regarding eligibility for financial aid, unless granted a hardship waiver by the institution in keeping with §22.2276 of this title (relating to Hardship Provisions); and

(2) if classified as an undergraduate student, have not completed a number of semester credit hours that is considered to be excessive under Texas Education Code, §54.014, unless granted a hardship waiver by the institution on a showing of good cause in keeping with §22.2276 of this title. In determining the number of hours an undergraduate has completed, semester credit hours completed include transfer credit hours that count towards the person's undergraduate degree or certificate requirements, but exclude:

(A) hours earned exclusively by examination;

(B) hours earned for a course for which the person received credit toward the person's high school academic requirements; and

(C) hours earned for developmental courses that the institution required the person to take under Texas Education Code, §51.3062 or under the former provisions of Texas Education Code, §51.306.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §21.2276

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §21.2276 concerning the Exemption Program for Dependent Children of Persons Who are Members of Armed Forces Deployed on Combat Duty. This new section adds language to implement legislative changes mandated by the 83rd Legislature through the passage of Senate Bill 1210. It also outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program grade point average requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for special consideration. Such circumstances include illness, caring for another person, military deployment, or other just causes acceptable to the institution. It also indicates an institution may, for good cause, allow a person to receive an exemption if he or she failed to meet the excess hour requirement.

Mr. Dan Weaver, Assistant Commissioner, Business and Support Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner, Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under Texas Education Code, §54.2031(i) which provides the Coordinating Board with the authority to adopt rules consistent with §21.2031 and necessary to implement the section.

The new section affects Texas Education Code, §54.2031.

§21.2276. Hardship Provisions.

(a) Each institution is required to adopt a policy to allow a student who fails to maintain a grade point average as required by §21.2273(b)(1) of this title (relating to Eligibility Requirements) to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(1) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(3) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(4) any other cause considered acceptable by the institution.

(b) An institution may, on a showing of good cause, permit an undergraduate to receive an exemption or waiver although he or she has completed a number of semester credit hours that is considered excessive under Texas Education Code, §54.014.

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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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER F. PROVISIONS FOR THE SCHOLARSHIP PROGRAMS FOR VOCATIONAL NURSING STUDENTS

19 TAC §§22.101 - 22.111

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§22.101 - 22.111, concerning Provisions for the Scholarship Programs for Vocational Nursing Students. Specifically, no funds were appropriated for any of the nursing-related financial aid programs authorized in Texas Education Code, Chapter 61, Subchapter L, during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft fresh rules for the program at that time to replace the current rules, first drafted in 1989.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The sections proposed for repeal were originally proposed under Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules concerning Provisions for the Scholarship Programs for Vocational Nursing Students. Although the program is still authorized in statute, no funding was provided in the past biennium or the current biennium. If funding is provided in the future, new rules will be drafted at that time.

The repeal affects Texas Education Code, Chapter 61, Subchapter L.

§22.101. Authority and Purpose.

§22.102. Definitions.

§22.103. Institutions.

§22.104. Program Titles and Distinctions.

§22.105. Eligible Students.

§22.106. Award Amounts and Uses.

§22.107. Allocations.

§22.108. Disbursements to Institutions.

§22.109. Retroactive Disbursements.

§22.110. Advisory Committee.

§22.111. Dissemination of Information and Rules.

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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SUBCHAPTER G. PROVISIONS FOR THE SCHOLARSHIP PROGRAMS FOR PROFESSIONAL NURSING STUDENTS

19 TAC §§22.121 - 22.131

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§22.121 - 22.131, concerning Provisions for the Scholarship Programs for Professional Nursing Students. Specifically, no funds were appropriated for any of the nursing-related financial aid programs authorized in Texas Education Code, Chapter 61, Subchapter L, during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft fresh rules for the program at that time to replace the current rules, first drafted in 1989.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The sections proposed for repeal were originally proposed under Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules concerning Provisions for the Scholarship Programs for Professional Nursing Students. Although the program is still authorized in statute, no funding was provided in the past biennium or the current biennium. If funding is provided in the future, new rules will be drafted at that time.

The repeal affects Texas Education Code, Chapter 61, Subchapter L.

§22.121. Authority and Purpose.

§22.122. Definitions.

§22.123. Institutions.

§22.124. Program Titles and Distinctions.

§22.125. Eligible Students.

§22.126. Award Amounts and Uses.

§22.127. Allocations.

§22.128. Disbursements to Institutions.

§22.129. Retroactive Disbursements.

§22.130. Advisory Committee.

§22.131. Dissemination of Information and Rules.

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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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.225 - 22.231, 22.234 - 22.236, 22.239, 22.241

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.225 - 22.231, 22.234 - 22.236, 22.239 and 22.241, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant Program.

The amendments to §22.225 eliminate reference to private institutions of higher education, which no longer participate in the program, and introduce the term "eligible institution" which is defined in §22.226.

The amendments to §22.226 include the addition of six new definitions - "Continuation or renewal award," "Eligible institution," "Financial Aid Advisory Committee," "Foundation high school program," "Medical or dental unit," and "Public state college." All of these terms are relevant to the TEXAS Grant program as amended by Senate Bill 215 (SB 215) and House Bill 5 (HB 5), passed by the 83rd Legislature, Regular Session. Another amendment to the section is the elimination of the definition for "Private or Independent Institution of Higher Education," since such institutions no longer participate in the program. These changes generated a renumbering of subsequent definitions in the section.

The definition of "Cost of attendance" in §22.226 is amended to reflect the fact that the Board no longer approves institutional cost estimates. The definition for "Enrolled on at least a three-quarter basis" is amended to indicate the given definition applies to undergraduate hours. The definition of "Priority model" is amended to reflect changes from SB 215 which cause the priority model to apply to initial award applicants attending general academic teaching institutions during the 2013-2014 academic year, but only to initial award applicants attending medical and dental units and general academic teaching institutions (GATIs) other than state colleges as of fall 2014. In addition, the definition for "Recommended or advanced high school program" was adjusted to cross-reference Texas Education Code, §28.025 as it existed on January 1, 2013 (prior to the passage of HB 5).

Also in §22.226 and throughout the document, references to "approved institutions" were changed to "eligible institutions" to align rules with program terminology as amended by SB 215.

Amendments to §22.227(a) were made to reflect changes in the types of institutions eligible to participate in the TEXAS Grant program as a result of the passage of SB 215. At present, the program is open to students attending all public institutions of higher education. Beginning with fall 2014, medical and dental units and general academic teaching institutions other than Lamar State College-Orange and Lamar State College-Port Arthur will be eligible to make initial and continuation awards, but other institutions of higher education (including the two Lamar State College institutions) will only be able to make continuation awards, and the continuation awards they will be able to make can only be made to persons who entered the TEXAS Grant program prior to fall 2014.

Amendments to the lead-in sentence of §22.228(a), in compliance with SB 215, indicate its provisions apply to public two-year institutions during the 2013-2014 academic year only. In addition, wording regarding the timeline for an associate degree recipient's eligibility to enter the TEXAS Grant program in subsection (a)(6)(D) and (7)(B) was amended to more closely track statutory language.

Amendments to the opening sentence of §22.228(b) were made to reflect the limited timeline for its provisions for GATIs (the 2013-2014 academic year only), in compliance with new parameters set for fall 2014 by SB 215.

Section 22.228(b)(5) was amended to reflect the fact that top consideration for initial grants at a GATI in the 2013-2014 academic year is to be given to students who meet the academic requirements outlined in subsection (b)(5)(A), and who meet the priority application deadline set by the Board in compliance with Texas Education Code, §56.008. Funds remaining after such students receive awards may be awarded to other students meeting the provisions of §22.228(a) or (b)(5)(A), (B) or (C). The reference to availability of funds previously located in §22.228(b)(5)(C) was deleted as it is now redundant with language in subsection (b)(5).

The lead-in sentence to §22.228(b)(6) was updated to indicate an exception can be made to the enrollment requirements outlined in this subsection if the institution determines the student meets hardship provisions listed in §22.231.

New subsection (c) was added to §22.228 to address initial award provisions for fall 2014. These requirements are identical to those in §22.228(b) except as listed below:

1. Initial award recipients must be enrolled in medical or dental units or in GATIs other than public state colleges (§22.228(c)(1)). This change is from SB 215.

2. Otherwise eligible initial award recipients will need to meet the same priority academic and application deadline requirements as recipients in the 2013-2014 academic year as listed in §22.228(b)(5) except for the changes listed below. These changes are in compliance with HB 5.

A. Students graduating from high school prior to September 1, 2020, may qualify for TEXAS Grant awards under the Foundation, recommended or distinguished achievement high school program or by being on track to graduate under any of these programs.

B. The first of the priority criteria for students graduating prior to September 1, 2020 will include the option of graduating under the recommended or distinguished curriculum.

C. The fourth of the priority criteria will include the option of completing at least one technical applications course.

3. Students must enroll in a baccalaureate degree plan (certificate programs are no longer an option). New provisions are established under which an incoming transfer student may qualify for an initial TEXAS Grant award. These changes are from SB 215.

The lead-in paragraph of §22.228(d) is amended to add the title, "Continuation Awards." Section 22.228(d)(4) and (7) are amended to indicate that to receive a continuation TEXAS grant, a person who receives his or her initial TEXAS Grant in fall 2014 or later must enroll in and make academic progress towards a baccalaureate degree at a medical or dental unit or general academic teaching institution other than Lamar State College-Orange and Lamar State College-Port Arthur. A person who receives his or her initial award prior to fall 2014 must enroll in and make academic progress towards an undergraduate degree or certificate program at any public institution of higher education.

The lead-in sentence to §22.228(d)(8) is amended to include students on track to complete the Foundation Program and update the citation for rule sections dealing with meeting academic requirements. Section 22.228(d)(8)(D) indicates the timeline required for persons trying to re-gain TEXAS grant eligibility based on the acquisition of an associate's degree.

The amendments to §22.229(a) and (b) more clearly indicate the timing of program academic progress requirements, delete language that is redundant with §22.229(c), and bring rule continuation requirements into alignment with statutes. The 75 percent completion requirement is no longer a requirement, now that students are required to complete at least 24 semester credit hours per year. This causes the other parts of this section to be renumbered and the cross-reference in §22.229(b)(2)(D) (old numbering) to be updated.

Amendments to §22.230(b)(1) indicate the year limits for TEXAS Grant eligibility will also apply to Foundation Program high school graduates. The lead-in sentence to §22.228(d)(2) is amended to correct a grammatical error. New subsection (b) of §22.230 indicates the Board staff, working with the Board's Financial Aid Advisory Committee, will devise a formula for determining the years of grant eligibility for individuals who enter the program as transfer students.

Amendments to §22.230(c) extend the provisions dealing with a grant recipient's period of eligibility to all students awarded grants based on the expectation of meeting the initial awards requirements of §22.228. The final sentence of that subsection is amended to indicate a person who entered the TEXAS Grant program as an associate's degree holder may receive grants for up to three years if pursuing a four-year degree; for up to four years if pursuing a degree of more than four years.

The amendments to §22.230(d) broaden the wording to indicate the 150-hour limit applies to all students who enter the program based on completing a given high school curriculum.

New subsection (f) of §22.230 indicates the Board staff, working with the Board's Financial Aid Advisory Committee, will devise a formula for determining the number of hours of eligibility for a person who enters the program as a transfer student.

Amendments to §22.231 change references to "directors of financial aid" to "Program Officers," the persons responsible for the administration of the program at the school level.

Amendments to §22.234(b)(1) and (3) remove language regarding awards to students attending private or independent institutions. The TEXAS Grant program is now limited to persons attending public institutions. These changes require subsequent parts of subsection (b) to be renumbered. Section 22.234(b)(4) and (5) are amended to include students graduating under the Foundation program and to provide updates to cross-references. Subsequent parts of §22.234(b) are renumbered appropriately.

The amendment to §22.235 clarifies that although a student may be granted an award after his/her period of enrollment has ended, the funds may not be disbursed to the student. They must be used to meet any outstanding balance at the institution for the period of enrollment or to make a payment against an outstanding loan for that period.

Amendments to §22.236(a)(1) remove references to allocations to private or independent institutions and update the cross-reference to §22.228 regarding the priority model requirements.

The changes to §22.239 update language regarding institutions' authority to transfer funds between programs as provided in Rider 22, pages III-49 of the General Appropriations Act for the 2014-2015 Biennium.

Changes to §22.241 update cross-references to §22.228 that have been amended based on SB 215 and HB 5.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt rules to implement the TEXAS Grant Program.

The amendments affect Texas Education Code, §§56.301 - 56.311.

§22.225. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter M, Toward EXcellence, Access and Success (TEXAS) Grant Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§56.301 - 56.311.

(b) Purpose. The purpose of this program is to provide grants of money to enable certain [~~eligible~~] students to attend eligible [~~public and private~~] institutions of higher education in this state.

§22.226. Definitions.

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

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

(5) Continuation or renewal award--A TEXAS Grant awarded to a person who has previously received an initial award.

(6) [~~(5)~~] Cost of attendance--An institution's [~~A Board-approved~~] estimate of the expenses incurred by a typical financial aid student [~~in attending a particular college~~]. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(7) [~~(6)~~] Degree or certificate program of four years or less--A baccalaureate degree or certificate program other than in architecture, engineering or any other program determined by the Board to require four years or less to complete.

(8) [~~(7)~~] Degree or certificate program of more than four years--A baccalaureate degree or certificate program in architecture, engineering or any other program determined by the Board to require more than four years to complete.

(9) Eligible institution--During the 2013-2014 academic year, all institutions of higher education are eligible to make initial and continuation awards. Beginning with awards for fall 2014, only medical or dental units and general academic teaching institutions other than the public state colleges may make initial and continuation awards. Other institutions of higher education, including public state institutions, may only make continuation awards and can make continuation awards only to otherwise eligible students who received TEXAS Grant awards prior to fall 2014.

(10) [~~(8)~~] Enrolled on at least a three-quarter basis--Enrolled for the equivalent of nine undergraduate semester credit hours in a regular semester.

(11) [~~(9)~~] Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(12) [~~(10)~~] Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(13) Financial Aid Advisory Committee--An advisory committee for the Board, authorized in Texas Education Code, §61.0776 and charged with providing the Board advice and recommendations regarding the development, implementation, and evaluation of state financial aid programs for college students.

(14) [~~(11)~~] Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need.

(15) Foundation high school program--The curriculum specified in the Texas Education Code, §28.025, as it exists after the passage of House Bill 5 by the 83rd Legislature, Regular Session, and the rules promulgated thereunder by the State Board of Education.

(16) [~~(12)~~] General Academic Teaching Institution--As the term is defined in Texas Education Code, §61.003.

(17) [~~(13)~~] Honorably discharged--Released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense.

(18) [~~(14)~~] Initial year award--The grant award made in the student's first year in the TEXAS Grant program, typically made up of a fall and spring disbursement.

(19) [~~(15)~~] Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(20) Medical or dental unit--As the term is defined in Texas Education Code, §61.003.

(21) [~~(16)~~] Period of enrollment--The term or terms within the current state fiscal year (September 1-August 31) for which the student was enrolled in an eligible [~~approved~~] institution and met all the eligibility requirements for an award through this program.

[~~(17) Private or Independent Institution of Higher Education--Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003(15).~~]

(22) [~~(18)~~] Priority Model--The additional academic requirements for priority consideration for an initial year TEXAS grant award for persons who graduate from high school on or after May 1, 2013 and enroll in [~~attend~~] a general academic teaching institution in the 2013-2014 academic year or enroll in a medical or dental unit or general academic teaching institution other than a state college in fall 2014 [~~2013~~] or later, as described [~~given~~] in §22.228[~~(b)(5)~~] of this title (relating to Eligible Students).

(23) [~~(19)~~] Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(24) Public state college--As the term is defined in Texas Education Code, §61.003.

(25) [~~(20)~~] Recommended or advanced high school programs--The curriculum specified in the Texas Education Code, §28.025 as it existed as of January 1, 2013, and the rules promulgated thereunder by the State Board of Education.

(26) [~~(21)~~] Required fees--A mandatory fee (required by statute) or discretionary fee (authorized by statute, imposed by the governing board of an institution) and that an institution charges to a student as a condition of enrollment at the institution or in a specific course.

(27) [~~(22)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(28) [~~(23)~~] Tuition--Statutory tuition, designated and/or Board-authorized tuition.

§22.227. Institutions.

(a) Eligibility.

(1) Prior to fall 2014, all institutions [~~Institutions and private or independent institutions~~] of higher education are eligible to participate in the TEXAS Grant program. Beginning with awards for fall 2014, the only institutions eligible to make initial and continuation awards in the program are medical and dental units and general academic teaching institutions other than the public state colleges. Other institutions of higher education, including public state colleges, are only eligible to make continuation awards, and can make continuation awards only to persons who received TEXAS grant awards prior to fall 2014.

(2) - (3) (No change.)

(b) Approval.

(1) Agreement. Each eligible [~~approved~~] institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner.

(2) Approval Deadline. An institution must be approved by April 1 in order for qualified students enrolled in that institution to be eligible to receive grants in the following fiscal year.

(c) (No change.)

§22.228. Eligible Students.

(a) All persons who receive an initial award through the TEXAS Grant Program while [~~prior to fall 2013, and all initial award recipients~~] attending public community colleges, technical colleges or the Lamar Institute of Technology in the 2013-2014 academic year [~~fall 2013 or later~~] must:

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

(6) have completed the Recommended or Advanced High School Program, or if a graduate of a private high school, its equivalent, unless the student:

(A) - (C) (No change.)

(D) was anticipated to receive an associate degree from an eligible institution no earlier than the twelfth month prior to the month in which the student enrolled for fall 2013 [~~within 12 months of enrolling for fall 2013 or a later term~~];

(7) enroll in an undergraduate degree or certificate program at an eligible [~~approved~~] institution on at least a three-quarter time basis:

(A) not later than the end of the 16th month after high school graduation, if an entering undergraduate student; or

(B) not later than the [~~end of the~~] 12th month after the month the [~~a~~] student has received an associate degree;

(8) - (9) (No change.)

(b) To [~~Beginning with awards made for the fall 2013 semester, to~~] receive an initial TEXAS Grant award for the 2013-2014 academic year, a person graduating from high school on or after May 1, 2013 and enrolling in a general academic teaching institution must:

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

(4) not have been granted a baccalaureate degree; and

(5) to receive top consideration for an award, meet the academic requirements prescribed by subparagraph (A) of this paragraph. If funds remain after awards are made to all students meeting the criteria in subparagraph (A) of this paragraph and who meet the priority deadline set by the Board in compliance with Texas Education Code, §56.008, remaining funds may be awarded to persons who meet the requirements outlined in subparagraph (A) of this paragraph but did not meet the priority deadline and persons who meet the requirements in subparagraph (B)[~~,~~] or (C) of this paragraph:

(A) - (C) (No change.)

(6) except as provided under §22.231 of this title (relating to Hardship Provisions), a person must also enroll in an undergraduate

degree or certificate program at a general academic teaching institution on at least a three-quarter time basis as:

(A) - (C) (No change.)

(7) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(c) To qualify for an initial award for fall 2014 or later, a person who graduates from high school on or after May 1, 2013 must:

(1) be enrolled in a medical or dental unit or general academic teaching institution other than state colleges;

(2) be a resident of Texas;

(3) meet financial need requirements established by the Board;

(4) have applied for any available financial aid assistance;

(5) not have been granted a baccalaureate degree; and

(6) to receive top consideration for an award, meet the academic requirements prescribed by subparagraph (A) of this paragraph. If funds remain after awards are made to all students meeting the criteria in subparagraph (A) of this paragraph and who meet the priority deadline set by the Board in compliance with Texas Education Code §56.008, remaining funds may be awarded to persons who meet the requirements outlined in subparagraph (A) of this paragraph but did not meet the priority deadline and persons who meet the requirements in subparagraph (B) or (C) of this paragraph:

(A) graduate or be on track to graduate from a public or accredited private high school in Texas on or after May 1, 2013, and complete or be on track to complete the Foundation High School program or its equivalent as amended in keeping with Texas Education Code, §56.009. An otherwise eligible student graduating before September 1, 2020, must complete or be on track to complete the Foundation, recommended, or advanced High School program. The person must also be on track to have accomplished any two or more of the following at the time the award was made:

(i) successful completion of the course requirements of the recommended or advanced high school program established under Texas Education Code, §28.025 or its equivalent or the international baccalaureate diploma program, or earning of the equivalent of at least 12 semester credit hours of college credit in high school through courses described in Texas Education Code, §28.009(a)(1), (2), and (3), or if graduating prior to September 1, 2020, graduate under the Recommended or Advanced high school program;

(ii) satisfaction of the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Board under Texas Education Code, §51.3062(f) on any assessment instrument designated by the Board under Texas Education Code, §51.3062(c) or qualification for an exemption as described by Texas Education Code, §51.3062(p), (q), or (q-1);

(iii) graduation in the top one-third of the person's high school graduating class or graduation from high school with a grade point average of at least 3.0 on a four-point scale or the equivalent; or

(iv) completion for high school credit of at least one advanced mathematics course following the successful completion of an Algebra II course, or at least one advanced career and technical or technical applications course;

(B) have received an associate's degree or be on track to receive an associate's degree from a public or private institution of higher education at the time the award was made; or

(C) meet the eligibility criteria described in subsection (a) of this section;

(7) except as provided under §22.231 of this title, to receive an initial award in fall 2014 or later, an otherwise eligible person must also enroll in a baccalaureate degree program at an eligible institution on at least a three-quarter time basis as:

(A) an entering undergraduate student not later than the end of the 16th month after high school graduation; or

(B) an entering undergraduate student who entered military service not later than the first anniversary of the date of high school graduation and enrolled in an eligible institution no later than 12 months after being honorably discharged from military service;

(C) a continuing undergraduate student not later than the end of the 12th month after the calendar month in which the student received an associate's degree; or

(D) an entering undergraduate student who has:

(i) previously attended an institution of higher education;

(ii) received an initial Texas Educational Opportunity Grant under Subchapter P for the 2014 fall semester or a subsequent academic term;

(iii) completed at least 24 semester credit hours at any Texas public or private institution or institutions of higher education;

(iv) earned an overall grade point average of at least 2.5 on a four-point scale or the equivalent on all course work previously attempted;

(v) has never previously received a TEXAS Grant; and

(8) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(d) [~~(c)~~] Continuation Awards. To receive a continuation award through the TEXAS Grant Program, a student must:

(1) have previously received an initial award through this program;

(2) show financial need;

(3) be enrolled at least three-quarter time unless granted a hardship waiver of this requirement under §22.231 of this title [~~(relating to Hardship Provisions)~~];

(4) if he or she received an initial TEXAS Grant award prior to fall 2014, be enrolled in an undergraduate degree or certificate program at an eligible [~~approved~~] institution; if he or she received an initial TEXAS Grant award in fall 2014 or later, be enrolled in a baccalaureate degree at a medical or dental unit or general academic teaching institution other than a state college;

(5) not have been granted a baccalaureate degree;

(6) have a statement on file with his or her institution that indicates the student is registered with the selective service system as required by federal law or is exempt from selective service registration under federal law; and

(7) if he or she received an initial TEXAS Grant award prior to fall 2014, make satisfactory academic progress towards an undergraduate degree or certificate, as defined in §22.229 of this title (relating to Satisfactory Academic Progress); if he or she received an initial TEXAS Grant award in fall 2014 or later, make satisfactory academic progress towards a baccalaureate degree at an eligible institution, as defined in §22.229 of this title;[.]

(8) If a student's eligibility was based on the expectation that the student would complete the Recommended or Advanced or Foundation High School Program, meet the priority model academic requirements as outlined in subsection (b)(5) or (c)(6) of this section, or acquire an associate's degree and the student failed to do so, then in order to resume eligibility such a student must:

(A) receive an associate's degree;

(B) meet all other qualifications for a TEXAS Grant; [and]

(C) if required to do so by the institution through which the TEXAS Grant was made, repay the amount of the TEXAS Grant that was previously received; and[.]

(D) enroll in a higher-level undergraduate degree program in an eligible institution not later than the 12th month after the month the student received an associate's degree.

(e) [(d)] In determining initial student eligibility for TEXAS Grant [grant] awards pursuant to subsections (a), [and] (b) and (c) of this section, priority shall be given to those students who have an expected family contribution that does not exceed the lesser of the limit set by the Board for the relevant fiscal year or 60 percent of the average statewide amount of tuition and fees for general academic teaching institutions for the relevant academic year.

§22.229. Satisfactory Academic Progress.

(a) To qualify for a continuation or renewal award after the [As of the end of the first] academic year in which a person receives an initial award, each recipient of the TEXAS Grant shall meet the academic progress requirements as indicated by the financial aid office of his or her institution.

[(1) A recipient who does not meet the academic progress requirements of his or her institution may not receive an award until the institution has determined that the academic performance requirements have been met.]

[(2) A recipient who is below program grade point average requirements as of the end of a spring term may appeal his/her grade point average calculation if he/she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with official transcripts from the previous institutions), shall calculate an overall grade point average counting all classes and grade points previously earned. If the resulting grade point average exceeds the current institution's academic progress requirement, an otherwise eligible student may receive an award in the following fall term.]

(b) To receive a subsequent award after he or she [At the end of the year in which a person] receives a continuation award:

(1) (No change.)

(2) To receive a subsequent award after he or she received a continuation award, a [A] recipient who was awarded an initial year award through the TEXAS Grant Program on or after September 1, 2005 shall, unless granted a hardship postponement in accordance with §22.231 of this title [(relating to Hardship Provisions)]:

[(A) complete at least 75 percent of the hours attempted in his or her most recent academic year, as determined by institutional policies;]

(A) [(B)] complete at least 24 semester credit hours in his or her most recent academic year; and,

(B) [(C)] maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at an institution or private or independent institution.

(C) [(D)] A first-time [first time] entering freshman student enrolling in a participating institution for the second regular term or semester in a given academic year meets the semester-credit-hour requirement outlined in subparagraph (A) [(B)] of this paragraph for continuing in the program if he or she completes at least 12 semester credit hours or its equivalent during that term or semester.

(c) (No change.)

§22.230. Discontinuation of Eligibility or Non-Eligibility.

(a) (No change.)

(b) For recipients who were awarded an initial year award through the TEXAS Grant program for the 2005-2006 academic year on or after September 1, 2005, or for a subsequent academic year:

(1) Unless granted a hardship postponement in accordance with §22.231 of this title, a student's eligibility for a TEXAS Grant ends:

(A) five years from the start of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student's eligibility for a TEXAS Grant was based on the completion of the Recommended or Advanced or Foundation High School Program or its equivalent in high school and the student is enrolled in a degree or certificate program of four years or less;

(B) six years from the start of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student's eligibility for a TEXAS Grant was based on the completion of the Recommended or Advanced or Foundation High School Program or its equivalent in high school and the student is enrolled in a degree or certificate program of more than four years.

(2) Unless granted a hardship postponement in accordance with §22.231 of this title, a student [student's] whose eligibility was based on receiving an associate's degree loses eligibility:

(A) three years from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award if the student is enrolled in a degree or certificate program of four or fewer years;

(B) four years from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award if the student is enrolled in a degree or certificate program of more than four years.

(3) Unless granted a hardship extension in accordance with §22.231 of this title, the number of years of eligibility for a transfer student whose initial award eligibility was based on the requirements outlined in §22.228(c)(7)(D) of this title (relating to Eligible Students) will be determined using a formula developed by Board staff with the assistance of the Financial Aid Advisory Committee.

(c) A student's eligibility ends one year from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student's eligibility was

based on the expectation that the student would complete the initial award requirements as outlined in §22.228 of this title [~~Recommended or Advanced High School Program~~], but the student failed to do so. However, if such a student later receives an associate's degree and again qualifies for TEXAS Grants, he or she can receive an additional three [~~four~~] years of eligibility if enrolled in a degree plan of four years or less, an additional four years if enrolled in a degree plan of greater than four years.

(d) A student who is eligible for a TEXAS Grant based on completion of a required high school curriculum [~~the Recommended or Advanced High School Program~~] or its equivalent [~~in high school~~] may receive a TEXAS Grant for no more than 150 semester credit hours or the equivalent.

(e) (No change.)

(f) The number of hours of eligibility granted a transfer student who receives an initial TEXAS Grant based on the requirements outlined in §22.228(c)(7)(D) of this title shall not exceed 150 semester credit hours and will be calculated based on a formula developed by board staff with the assistance of the Financial Aid Advisory Committee.

(g) [~~(f)~~] A person is not eligible to receive an initial or continuation TEXAS Grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a TEXAS Grant.

(h) [~~(g)~~] Other than as described in §22.231 of this title (relating to Hardship Provisions), if a person fails to meet any of the requirements for receiving a continuation award as outlined in subsection (b) of this section after completion of any year, the person may not receive a TEXAS Grant until he or she completes courses while not receiving a TEXAS Grant and meets all the requirements of subsection (b) of this section as of the end of that period of enrollment.

§22.231. Hardship Provisions.

(a) (No change.)

(b) The Program Officer [~~director of financial aid~~] may grant an extension of the year limits found in §22.230 of this title (relating to Discontinuation of Eligibility or Non-Eligibility) in the event of hardship. Documentation justifying the extension must be kept in the student's files, and the institution must identify students granted extensions and the length of their extensions to the Coordinating Board, so that it may appropriately monitor each student's period of eligibility.

(c) The Program Officer [~~director of financial aid~~] may allow a student to receive his/her first award after more than 16 months have passed since high school graduation if the student and/or the student's family has suffered a hardship that would now make the student rank as one of the institution's neediest. Documentation justifying the exception must be kept in the student's files.

(d) (No change.)

§22.234. Award Amounts and Adjustments.

(a) (No change.)

(b) Award Amounts.

(1) The amount of a TEXAS Grant awarded through an institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any aid other than loans received equals or exceeds the student's tuition and required fees. [~~The amount of a TEXAS Grant awarded to a student attending a private or independent institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid exceeds the student's financial need.~~]

(2) (No change.)

[~~(3) For students enrolled in eligible private or independent institutions:~~]

[~~(A) The amount of the TEXAS Grant may not exceed the maximum award possible through the Tuition Equalization Grant Program (Texas Education Code, §61.221).~~]

[~~(B) No student may receive both a TEXAS Grant and a Tuition Equalization Grant in the same term or semester.~~]

(3) [~~(4)~~] An eligible institution may not charge a person receiving a TEXAS Grant through that institution, an amount of tuition and required fees in excess of the amount of the TEXAS Grant received by the person unless it also provides the student sufficient aid other than loans to meet his or her full tuition and required fees. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a TEXAS Grant.

(4) [~~(5)~~] The eligible institution may require a student to forgo or repay the amount of an initial TEXAS Grant awarded to the student as described in §22.228(a)(6)(B) of this title (relating to Eligible Students) if the student is determined to have failed to complete the Recommended or Advanced or Foundation High School Program or its equivalent as evidenced by the final high school transcript.

(5) [~~(6)~~] If the money available for TEXAS Grants is sufficient to provide grants to all eligible applicants in the amounts specified in paragraphs (1) - (3) [~~(1) - (4)~~] of this subsection, the Board may use any excess money to award a grant in an amount not more than three times the amount that may be awarded under paragraphs (1) - (3) [~~(1) - (4)~~] of this subsection, to a student who:

(A) is enrolled in a program that fulfills the educational requirements for licensure or certification by the state in a health care profession that the Board, in consultation with the Texas Workforce Commission and the Statewide Health Coordinating Council, has identified as having a critical shortage in the number of license holders needed in this state;

(B) has completed at least one-half of the work toward a degree or certificate that fulfills the educational requirement for licensure or certification; and

(C) meets all the requirements to receive a grant award under §22.228 of this title.

(6) [~~(7)~~] No person enrolled for fewer than six semester credit hours may receive a TEXAS Grant. In addition, an award to an otherwise eligible student enrolled for less than a three quarter-time load due to hardship is to be prorated. The amount he/she can be awarded is equal to the semester's maximum award for the relevant type of institution, divided by twelve hours and multiplied by the actual number of hours for which the student enrolled.

(c) - (e) (No change.)

§22.235. Retroactive Disbursements.

(a) A student may receive an award [~~a disbursement~~] after the end of his/her period of enrollment if the student:

(1) owes funds to the institution for the period of enrollment for which the award is being made; or

(2) received a student loan that is still outstanding for the period of enrollment.

(b) (No change.)

§22.236. Allocation and Reallocation of Funds.

(a) Allocations.

(1) Initial Year Funds. Available program funds for initial year awards will be allocated to each participating institution in proportion to each institution's share of the state's undergraduate financial aid population with significant amounts of financial need[~~, except that, beginning with September 1, 2005, no additional initial year funds will be allocated to private or independent institutions~~]. No allocations of initial year funds are to be impacted by an institution's number of initial award recipients who met the priority model requirements described in §22.228(b)(5) or (c)(6) of this title (relating to Eligible Students).

(2) Renewal Year Funds. Available program funds for continuation or renewal awards will be allocated in proportion to the number of prior year recipients reported for each institution, adjusted for the institution's student retention rate.

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

§22.239. Authority to Transfer Funds.

Institutions participating in a combination of the Toward EXcellence, Access and Success Grant, [~~Tuition Equalization Grant,~~] and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer in a given fiscal year up to the lesser of 10 percent or $20,000 [~~$10,000~~] between these programs.

§22.241. Tolling of Eligibility for Initial Award.

(a) A person is eligible for consideration for an Initial Year TEXAS Grant award under this subsection if the person was eligible for an award under §22.228 of this title (relating to Eligible Students) in an academic year for which the Texas Legislature failed to appropriate sufficient funds to make awards to at least 10 percent of the eligible student population, and:

(1) has not received an award under this subchapter in the past;

(2) has not received a baccalaureate degree; and

(3) meets the eligibility requirements for a continuation award as described in §22.228(d) [~~(c)~~] of this title.

(b) A person who meets the requirements outlined in subsection (a) of this section:

(1) cannot be disqualified for a TEXAS Grant by changes in program requirements since the time he or she was originally eligible or by the amount of time that has passed since he or she was originally eligible;

(2) is to receive highest priority in the selection of recipients if he or she met the priority model requirements of §22.228(b)(5) or (c)(6) of this title, when originally determined to be eligible;

(3) may continue receiving awards as long as he or she meets the requirements for such awards; and

(4) may not receive awards for prior terms.

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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Bill Franz
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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.254, 22.256, 22.260

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.254, 22.256, and 22.260 concerning the Texas Educational Opportunity Grant Program (TEOG).

The definition for "Institution" in §22.254 is amended to more clearly identify public state colleges.

Amendments to §22.256(a) clarify that the recipient of an initial year award must be enrolled as an entering student, and that in selecting initial award recipients, priority is to be given to persons who have an expected family contribution that does not exceed the lesser of the limit set by the Board for the relevant fiscal year or 60 percent of the average statewide amount of tuition and fees for a general academic teaching institution for the relevant academic year.

Amendments to §22.256(b) are made to specify a student, to receive a continuation award, must not have been granted an associate degree and must be making academic progress towards an associate degree or certificate.

Amendments to §22.260(b)(1) clarify that a student's TEOG award cannot be reduced by other gift aid unless the combination would exceed the student's cost of attendance, but that no student's award may exceed his or her financial need. Amendments to subsection (b)(2) clarify that the deadline for the Board to determine the maximum annual award for the a given state fiscal year is January 31 of the prior fiscal year and to remove the statement regarding student need, since that statement is now a part of §22.260(b)(1). New paragraph (3) indicates that, beginning with awards for fall 2014, the value of a given student's award is to be based on the share of a full-time student's course load in which the student is enrolled as of the census date of the term. The subsequent paragraph in subsection (b) is renumbered as subsection (b)(4), and subsection (b)(4)(A) is revised to reflect current statute, that aid other than a loan or Pell grant, may be used to make up the difference between a student's tuition and fee amount and his or her TEOG award.

The title to §22.260(e) is amended to distinguish the proration table provided in that subsection for persons limited hours of eligibility remaining from the award amount proration table included in subsection (b)(3). Language regarding limited need is removed because §22.260(b)(1) now explains that a student's

award may not exceed his or her need, and this statement in §22.260(e) is no longer needed.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner for Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments to §§22.254, 22.256, and 22.260 are proposed under Texas Education Code, §56.403, which provides the Coordinating Board with the authority to adopt rules consistent with Texas Education Code, Chapter 56, Subchapter P.

The amendments affect Texas Education Code §§56.401 - 56.4075.

§22.254. Definitions.

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

(1) - (10) (No change.)

(11) Institution--A public junior college as defined in Texas Education Code, §61.003(2); a public technical institution as defined in Texas Education Code, §61.003(7); and a public state college as defined in Texas Education Code, §61.003(16) [~~Lamar State College-Orange and Lamar State College-Port Arthur~~].

(12) - (15) (No change.)

§22.256. Eligible Students.

(a) To receive an initial award through the Texas Educational Opportunity Grant Program, a student must:

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

(4) be enrolled as an entering student on at least a half-time basis in an associate's degree or certificate program at an eligible institution;

(5) - (7) (No change.)

(8) In determining initial student eligibility for Texas Educational Opportunity grant awards pursuant to subsections (a), (b) and (c) of this section, priority shall be given to those students who have an expected family contribution that does not exceed the lesser of the limit set by the Board for the relevant fiscal year or 60 percent of the average statewide amount of tuition and fees for general academic teaching institutions for the relevant academic year.

(b) To receive a continuation award through the Texas Educational Opportunity Grant Program, a student must:

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

(5) not have been granted an associate or [~~a~~] baccalaureate degree;

(6) - (7) (No change.)

(8) make satisfactory academic progress towards an associate [~~undergraduate~~] degree or certificate, which requires:

(A) - (D) (No change.)

(c) (No change.)

§22.260. Award Amounts and Adjustments.

(a) (No change.)

(b) Award Amounts.

(1) The amount of a Texas Educational Opportunity Grant award may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the student's cost of attendance [~~financial need~~]. However, no student's award shall be greater than the amount of the student's financial need.

(2) The Board shall determine and announce the maximum amount of a Texas Educational Opportunity Grant award in a given state fiscal year by January 31 of the prior fiscal year [~~prior to the start of each fiscal year~~]. The calculation of the maximum amount will be based on the mandates contained in Texas Education Code, §56.407. [~~However, no student's award shall be greater than the amount of the student's financial need.~~] To ensure the program has sufficient funds to make awards to all eligible returning recipients, institutions may not decrease award amounts per student in order to provide grants to a larger number of applicants. If an otherwise eligible student, due to hardship, enrolls for less than a half-time course load, his or her award is to be prorated. The amount he or she can be awarded is equal to the semester's maximum award for the relevant type of institution, divided by 12 hours and multiplied by the actual number of hours for which the student is enrolled.

(3) Beginning with awards for fall 2014, the value of an individual's award in a given term is to be based on the share of a full-time course load in which the student is enrolled as of the census date of the term, in accordance with the following table:

(A) 12 or more semester credit hours = 100% of the semester's maximum award for a full-time student;

(B) 9 to <12 semester credit hours = 75 percent of the semester's maximum award for a full-time student;

(C) 6 to <9 semester credit hours = 50 percent of the semester's maximum award for a full-time student; and

(D) <6 semester credit hours = $0, unless granted an award under hardship conditions in accordance with paragraph (2) of this subsection.

(4) [~~(3)~~] An approved institution may not charge a person receiving a Texas Educational Opportunity Grant through that institution, an amount of tuition and required fees in excess of the amount of the Texas Educational Opportunity Grant award received by the person. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a Texas Educational Opportunity Grant award. If an institution's tuition and fee charges exceed the Texas Educational Opportunity Grant award amount, it may address the shortfall in one of two ways:

(A) It may use other available sources of financial aid, other than a loan or Pell grant [~~work-study funds~~] to cover any difference in the amount of a Texas Educational Opportunity Grant award

and the student's actual amount of tuition and required fees at the institution; or

(B) it may waive the excess charges for the student. However, if a waiver is used, the institution may not report the recipient's tuition and fees in a way that would increase the general revenue appropriations to the institution.

(c) (No change.)

(d) Over Awards. If, at a time after an award has been disbursed [~~offered~~] by the institution and accepted by the student, the student receives assistance that was not taken into account in the student's estimate of financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than $300.

(e) Prorated Awards in Case of Low Balance of Eligible Hours. If [~~a student's need is insufficient to allow him or her to receive a full award in a given term or semester, or if~~] the student's balance of eligible hours is less than the number of hours he or she is taking in a given term or semester, the student's award amount for that term or semester should be prorated. Beginning no later than Fiscal Year 2012, prorated amounts shall be calculated using the following schedule:

(1) - (4) (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.

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SUBCHAPTER O. EXEMPTION PROGRAM FOR CHILDREN OF PROFESSIONAL NURSING PROGRAM FACULTY AND STAFF

19 TAC §22.293, §22.295

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §22.293 and §22.295 concerning the Exemption Program for Children of Professional Nursing Program Faculty and Staff.

Specifically, definitions are added to §22.293 to introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014. The new provisions, which included a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding, were introduced by Senate Bill 1210, passed by the 83rd Legislature, Regular Session. The inclusion of new definitions for "continuation award" and "excess hours" caused subsequent definitions to be renumbered.

Section 22.295 is amended by adding paragraph (7) to reflect the Senate Bill 1210 requirements regarding grade point average and excess hours to the eligibility requirements for exemption recipients.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner for Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments to these sections are proposed under Texas Education Code, §54.355(g), which provides the Coordinating Board with the authority to adopt rules consistent with §54.355 and necessary to implement the section.

The amendments affect Texas Education Code, §54.355.

§22.293. Definitions.
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

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

(4) Continuation award--An exemption from tuition awarded to a student in keeping with this subchapter who has received the exemption in a previous semester.

(5) Excess Hours--In accordance with Texas Education Code, §54.014, for undergraduates - hours in excess of 30 or more than those required for completion of the degree program in which the student is enrolled.

(6) [~~(4)~~] Full-time member of faculty or staff--An individual who is classified by the human resources department of his or her institution of higher education as employed full-time.

(7) [~~(5)~~] Graduate professional nursing program--An educational program of a public institution of higher education that prepares students for a master's or doctoral degree in nursing.

(8) [~~(6)~~] Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(9) [~~(7)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(10) [~~(8)~~] Tuition--Includes statutory tuition, designated tuition and board-authorized tuition.

(11) [~~(9)~~] Undergraduate professional nursing program--A public educational program for preparing students for initial licensure as registered nurses.

§22.295. Eligible Students.

(a) To receive an award through the Exemption Program for Children of Professional Nursing Faculty and Staff, a student shall:

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

(7) If receiving a continuation award in fall 2014 or later, the student shall also:

(A) be meeting the institution's grade point average requirement for making satisfactory academic progress towards a degree or certificate in accordance with the institution's policy regarding eligibility for financial aid, unless granted a hardship waiver by the institution in keeping with §22.298 of this title (relating to Hardship Provisions); and

(B) if classified as an undergraduate student, have not completed a number of semester credit hours that is considered to be excessive under Texas Education Code, §54.014, unless granted a hardship waiver by the institution on a showing of good cause in keeping with §22.298 of this title. In determining the number of hours an undergraduate has completed, semester credit hours completed include transfer credit hours that count towards the person's undergraduate degree or certificate requirements, but exclude:

(i) hours earned exclusively by examination;

(ii) hours earned for a course for which the person received credit toward the person's high school academic requirements; and

(iii) hours earned for developmental courses that the institution required the person to take under Texas Education Code, §51.3062 or under the former provisions of Texas Education Code, §51.306.

(b) (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.

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19 TAC §22.298

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §22.298 concerning the Exemption Program for Children of Professional Nursing Program Faculty and Staff. Specifically, this new section adds language to implement legislative changes mandated by the 83rd Legislature through the passage of Senate Bill 1210. It also outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program grade point average requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for special consideration. Such circumstances include illness, caring for another person, military deployment or other just causes acceptable to the institution. It also indicates an institution may, for good cause, allow a person to receive an exemption if he or she failed to meet the excess hour requirement.

Mr. Dan Weaver, Assistant Commissioner, Business and Support Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner, Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under Texas Education Code, §54.355(g), which provides the Coordinating Board with the authority to adopt rules consistent with §54.355 and necessary to implement the section.

The new section affects Texas Education Code, §54.355.

§22.298. Hardship Provisions.

(a) Each institution is required to adopt a policy to allow a student who fails to maintain a grade point average as required by §22.295(a)(7) of this title (relating to Eligible Students) to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(1) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(3) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(4) any other cause considered acceptable by the institution.

(b) An institution may, on a showing of good cause, permit an undergraduate continuation award applicant to receive an exemption or waiver; although, he or she has completed a number of semester credit hours that is considered excessive under Texas Education Code, §54.014.

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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SUBCHAPTER Q. ENGINEERING SCHOLARSHIP PROGRAM

19 TAC §§22.312 - 22.318

(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 Higher Education Coordinating Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§22.312 - 22.318, concerning the Engineering Scholarship Program. Specifically, no funds were appropriated for the program during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft new rules for the program at that time to replace the current rules, first drafted in 2007.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this proposal will be that the public will not be confused by rules in the Texas Administrative Code for a program that is inactive.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The sections proposed for repeal were originally proposed under Texas Education Code, §61.792, which provides the Coordinating Board with the authority to adopt rules concerning the Engineering Scholarship Program. Although the program is still authorized in statute, no funding was provided in the past biennium or the current biennium. If funding is provided in the future, new rules will be drafted at that time.

The repeal affects Texas Education Code, §61.792 and §61.793.

§22.312. Authority, Scope, and Purpose.

§22.313. Definitions.

§22.314. Scholarship Program Announcement.

§22.315. Student Eligibility Requirements.

§22.316. Award Amounts and Continuing Eligibility.

§22.317. Application Process.

§22.318. Reporting Requirements.

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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SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §§22.518, 22.519, 22.521 - 22.523

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.518, 22.519, and 22.521 - 22.523 concerning the Exemption for Firefighters Enrolled in Fire Science Courses.

Specifically, the statement of purpose in §22.518 was amended to refer to "eligible" organized volunteer fire departments. Senate Bill 220, passed by the 83rd Legislature, Regular Session, changed the criteria for identifying eligible volunteer fire departments. A definition that explains the new requirement for eligibility is included in §22.519.

In §22.519, definitions are added to explain what is meant by an "eligible" volunteer fire department as mentioned above, and to introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014. The new provisions, which included a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding, were introduced by Senate Bill 1210, passed by the 83rd Legislature, Regular Session. The inclusion of new definitions for "continuation award," "eligible organized volunteer fire department," and "excess hours" caused subsequent definitions to be renumbered.

Amendments to §22.521(b) accomplish two things. The deleted language removes provisions that were added to Texas Education Code (TEC) §54.208 by the passage of House Bill 2013 in 2009. The firefighter exemption is now authorized under TEC §54.353 and TEC §54.208 is now repealed. New wording in §22.521 indicates the grade point average (GPA) requirement for continuation awards received in fall 2014 or later may be overridden in accordance with §22.524(a) if the student's poor performance is due to hardship. Senate Bill 1210, passed by the 83rd Legislature, Regular Session, requires institutions to adopt provisions for allowing awards to undergraduate or graduate students failing to meet the GPA requirement due to hardship.

Amendments to §22.522 also accomplish two things. The deleted language removes provisions that were added to TEC §54.208 by the passage of House Bill 2013 in 2009. The firefighter exemption is now authorized under TEC §54.353

and TEC §54.208 is now repealed. New wording in §22.522 indicates loss of eligibility for a continuation award in fall 2014 or later due to excess hours can be overridden for good causes shown in accordance with §22.524(b). Senate Bill 1210 requires institutions to adopt provisions for allowing awards to undergraduates who take excess hours due to hardship or other good cause.

Amendments to §22.523(c) reflect new language in Senate Bill 1210 that indicates the exemptions only apply to courses for which an institution of higher education receives formula funding.

Mr. Dan Weaver, Assistant Commissioner, Business and Support Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner, Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments to §§22.518, 22.519, and 22.521 - 22.523 are proposed under Texas Education Code, §54.353, which provides the Coordinating Board with the authority to adopt rules consistent with §54.353 and necessary to implement the section.

The amendments affect Texas Education Code, §54.353.

§22.518. Authority and Purpose.

(a) (No change.)

(b) Purpose. The purpose of this program is to provide an exemption from tuition and laboratory fees to eligible persons employed as firefighters by a political subdivision of the state or who are active members of an eligible organized volunteer fire department in this state.

§22.519. Definitions.

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

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

(4) Continuation award--An exemption from tuition and fees awarded to a student in accordance with this subchapter who has received the exemption in a previous semester.

(5) Eligible organized volunteer fire department--An organized volunteer fire department participating in the Texas Emergency Services Retirement System or a retirement system established under the Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes).

(6) Excess hours--In accordance with Texas Education Code, §54.014, for undergraduates - hours in excess of 30 or more than those required for completion of the degree program in which the student is enrolled.

(7) [~~(4)~~] Fire Science Courses--Courses that fall within a designated fire science curriculum, as well as courses that are primarily related to fire service, emergency medicine, emergency management, or public administration.

(8) [~~(5)~~] Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(9) [~~(6)~~] Laboratory fees--Fees authorized through Texas Education Code, §54.501.

(10) [~~(7)~~] Program--The Exemption Program for Firefighters Enrolled in Fire Science Courses.

(11) [~~(8)~~] Tuition--Includes statutory tuition, designated tuition and Board-authorized tuition.

§22.521. Eligible Firefighters.

(a) (No change.)

(b) To receive an exemption in a subsequent semester the student must be in compliance with the institution's financial aid satisfactory academic progress requirements. If receiving a continuation award in fall 2014 or later, a student may be allowed to receive an award while holding a grade point average lower than the institution's financial aid academic progress requirements if he or she is granted an exception by the institution under §22.524 of this title (relating to Hardship Provisions). [~~This provision does not apply to a student who received an exemption under Texas Education Code, §54.208 before the 2009 fall semester as long as the student remains enrolled in the same degree or certificate program and is otherwise eligible to continue to receive the exemption under the statutory provisions that existed at that time.~~]

§22.522. Excess Hours.

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

(c) Unless granted a hardship exception under §22.524 of this title (relating to Hardship Provisions) an undergraduate student applying for a continuation exemption in fall 2014 or later and who has completed as of the beginning of the semester or term a number of semester credit hours that is considered to be excessive under §54.014 may not receive the exemption under this subchapter.

[~~(c) The provisions of subsection (a) and (b) of this section do not apply to a student who received an exemption under Texas Education Code, §54.208 before the 2009 fall semester as long as the student remains enrolled in the same degree or certificate program and is otherwise eligible to continue to receive the exemption under the statutory provisions that existed at that time.~~]

§22.523. Degree and Certificate Programs and Courses Eligible for the Exemption.

(a) (No change.)

(b) Courses eligible for the exemption will be identified by the institution.

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

(3) An exemption under this title only applies to courses for which an institution receives formula funding.

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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19 TAC §22.524

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §22.524 concerning the Exemption for Firefighters Enrolled in Fire Science Courses. Specifically, the new section adds language to implement legislative changes mandated by the 83rd Legislature through the passage of Senate Bill 1210. This new section outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program grade point average requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for special consideration. Such circumstances include illness, caring for another person, military deployment, or other just causes acceptable to the institution.

Mr. Dan Weaver, Assistant Commissioner, Business and Support Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner, Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under Texas Education Code, §54.353, which provides the Coordinating Board with the authority to adopt rules consistent with §54.353 and necessary to implement the section.

The new section affects Texas Education Code, §54.353.

§22.524. Hardship Provisions.

(a) Each institution is required to adopt a policy to allow a student who fails to maintain a grade point average as required by §22.521 of this title (relating to Eligible Firefighters) to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(1) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(3) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(4) any other cause considered acceptable by the institution.

(b) An institution may, on a showing of good cause, permit an undergraduate continuation award applicant to receive an exemption or waiver although he or she has completed a number of semester credit hours that is considered excessive under Texas Education Code, §54.014.

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 October 21, 2013.

TRD-201304769
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 23, 2014
For further information, please call: (512) 427-6114

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SUBCHAPTER U. EXEMPTION FOR PEACE OFFICERS ENROLLED IN LAW ENFORCEMENT OR CRIMINAL JUSTICE COURSES

19 TAC §§22.531, 22.533 - 22.535

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.531, 22.533 - 22.535 concerning the Exemption for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses.

Specifically, definitions are added to §22.531 to introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014. The new provisions, which included a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding, were introduced by Senate Bill 1210, passed by the 83rd Legislature, Regular Session. The inclusion of new definitions for "continuation award" and "excess hours" caused subsequent definitions to be renumbered.

Amendments to §22.533(2) eliminates an unneeded word. Amendments to §22.533(3) indicates the grade point average (GPA) requirement for continuation awards received in fall 2014 or later may be overridden in accordance with §22.538(a) of this title if the student's poor performance is due to hardship. Senate Bill 1210, passed by the 83rd Legislature, Regular Session, requires institutions to adopt provisions for allowing awards to undergraduate or graduate students failing to meet the GPA requirement due to hardship.

Amendments to §22.534(c) reflect new language in Senate Bill 1210 that indicates the Peace Officer exemption only applies to courses for which an institution of higher education receives formula funding. The meaning of the section is not changed, but the new language is more straightforward than the old.

Amendments to §22.535 indicates loss of eligibility for a continuation award in fall 2014 or later due to excess hours can be overridden for good causes shown in accordance with §22.538(b).

Senate Bill 1210 requires institutions to adopt provisions for allowing awards to undergraduates who take excess hours due to hardships or other good cause. The legislative citation for determining excess hours for undergraduates is also changed to reflect Texas Education Code §54.014, the statute cited in Senate Bill 1210.

Mr. Dan Weaver, Assistant Commissioner, Business and Support Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner, Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments to §§22.531, 22.533 - 22.535 are proposed under Texas Education Code, §54.3531, which provides the Coordinating Board with the authority to adopt rules consistent with §54.3531 and necessary to implement the section.

The amendments affect Texas Education Code §54.3531.

§22.531. Definitions.

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

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

(3) Continuation Award--An exemption from tuition and fees awarded to a student in accordance with this subchapter who has received the exemption in a previous semester.

(4) [~~(3)~~] Criminal Justice Courses--Courses determined by an institution to be a part of a criminal justice degree or certificate program.

(5) Excess Hours--In accordance with Texas Education Code §54.014. for undergraduates, hours in excess of 30 more than those required for completion of the degree program in which the student is enrolled.

(6) [~~(4)~~] Governing Board--As defined in Texas Education Code, §61.003.

(7) [~~(5)~~] Institution of Higher Education or Institution--Any public institution of higher education as defined in Texas Education Code, §61.003.

(8) [~~(6)~~] Laboratory Fees--Fees authorized through Texas Education Code, §54.501.

(9) [~~(7)~~] Law Enforcement Courses--Courses determined by an institution to be a part of a law enforcement-related degree or certificate program.

(10) [~~(8)~~] Peace Officer--An individual employed as a peace officer by this state or a political subdivision of the state.

(11) [~~(9)~~] Program--The Exemption Program for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses.

(12) [~~(10)~~] Tuition--Includes statutory tuition, designated tuition and governing board-authorized tuition.

(13) [~~(11)~~] Undergraduate Student--A person classified by his or her institution as an undergraduate.

§22.533. Eligible Peace Officers.
To qualify, a Peace Officer must:

(1) (No change.)

(2) apply for the exemption at least one week before the last day of the institution's regular registration period for that semester, [~~and~~]

(3) be in compliance with the institution's financial aid satisfactory academic progress requirements, unless applying for a continuation exemption in fall 2014 or later and granted an exception under new §22.538(a) of this title (relating to Hardship Provisions);[~~.~~]

(4) - (5) (No change.)

§22.534. Eligible Courses.
(a) - (b) (No change.)

(c) Pursuant to Texas Education Code, §54.2002 [~~§54.545~~], the exemption only applies [~~does not apply~~] to courses that [~~do not~~] receive higher education [~~Texas Education Code §61.059~~] formula funding.

§22.535. Excess Hours.
A person who has reached the limit of undergraduate hours for which the state will provide formula funding as specified in the Texas Education Code, §54.014 [~~61.0595(a)~~] (relating to Tuition for Repeated or Excessive Undergraduate Hours [~~Funding for Certain Excess Undergraduate Credit Hours~~]), is not eligible for the exemption described in this subchapter unless he or she is applying for a continuation award in fall 2014 or later and is granted an exception under §22.538(b) of this title (relating to Hardship Provisions).

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 23, 2014
For further information, please call: (512) 427-6114

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19 TAC §22.538

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §22.538, concerning the Exemption for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses. Specifically, the new section adds language to implement legislative changes mandated by the 83rd Legislature through the passage of Senate Bill 1210. This new section outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program grade point average requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for

special consideration. Such circumstances include illness, caring for another person, military deployment, or other just causes acceptable to the institution.

Mr. Dan Weaver, Assistant Commissioner, Business and Support Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the agency's ability to better meet the needs of the student recipient.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner, Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under Texas Education Code, §54.3531, which provides the Coordinating Board with the authority to adopt rules consistent with §54.3531 and necessary to implement the section.

The new section affects Texas Education Code §54.3531.

§22.538. Hardship Provisions.

(a) Beginning with the fall term, 2014, each institution is required to adopt a policy to allow a student who fails to maintain a grade point average as required by §22.533 of this title (relating to Eligible Peace Officers) to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(1) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(3) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(4) any other cause considered acceptable by the institution.

(b) An institution may, on a showing of good cause, permit an undergraduate continuation award applicant to receive an exemption or waiver although he or she has completed a number of semester credit hours that is considered excessive under Texas Education Code §54.014.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 95. COMMISSIONER'S RULES CONCERNING EDUCATION RESEARCH CENTERS

19 TAC §95.1001

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

The Texas Education Agency (TEA) proposes the repeal of §95.1001, concerning education research centers. The section establishes requirements for the operation of education research centers. The proposed repeal is necessary due to amendment to the rule's authorizing statute, Texas Education Code (TEC), §1.005, by House Bill (HB) 2103, 83rd Texas Legislature, Regular Session, 2013.

The TEC, §1.005, as added by HB 1, 79th Texas Legislature, Third Called Session, 2006, authorized the commissioner of education to adopt rules relating to the operation of education research centers. The commissioner exercised rulemaking authority to adopt 19 TAC §95.1001, Operation of Education Research Centers, effective December 30, 2007.

Section 95.1001 establishes definitions, explains the process by which an education research center (ERC) can be established, outlines the responsibilities of the agencies and sponsoring institutes of higher education, and provides details regarding the development and procedures of the Joint Advisory Board. The rule further describes the operating procedures for an ERC with respect to management of the ERC, access to and use of confidential information, the availability and review of research produced by an ERC, compliance requirements with the Texas Public Information Act, compliance requirements with audit requests, and the process by which data not included in the ERC data warehouse would be added. The rule also includes provisions for sanctions, termination, and data security.

HB 2103, 83rd Texas Legislature, Regular Session, 2013, amended the TEC, §1.005, by removing provisions for commissioner of education rulemaking authority and direct oversight of the operation of ERCs by the TEA. The proposed repeal would implement the statutory changes enacted by HB 2103.

The proposed repeal would have no procedural or reporting implications. The proposed repeal would have no locally maintained paperwork requirements.

Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the repeal is in effect there will be no additional costs for school districts as a result of enforcing or administering the repeal. However, there may be fiscal implications for the TEA. Although TEA's rulemaking authority regarding imposing fees for cost recovery was removed, it is assumed costs of

supporting the ERCs will be maintained by charges imposed by the ERCs and effort to support the ERCs will be performed with existing resources. However, if the TEA is unable to receive reimbursement for these costs from the ERCs via the Texas Higher Education Coordinating Board, then there may be a fiscal impact on the agency. The total estimated cost to the TEA would be $107,040.51 for each year in fiscal years 2014-2018 for costs associated with personnel.

Dr. Cloudt has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal would be alignment with statute and removing from rule provisions for which the commissioner of education no longer has authority. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

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 November 1, 2013 and ends December 2, 2013. 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 November 1, 2013.

The repeal is proposed under the Texas Education Code (TEC), §1.005, which required the commissioner of education and the Texas Higher Education Coordinating Board to adopt rules for the implementation of education research centers, including the use of student data at an education research center. House Bill (HB) 2103, 83rd Texas Legislature, Regular Session, 2013, amended the TEC, §1.005, by removing the provisions for commissioner of education rulemaking authority and direct oversight of the operation of education research centers by the Texas Education Agency.

The repeal implements the TEC, §1.005, as amended by HB 2103, 83rd Texas Legislature, Regular Session, 2013.

§95.1001. Operation of Education Research Centers.

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 October 18, 2013.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 475-1497

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING FEDERAL FISCAL COMPLIANCE AND REPORTING

19 TAC §109.3001, §109.3003

The Texas Education Agency (TEA) proposes new §109.3001 and §109.3003, concerning federal fiscal compliance and reporting. The proposed new rules would provide guidance for local educational agencies (LEAs) that has been developed in conjunction with federal statutes and guidance from the United States Department of Education (USDE) regarding local maintenance of effort (MOE) and indirect cost rates.

The TEA currently provides guidance for financial accounting for school districts, charter schools, and education service centers through the Financial Accountability System Resource Guide (FASRG), which is adopted by reference as rule in 19 TAC §109.41. The FASRG is currently under review and will undergo significant revision. As a result, updated provisions relating to federal fiscal compliance and reporting would be adopted in 19 TAC Chapter 109, Subchapter CC, instead of the FASRG.

Proposed new 19 TAC Chapter 109, Subchapter CC, would align TEA guidance for federal fiscal compliance and reporting with current federal statutory authority and USDE guidance for local MOE and indirect cost rates. The proposed new subchapter would consist of proposed new 19 TAC §109.3001, Local Maintenance of Effort, and 19 TAC §109.3003, Indirect Cost Rates.

Proposed new 19 TAC §109.3001 would adopt in rule Figure: 19 TAC §109.3001(c)(1), which would establish the MOE requirements for a grant under the Individuals with Disabilities Education Act, Part B, and Figure: 19 TAC §109.3001(c)(2), which would establish the MOE requirements for a grant under the No Child Left Behind Act.

Proposed new 19 TAC §109.3003 would adopt in rule Figure: 19 TAC §109.3003(d), which would establish definitions, standards, and procedures used to govern indirect cost rates.

The TEA intends to update 19 TAC §109.3001 and 19 TAC §109.3003 annually as needed to align with subsequent updates, modifications, and amendments to the federal statutory authority and USDE guidance.

The proposed new rules would have no procedural or reporting implications beyond those already in place. Entities required to meet MOE requirements must provide certain fiscal and compliance information in order for the TEA to determine compliance with the MOE requirement and subsequent reporting to the USDE. Additionally, entities requesting an indirect cost rate must provide all documentation required by the USDE to support the entity's request and subsequent approval by the TEA of the indirect cost rate. The proposed new rules would have no locally maintained paperwork requirements beyond those already in place. Participating LEAs are required to retain all financial and programmatic records specific to the local MOE and indirect cost rate requirements.

Nora Hancock, associate commissioner for grants and federal fiscal compliance, has determined that for the first five-year period the new sections are in effect there will be no additional costs for state or local government as a result of enforcing or administering the new sections.

Dr. Hancock has determined that for each year of the first five years the new sections are in effect the public benefit anticipated

as a result of enforcing the new sections will be to ensure that state guidance regarding local MOE and indirect cost rates is clear and based on current federal statute and guidance. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

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 November 1, 2013, and ends December 2, 2013. 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 November 1, 2013.

The new sections are proposed under the Texas Education Code (TEC), §7.021(b)(1), which authorizes the agency to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; and TEC, §7.031(a), which allows the agency to seek, accept, and distribute grants awarded by the federal government or any other public or private entity for the benefit of public education, subject to the limitations or conditions imposed by the terms of the grants or by other law.

The new sections implement the TEC, §7.021(b)(1) and §7.031(a).

§109.3001. Local Maintenance of Effort.

(a) In accordance with the Texas Education Code, §7.021, the Texas Education Agency (TEA) shall administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs.

(b) The following terms have the following meanings when used in this subchapter.

(1) Maintenance of Effort (MOE) for a grant under the Individuals with Disabilities Education Act, Part B (IDEA-B)--This term has the meaning assigned by 34 Code of Federal Regulations (CFR), §300.203(a).

(2) MOE for a grant under the No Child Left Behind Act (NCLB)--This term is generally defined by Public Law 107-110, Title IX, Part E, Subpart 2, §9521.

(c) Each local education agency (LEA) that expends federal IDEA-B or NCLB funds must comply with established MOE requirements developed in conjunction with federal statutes, regulations, and guidance from the United States Department of Education (USDE). The methods of determining compliance, the consequences of noncompliance, and allowable exceptions to the MOE requirements are described in the figures provided in paragraphs (1) and (2) of this subsection.

(1) The specific MOE requirements for a grant under the IDEA-B are described in the *IDEA-B LEA MOE Guidance Handbook* provided in this paragraph.
Figure: 19 TAC §109.3001(c)(1)

(2) The specific MOE requirements for a grant under the NCLB are described in the *NCLB LEA MOE Guidance Handbook* provided in this paragraph.
Figure: 19 TAC §109.3001(c)(2)

(d) Guidance provided in the handbooks described in subsection (c)(1) and (2) of this section will be updated annually as necessary by the commissioner of education to align with subsequent updates, modifications, and amendments to the statutory authority and USDE guidance.

(e) For determining compliance with MOE requirements, the TEA will use the handbooks provided in subsection (c)(1) and (2) of this section instead of:

(1) the software in PEIMS EDIT+ containing a formula to allocate costs recorded in Program Intent Code 99, Undistributed, according to instructional FTEs (as reported in PEIMS) assigned to Basic and Enhanced Program Intent Codes; or

(2) the software in EDIT+ containing a formula to allocate costs recorded in Organization Code 999, Undistributed.

(f) If the LEA receives School Health and Related Services (SHARS) reimbursements, funds received represent reimbursements to the LEA for school-based health services, which are provided to special education students enrolled in the Medicaid Program. Additional guidance concerning the treatment of SHARS direct and indirect cost reimbursements is documented in the *IDEA-B LEA MOE Guidance Handbook* provided in subsection (c)(1) of this section.

(g) To the extent that this section conflicts with any other commissioner or State Board of Education rule, including the Financial Accountability System Resource Guide, the provisions of this section control.

§109.3003. Indirect Cost Rates.

(a) Pursuant to authorization in 34 Code of Federal Regulations (CFR), §75.561(b), the Texas Education Agency (TEA) has been delegated the authority by the United States Department of Education (USDE) to review indirect cost applications and to approve indirect cost rates.

(b) To recover any indirect costs for the administration of federal grants, an entity must have an approved indirect cost rate. A new indirect cost rate must be obtained for every fiscal year.

(c) For the fiscal year an entity has been issued an indirect cost rate, it can claim indirect cost revenue on applicable grants in that fiscal year. As indirect cost revenues are earned in the Special Revenue Fund on federally funded grants, these revenues can be transferred from the Special Revenue Fund to the General Fund. After the indirect cost revenue has been recorded in the General Fund, the revenues can be used for any legal purpose.

(d) Guidance concerning indirect cost rates has been developed by the TEA in conjunction with federal statutes and guidance from the USDE to be used for various entities for which the TEA is the cognizant agency. The definitions, standards, and procedures used to govern indirect cost rates are described in the *Indirect Cost Handbook* provided in this subsection.
Figure: 19 TAC §109.3003(d)

(e) Guidance provided in the handbook described in subsection (d) of this section will be updated annually as necessary by the commissioner of education to align with subsequent updates, modifications, and amendments to the statutory authority and USDE guidance.

(f) To the extent that this section conflicts with any other commissioner or State Board of Education rule, including the Financial Ac-

countability System Resource Guide, the provisions of this section control.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.30

The Texas State Board of Examiners of Board of Examiners of Psychologists proposes an amendment to §463.30, Licensing of Military Spouses and Applicants with Military Experience. The proposed amendment is necessary to comply with Senate Bill 162 and the changes made to Chapter 55 of the Occupations Code by the 83rd Legislature, regarding licensing of military spouses and applicants with military experience.

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

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

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

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

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

§463.30. Licensing of [for] Military Spouses and Applicants with Military Experience.

(a) Military Spouses.

(1) [(a)] A license may be issued to a military spouse, as defined by Chapter 55, Occupations Code, [the spouse of an active duty member of the armed forces] provided that the following documentation is provided to the Board:

(A) [(1)] proof of the marriage to the spouse of an active duty member of the armed forces; and

(B) [(2)] proof that the spouse holds a current license in another state and the licensing requirements for the license in the other state are substantially equivalent to the requirements for the license in Texas; or

(C) [(3)] proof that within the five years preceding the application date, the spouse held the license in Texas and it expired while the applicant lived in another state for at least six months.

(2) [(b)] An applicant applying for licensure under paragraph (1) [subsection (a)] of this subsection [section] must provide documentation from all other states in which the applicant is licensed that indicate that the applicant has received no disciplinary action from those states regarding a mental health license.

(3) [(c)] Alternative demonstrations of competency to meet the requirements for licensure. The following provisions provide alternative demonstrations of competency to the Board's licensing standards.

(A) [(1)] Licensed Specialist in School Psychology. A spouse that meets the requirements of paragraph (1)(A) and (B) [subsection (a)(1) and (2)] of this subsection [section] is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, and evidence of the required coursework or National Association of School Psychologists certification, and passage of the National School Psychology Examination. All other requirements for licensure are still required.

(B) [(2)] Licensed Psychological Associate. A spouse that meets the requirements of paragraph (1) [subsection (a)] of this subsection [section] is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, 450 internship hours, and passage of the Examination for Professional Practice (EPPP) in Psychology at the Texas cut-off. All other requirements for licensure are still required.

(C) [(3)] Provisionally Licensed Psychologist. A spouse who meets the requirements of paragraph (1)(A) and (B) [subsection (a)(1) and (2)] of this subsection [section] is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, and passage of the EPPP at the Texas cut-off. All other requirements for licensure are still required.

(D) [(4)] Licensed Psychologist. A spouse who meets the requirements of paragraph (1)(A) and (B) [subsection (a)(1) and (2)] of this subsection [section] is considered to have met the following requirements for this type of license: two years of supervised experience. All other requirements for licensure are still required.

(4) [(d)] Determination of substantial equivalency for licensing requirements in another state. The applicant must provide to the Board proof that the state in which the applicant is licensed has standards for licensure that are substantially equivalent to the requirements of this Board for the applicable license type:

(A) [(1)] Licensed Specialist in School Psychology (the license required to provide psychological services in the public schools).

(i) [~~(A)~~] The completion of a training program in school psychology approved/accredited by the American Psychological Association or the National Association of School Psychologists or a master's degree in psychology with specific course work as set forth in Board rule §463.9 of this title (relating to Licensed Specialist in School Psychology); and

(ii) [~~(B)~~] Passage of the National School Psychology Examination.

(B) [~~(2)~~] Licensed Psychological Associate (the master's level license that requires supervision by a licensed psychologist).

(i) [~~(A)~~] Master's degree that is primarily psychological in nature and the degree is at least 42 hours with at least 27 hours in psychology courses; and

(ii) [~~(B)~~] Passage of the EPPP at the master's level at 55%.

(C) [~~(3)~~] Provisionally Licensed Psychologist (the doctoral level license that must be supervised by a licensed psychologist).

(i) [~~(A)~~] Doctoral degree in psychology; and

(ii) [~~(B)~~] Passage of the EPPP at the doctoral level at 70%.

(D) [~~(4)~~] Licensed Psychologist (the doctoral license that is required to practice independently).

(i) [~~(A)~~] Doctoral degree in psychology;

(ii) [~~(B)~~] Passage of the EPPP at the doctoral level of 70%;

(iii) [~~(C)~~] Two years of supervised experience by a licensed psychologist; and

(iv) [~~(D)~~] Passage of an oral examination.

(5) Renewal of License Issued to Military Spouse. A license issued to a military spouse under paragraph (1)(A) and (B) of this subsection shall remain active until the licensee's birthdate following a period of one year from the date of issuance of the license, at which time it will be subject to all renewal requirements.

(b) Applicants with Military Experience.

(1) A military service member or military veteran, as defined by Chapter 55, Occupations Code, shall receive credit toward the following licensing requirements for verified military service, training, or education:

(A) Licensed Specialist in School Psychology. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters, 450 hours of supervised experience. All other requirements for licensure are still required.

(C) Provisionally Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters. All other requirements for licensure are still required.

(D) Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year following conferral of a doctoral degree, is considered to have met the following requirements for this type of license: one year of post-doctoral supervised experience. All other requirements for licensure are still required.

(2) An applicant with an honorable discharge from the United States military either during the application process or within the three year period preceding the date the application is received by the Board, is considered to have met the requirement for one of the three required reference letters.

(3) A military service member or military veteran may not receive credit toward licensing requirements due to military service, training, or education if they hold a license issued by another jurisdiction that has been restricted, or they have an unacceptable criminal history.

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 October 21, 2013.

TRD-201304778
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 305-7706

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §§133.2, 133.240, 133.250, and 133.305, concerning medical billing and processing and the dispute of medical bills. These amendments are necessary to make conforming changes to these sections and harmonize these rules with the Department's recently adopted amendments to 28 Texas Administrative Code (TAC) Chapter 19, Agent's Licensing, Subchapter U, §§19.2001 - 19.2017, concerning Utilization Reviews for Health Care Provided Under Workers' Compensation Coverage (Subchapter U), published in the February 15, 2013, issue of the *Texas Register.* Harmonization of these proposed sections with Subchapter U is beneficial because consistency whenever possible benefits both regulated entities and consumers. Because there are statutes that specifically govern utilization review for workers' compensation coverage, there are differences between Subchapter U and 28 TAC Chapter 19, Agent's Licensing,

Subchapter R, §§19.1701 - 19.1719, concerning Utilization Review for Health Care Provided Under a Health Benefit Plan or Health Insurance Policy (Subchapter R) as needed to implement and maintain consistency with the relevant statutes. However, because there are utilization review agents that might be subject to both subchapters and these proposed sections, the Division recognizes the importance of consistency for ease of interpretation and compliance. Uniform standards offer a more consistent and efficient utilization review process for enrollees and injured employees, who are equally entitled to the highest quality of utilization review. Furthermore, the proposed amendments to these sections are also important for reasons set out in the adoption order of 28 TAC Chapter 19, Agent's Licensing, Subchapter R, §§19.1701 - 19.1719, and Subchapter U, §§19.2001 - 19.2017, published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 892). The Division proposes these amendments in conjunction with its proposed amendments to 28 TAC §134.110, concerning Reimbursement of Injured Employee for Travel Expenses Incurred; §134.502, concerning Pharmaceutical Services; and §134.600, concerning Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care, published in this issue of the *Texas Register.*

Subchapter U became effective on February 20, 2013. The new sections in Subchapter U were necessary, in part, to: (1) implement House Bill (HB) 4290, 81st Legislature, Regular Session, effective September 1, 2009, which revised the definition of "utilization review" in Insurance Code Chapter 4201 to include retrospective reviews; and (2) make other changes necessary for clarity and effective implementation and enforcement of Insurance Code Chapter 4201.

Because the amendments to Subchapter U, in part, apply to retrospective utilization review and requests for reconsideration under the Texas Workers' Compensation Act, the Division proposes amendments to Chapter 133 to harmonize with newly adopted Subchapter U. Primarily, the Division's proposed amendments clarify that: (1) retrospective review of the medical necessity and appropriateness of a health care service is utilization review; (2) the insurance carrier must provide the requesting health care provider a reasonable opportunity to discuss the pending adverse determination, both, before the insurance carrier issues the adverse determination on the health care service after retrospective utilization review of the health care service and after a request for reconsideration (appeal) of the adverse determination; and (3) all utilization review under Chapter 133 must be performed by a utilization review agent that is certified by the Department to perform utilization review in accordance with Insurance Code Chapter 4201 and Subchapter U or by an insurance carrier registered with the Department to perform utilization review in accordance with Insurance Code Chapter 4201 and Subchapter U. Additionally, an amendment to §133.240 is proposed to correspond with the requirements in Insurance Code §1305.153(f) - (j) that was enacted by HB 3152, 83rd Legislature, Regular Session, effective September 1, 2013.

An informal draft of this proposal was published on the Division's website from July 29, 2013 to August 19, 2013 and the Division received and considered informal comments. Non-substantive changes have been made throughout proposed sections of text to conform to current nomenclature, re-letter and renumber, and correct typographical and grammatical errors. Non-substantive changes include changing the word "Division" to "division" and "Department" to "department."

Proposed Amended §133.2.

Proposed new §133.2(1) defines "adverse determination" which corresponds with the definition of the term in 28 TAC §19.2003(b)(1) concerning Definitions; however, this definition does deviate from the statutory definition of "adverse determination" in Insurance Code §4201.002(2). The Division must exclude "experimental or investigational services" from the definition of "adverse determination" because Labor Code §408.021 entitles an injured employee subject to either network coverage or non-network coverage to all heath care reasonably required by the nature of the injury as and when needed, including experimental and investigational health care services. Pursuant to Insurance Code §4201.054, Labor Code Title 5 prevails if it conflicts with Insurance Code Chapter 4201. The Division also notes that experimental or investigational health care services for injured employees subject to non-network coverage must be preauthorized pursuant to Labor Code §413.014.

Proposed new §133.2(8) defines "reasonable opportunity" which corresponds with the Department's definition of the term in §19.2003(b)(28) of this title.

Proposed amended §133.2(9) defines "retrospective utilization review" which corresponds with the definition of the term in 28 TAC §19.2003(b)(31).

Current §133.2(a)(8) is proposed for deletion because its provisions have expired. Labor Code §413.0115 provides a definition for "informal network" that became obsolete with the expiration of Labor Code §413.011(d-1). Labor Code §413.0115(b) states that "not later than January 1, 2011 each informal network or voluntary network must be certified as a workers' compensation health care network under Chapter 1305, Insurance Code." Labor Code §413.0115 also contains a definition for "voluntary network" which pertains to voluntary workers' compensation health care delivery networks established by insurance carriers under former Labor Code §408.0233, as that section existed before repeal by Chapter 265, Acts of the 79th Legislature, Regular Session.

The effective date in existing §133.2(b) is proposed for deletion because it is no longer necessary. Section 133.2 will become effective 20 days after the date it is filed in the office of the secretary of state in accordance with Government Code §2001.036.

Proposed Amended §133.240.

Proposed amendments to §133.240(e) clarify that the insurance carrier shall send the explanation of benefits to the injured employee when payment is denied because of an adverse determination. Proposed amended §133.240(e) deletes the phrase "determined to be unreasonable and/or unnecessary" and replaces it with the term "adverse determination" which corresponds with its definition 28 TAC §19.2003(b)(1) and proposed new §133.2(1). Further, Labor Code §408.027 contains requirements for the payment of health care providers by insurance carriers and provides that the "commissioner shall adopt rules as necessary to implement the provisions of this section and §408.0271."

Proposed amendments to §133.240(f)(16) add the requirement to include the name of a durable medical equipment or home health care services informal or voluntary network. The current rule already requires the name of a pharmacy informal or voluntary network to be included on the bill if applicable. The proposed amendments also add citations to Labor Code §408.0281 and §408.0284 because Labor Code §408.0281 provides a def-

inition for "informal network" and "voluntary network" which pertains to the provision of pharmaceutical services and was enacted by HB 528, 82nd Legislature, Regular Session, effective June 17, 2011. Labor Code §408.0284 provides a definition for "informal network" and "voluntary network" which pertains to the provision of durable medical equipment and home health care services and was enacted by Senate Bill (SB) 1322, 83rd Legislature, Regular Session, effective September 1, 2013.

Proposed amendments to §133.240(j) correspond with the requirement 28 TAC §19.2011(b) that if a request for reconsideration of an adverse determination is made, the request for reconsideration constitutes an appeal for the purposes of 28 TAC §19.2011(b).

Proposed amendments to §133.240(m) correspond with the requirements of Insurance Code §1305.153 and require that payment be made in accordance with that section. The amendments correspond with the requirements in Insurance Code §1305.153(f) - (j) that was enacted by HB 3152, 83rd Legislature, Regular Session, effective September 1, 2013.

Proposed new §133.240(q) provides that when denying payment due to an adverse determination, the insurance carrier shall comply with the requirements of 28 TAC §19.2009, concerning Notice of Determinations Made in Utilization Review and 28 TAC §19.2010, concerning Requirements Prior to Issuing an Adverse Determination. The Division clarifies that for retrospective review adverse determinations the notice of adverse determination required by 28 TAC §19.2009 may be satisfied by including the elements required in the notice in the explanation of benefits required by §133.240(f). This amendment is necessary to harmonize this section with the requirements in Subchapter U that insurance carriers provide health care providers a reasonable opportunity to discuss the plan of treatment for the injured employee and the pending adverse determination before issuing the adverse determination. Because proposed §133.240(q) pertains to retrospective utilization review, the words "billed health care" have been added to conform to the requirement that the health care providers have a reasonable opportunity to discuss the services under review with the insurance carriers since the services have already been provided. The term "reasonable opportunity" corresponds with the term's definition in 28 TAC §19.2003(b)(28).

The effective date of existing §133.240(q) is proposed for deletion because it is no longer necessary. Section 133.240 will become effective 20 days after the date it is filed in the office of the secretary of state in accordance with Government Code §2001.036.

Proposed Amended §133.250.

The word "written" has been added throughout this section to clarify when requirements apply to written requests for reconsideration.

Proposed amended §133.250(a) corresponds with Insurance Code §4201.354 which requires that the procedures for appealing an adverse determination must provide that the adverse determination may be appealed orally or in writing and is consistent with the requirements of Insurance Code §1305.354 for workers' compensation network coverage. Proposed amended §133.250(a) provides that if the health care provider is requesting reconsideration of a bill denied based on an adverse determination, the request for reconsideration constitutes an appeal for the purposes of 28 TAC §19.2011 and may be submitted orally or in writing. This proposed amendment is necessary to harmonize §133.250(a) with recently adopted 28 TAC §19.2011 and to clarify the application of those provisions in 28 TAC §19.2011 to this section.

Proposed new §133.250(e) provides minimum guidelines for oral requests for reconsideration following the denial of health care services based on an adverse determination and corresponds with Insurance Code §4201.354 and §1305.354 which require procedures for oral appeals of adverse determinations. This proposed amendment implements and maintains consistency with relevant statutes and Division sections and assists with ease of interpretation and compliance by system participants. Labor Code §402.00114 requires the Division to regulate and administer the business of workers' compensation in this state and ensure that Labor Code Title 5 and other laws regarding workers' compensation are executed. Labor Code §402.00116 requires the Commissioner of Workers' Compensation to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the Division. This proposed amendment ensures that Labor Code Title 5, Division sections, and other laws regarding workers' compensation are executed, administered, and enforced. An oral request for reconsideration must clearly identify the health care service(s) denied based on an adverse determination and include a substantive explanation in accordance with 28 TAC §133.3, concerning Communication Between Health Care Providers and Insurance Carriers, that provides a rational basis to modify the previous denial or payment. This requirement corresponds with Insurance Code §4201.054 which requires the commissioner of workers' compensation to regulate as provided by Insurance Code Chapter 4201 a person who performs utilization review of a medical benefit provided under Labor Code Title 5 and adopt rules as necessary to implement this section. This requirement complies with the requirement of Labor Code §402.021(b) that the workers' compensation system minimize the likelihood of disputes and resolve them promptly and fairly when identified. Not later than the fifth working day after the date of receipt of the request for reconsideration, the insurance carrier must send to the requesting party a letter acknowledging the date of the receipt of the oral request that includes a reasonable list of documents the requesting party is required to submit. This requirement corresponds with Insurance Code §4201.355 which requires that within five working days from the date the utilization review agent receives the appeal, the agent shall send to the appealing party a letter acknowledging the date of receipt and include a list of documents the appealing party must submit for review. This requirement also corresponds with Insurance Code §1305.354 which pertains to the reconsideration of adverse determinations by workers' compensation health care networks that requires that not later than the fifth calendar day after the date of receipt of the request, the network shall send to the requesting party a letter acknowledging the date of the receipt of the request that includes a reasonable list of document the requesting party is required to submit. This amendment is necessary to align this proposed section with 28 TAC §19.2011(a)(3) which provides that an injured employee, the injured employee's representative, or the provider of record may appeal the adverse determination orally or in writing. This amendment is also consistent with 28 TAC §10.103 concerning workers' compensation network requests for reconsideration. Proposed §133.250(e) also provides for a delayed effective date to allow time for insurance carriers to update their procedures.

Proposed added §133.250(k) provides that in any instance where the insurance carrier is questioning the medical necessity

or appropriateness of the health care services, the insurance carrier shall comply with the requirements of 28 TAC §19.2010 and §19.2011, including the requirement that prior to issuance of an adverse determination on the request for reconsideration the insurance carrier shall afford the health care provider a reasonable opportunity to discuss the plan of treatment for the injured employee with a doctor or, in cases of a dental plan or chiropractic services, with a dentist or chiropractor, respectively. Insurance Code §1305.354(a)(3) provides, in part, that "not later than the fifth calendar day after the date of receipt of the request, the network shall send to the requesting party a letter acknowledging the date of the receipt of the request that includes a reasonable list of documents the requesting party is required to submit..." This amendment is necessary to clarify that the reasonable opportunity to discuss a pending adverse determination required by recently adopted 28 TAC §19.2011 applies to the issuance of adverse determinations on requests for reconsideration. Additionally, the Division clarifies that the doctors, dentists, and chiropractors that discuss pending adverse determinations with health care providers must meet the requirements of Labor Code §§408.0043, 408.0044, and 408.0045, respectively. Because proposed §133.250(k) pertains to retrospective utilization review, the words "billed health care" have been added to conform to the requirement that the health care providers have a reasonable opportunity to discuss the services under review with the insurance carriers since the services have already been provided. These conforming changes will enable the monitoring of whether a reasonable opportunity for discussion was offered and collecting of information on peer-to-peer discussion results to ensure compliance with Subchapter U and the Division's applicable rule requirements.

The effective date in existing §133.250(j) is proposed for deletion because it is no longer necessary. With the exception of proposed §133.250(e), this section will become effective 20 days after the date it is filed in the office of the secretary of state in accordance with Government Code §2001.036. Proposed §133.250(e) will apply to oral requests made on or after six months from the effective date of §133.250.

Proposed Amended §133.305.

The definition for "adverse determination in §133.305(a)(1) is proposed for deletion because the definition is in proposed §133.2(1) and is applicable to all of 28 TAC Chapter 133.

Proposed amended §133.305(a)(6) adds citations to Labor Code §408.0281 and §408.0284 because Labor Code §408.0281 provides a definition for "informal network" and "voluntary network" which pertains to the provision of pharmaceutical services and was enacted by HB 528, 82nd Legislature, Regular Session, effective June 17, 2011. Labor Code §408.0284 provides a definition for "informal network" and "voluntary network" which pertains to the provision of durable medical equipment and home health care services and was enacted by Senate Bill (SB) 1322, 83rd Legislature, Regular Session, effective September 1, 2013.

Proposed amended §133.305(a)(7) adds the word "utilization" for clarity. Additionally, the title of §133.308 is updated to correctly reflect its existing title.

The effective date in existing §133.305(f) is proposed for deletion because it is no longer necessary. Section 133.305 will become effective 20 days after the date it is filed in the office of the secretary of state in accordance with Government Code §2001.036.

Matthew Zurek, Executive Deputy Commissioner of Health Care Management and System Monitoring, has determined that for each year of the first five years the proposed sections will be in effect there will be minimal fiscal implications to state or local governments as a result of enforcing or administering the proposed sections. There also will be no measurable effect on local employment or the local economy as a result of the proposed rules.

Mr. Zurek has determined that for each year of the first five years the sections are in effect, the public benefit as a result of the proposed amendments will be the updating of Division rules to comply or harmonize with provisions of Insurance Code Chapters 1305 and 4201 and to implement provisions of HB 528, HB 3152, HB 4290, and SB 1322. These amendments will result in a clearer, more consistent regulatory framework and, therefore, in better and more efficient compliance by system participants. Because the costs relating to the requirements in proposed amended §§133.2, 133.240, 133.250, and 133.305 are a result of the enactment of HB 4290, existing statutory requirements, and existing regulatory requirements in 28 TAC Chapter 19, Subchapter U, any additional costs of compliance are not the result of the proposed rules. The Division agrees with the Department's costs associated with complying with the requirements of 28 TAC Chapter 19, Subchapter U are detailed in the proposal of 28 TAC Chapter 19, Agent's Licensing, Subchapter R, §§19.1701 - 19.1719, and Subchapter U, §§19.2001 - 19.2017, published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6466), and are applicable to proposed amended §§133.2, 133.240, 133.250, and 133.305. The information in proposed §133.250(e) is required under existing Insurance Code §4201.354. The Division does not add any additional costs except for the following letter described for §133.250(e). Proposed §133.250(e) requires the insurance carrier to send to the requesting party a letter acknowledging the date of receipt of the oral request that includes a reasonable list of documents the requesting party is required to submit. The Division anticipates the insurance carrier may incur costs associated with the printing and mailing of the acknowledgment letter. The Division estimates that the cost of printing could range from approximately six to eight cents per page for printing and paper. The Division anticipates that the entity required to comply with a proposed provision will have the information necessary to determine its individual cost, including the number of pages that will need to be printed, and whether in-house printing costs or out-of-house printing costs will be incurred. According to the U.S. Postal Service business price calculator, available at: http://dbcalc.usps.gov/, the cost to mail machinable letters in a standard business mail envelope with a weight limit of 3.3 ounces to a standard five-digit ZIP code in the United States is 27 cents. With the weight limit of 3.3 ounces, approximately 18 pages could be sent per envelope for the 27-cent cost; this estimate is based on six pages of standard 20 lb. printing paper, which weighs one ounce. The Division has determined that the cost of a standard business envelope is two cents. Accordingly, for each additional mailing that does not exceed 18 pages, it is estimated that the total mailing cost would be no more than 29 cents. The Division anticipates that the individual or entity required to comply with a proposed provision will have the information necessary to determine its individual cost, including the number of mailing and the number of pages to be mailed.

As required by the Government Code §2006.002(c), the Division has determined that the proposal will not have an adverse economic effect on small and micro-businesses that qualify as small or micro-businesses for the purposes of Government §2006.001.

Additionally, the cost of compliance with the proposal will not vary between large businesses

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

REQUEST FOR PUBLIC COMMENT.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on December 2, 2013. Comments may be submitted via the internet through the Division's website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

A request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. CST by the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

SUBCHAPTER A. GENERAL RULES FOR MEDICAL BILLING AND PROCESSING

28 TAC §133.2

The amendments are proposed under Labor Code §§401.011(42-a), 402.00111, 402.00128, 402.061, 408.021, 408.027, 413.011, 413.0115, 413.014; Insurance Code §§4201.002, 4201.206, 4201.054; and Government Code §2001.036.

Labor Code §401.011(42-a) provides that "utilization review" has the meaning assigned by Chapter 4201, Insurance Code. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. 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. Section 408.021, in part, entitles an employee who sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed and specifically entitles the employee to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Section 408.027 provides requirements for payment of health care providers by insurance carriers and requires the commissioner to adopt rules as necessary to implement the provisions of §408.027 and §408.0271. Section 413.0115 defines "informal network" to mean a health care provider network described by §413.011(d-1). Section 413.0115 also provides that "voluntary network" means a voluntary workers' compensation health care delivery network established by an insurance carrier under former Labor Code §408.0223, as that section existed before repeal by Chapter 265, Acts of the 79th Legislature, Regular Session, 2005. Section 413.014 provides, in part, that division rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for any investigational or experimental services or devices.

Insurance Code §4201.002 provides definitions related to utilization review agents, including the definition of "adverse determination", "utilization review", and "utilization review agent." Section 4201.206 provides that subject to the notice requirements of Chapter 4201, Subchapter G, before an adverse determination is issued by a utilization review agent who questions the medical necessity or appropriateness, or the experimental or investigational nature, of a health care service, the agent shall provide the health care provider who ordered the service a reasonable opportunity to discuss with a physician the patient's treatment plan and the clinical basis for the agent's determination. Section 4201.054 provides that Title 5, Labor Code, prevails in the event of a conflict between Chapter 4201 and Title 5, Labor Code.

Government Code §2001.036 provides, in part, that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state.

The following statutes are affected by this proposal: §133.2 - Labor Code §§401.011(42-a), 408.021, 408.027, 413.011, 413.0115, 413.014; Insurance Code §§4201.002, 4201.206, 4201.054; and Government Code §2001.036.

§133.2. Definitions.

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

(1) Adverse determination--A determination by a utilization review agent made on behalf of a payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the failure to request prospective or concurrent utilization review. An adverse determination does not include a determination that health care services are experimental or investigational.

(2) [~~(1)~~] Agent--A person whom a system participant utilizes or contracts with for the purpose of providing claims service or fulfilling medical bill processing obligations under Labor Code, Title 5 and rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent. This definition does not apply to "agent" as used in the term "pharmacy processing agent."

(3) [~~(2)~~] Bill review--Review of any aspect of a medical bill, including retrospective review, in accordance with the Labor Code, the Insurance Code, division [~~Division~~] or department [~~Department~~] rules, and the appropriate fee and treatment guidelines.

(4) [~~(3)~~] Complete medical bill--A medical bill that contains all required fields as set forth in the billing instructions for the appropriate form specified in §133.10 of this chapter (relating to Required Billing Forms/Formats), or as specified for electronic medical bills in §133.500 of this chapter (relating to Electronic Formats for Electronic Medical Bill Processing).

(5) [~~(4)~~] Emergency--Either a medical or mental health emergency as follows:

(A) a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

(i) placing the patient's health or bodily functions in serious jeopardy, or

(ii) serious dysfunction of any body organ or part;

(B) a mental health emergency is a condition that could reasonably be expected to present danger to the person experiencing the mental health condition or another person.

(6) [~~(5)~~] Final action on a medical bill--

(A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or

(B) denying a charge on the medical bill.

(7) [~~(6)~~] Pharmacy processing agent--A person or entity that contracts with a pharmacy in accordance with Labor Code §413.0111, establishing an agent or assignee relationship, to process claims and act on behalf of the pharmacy under the terms and conditions of a contract related to services being billed. Such contracts may permit the agent or assignee to submit billings, request reconsideration, receive reimbursement, and seek medical dispute resolution for the pharmacy services billed.

(8) Reasonable opportunity--At least one documented good faith attempt to contact the provider of record that provides an opportunity for the provider of record to discuss the services under review with the utilization review agent during normal business hours prior to issuing a prospective, concurrent, or retrospective utilization review adverse determination:

(A) no less than one working day prior to issuing a prospective utilization review adverse determination;

(B) no less than five working days prior to issuing a retrospective utilization review adverse determination; or

(C) prior to issuing a concurrent or post-stabilization review adverse determination.

(9) Retrospective utilization review--A form of utilization review for health care services that have been provided to an injured employee. Retrospective utilization review does not include review of services for which prospective or concurrent utilization reviews were previously conducted or should have been previously conducted.

[~~(7) Retrospective review--The process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.~~]

[~~(8) In this chapter, the following terms have the meanings assigned by Labor Code §413.0115:~~]

[~~(A) Voluntary networks; and~~]

[~~(B) Informal networks.~~]

[~~(b) This section is effective July 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 October 21, 2013.

TRD-201304772

Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 804-4703

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SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER

28 TAC §133.240, §133.250

The amendments are proposed under Labor Code §§402.00111, 402.00128, 402.061, 408.0043, 408.0044, 408.0045, 408.027, 408.0281 and 408.0284; Insurance Code §§1305.153, 1305.354, 4201.354, 4201.355; and Government Code §2001.036.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. 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. Section 408.0043 provides in part that a person, other than a chiropractor or a dentist, who performs health care services as a doctor performing a utilization review of a health care service provided to an injured employee who reviews a specific workers' compensation case must hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving. Section 408.0044 provides, in part, that a dentist performing a utilization review of a dental service provided to an injured employee in conjunction with a specific workers' compensation case must be licensed to practice dentistry. Section 408.0045 provides, in part, that a chiropractor performing a utilization review of a chiropractic service provided to an injured employee in conjunction with a specific workers' compensation case must be licensed to engage in the practice of chiropractic. Section 408.027 provides requirements for payment of health care providers by insurance carriers and requires the commissioner to adopt rules as necessary to implement the provisions of §408.027 and §408.0271. Section 408.0281 defines "informal network" and "voluntary network" for the provision of pharmaceutical services. Section 408.0284 defines "informal network" and "voluntary network" for the provision of durable medical equipment or home health care services.

Insurance Code §1305.153 concerns provider reimbursement in workers' compensation health care networks and provides requirements for contracts and contractual disclosures when a person is serving as both a management contractor or a third party to which the certified network delegates a function and as an agent of the health care provider. Section 1305.354 concerns reconsideration of adverse determinations by workers' compensation health care networks and provides, in part, requirements for the written reconsideration procedures that utilization review agents shall maintain and make available. Section 4201.002 provides definitions related to utilization review agents, including the definition of "adverse determination" and "utilization review agent." Section 4201.354 provides, in part, that adverse determinations may be appealed orally or in writing by an enrollee,

a person acting on the enrollee's behalf, or the enrollee's physician or other health care provider. Section 4201.355 provides, in part, that the procedures for appealing an adverse determination must provide that, within five working days from the date the utilization review agent receives the appeal, the agent shall send to the appealing party a letter acknowledging the date of receipt and the letter must also include a list of the documents that the appealing party must submit for review.

Government Code §2001.036 provides, in part, that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state, except that if a later date is required by statute or specified in the rule, the later date is the effective date.

The following statutes are affected by this proposal: §133.240 - Labor Code §§408.027, 408.0281 and 408.0284; Insurance Code §1305.153; and Government Code §2001.036; and §133.250 - Labor Code §§408.0043, 408.0044 and 408.0045; Insurance Code §§1305.354, 4201.354, 4201.355; and Government Code §2001.036.

§133.240. Medical Payments and Denials.

(a) An insurance carrier shall take final action after conducting bill review on a complete medical bill, or determine to audit the medical bill in accordance with §133.230 of this chapter (relating to Insurance Carrier Audit of a Medical Bill), not later than the 45th day after the date the insurance carrier received a complete medical bill. An insurance carrier's deadline to make or deny payment on a bill is not extended as a result of a pending request for additional documentation.

(b) For health care provided to injured employees not subject to a workers' compensation health care network established under Insurance Code Chapter 1305, the insurance carrier shall not deny reimbursement based on medical necessity for health care preauthorized or voluntarily certified under Chapter 134 of this title (relating to Benefits--Guidelines for Medical Services, Charges, and Payments). For pharmaceutical services provided to any injured employee, the insurance carrier shall not deny reimbursement based on medical necessity for pharmaceutical services preauthorized or agreed to under Chapter 134, Subchapter F of this title (relating to Pharmaceutical Benefits).

(c) The insurance carrier shall not change a billing code on a medical bill or reimburse health care at another billing code's value.

(d) The insurance carrier may request additional documentation, in accordance with §133.210 of this chapter (relating to Medical Documentation), not later than the 45th day after receipt of the medical bill to clarify the health care provider's charges.

(e) The insurance carrier shall send the explanation of benefits in accordance with the elements required by §133.500 and §133.501 of this title (relating to Electronic Formats for Electronic Medical Bill Processing and Electronic Medical Bill Processing, respectively) if the insurance carrier submits the explanation of benefits in the form of an electronic remittance. The insurance carrier shall send an explanation of benefits in accordance with subsection (f) of this section if the insurance carrier submits the explanation of benefits in paper form. The explanation of benefits shall be sent to:

(1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill; and

(2) the injured employee when payment is denied because [~~the health care was~~]:

(A) of an adverse determination [~~determined to be unreasonable and/or unnecessary~~];

(B) the health care was provided by a health care provider other than:

(i) the treating doctor selected in accordance with Labor Code §408.022;

(ii) a health care provider that the treating doctor has chosen as a consulting or referral health care provider;

(iii) a doctor performing a required medical examination in accordance with §126.5 of this title (relating to Entitlement and Procedure for Requesting Required Medical Examinations) and §126.6 of this title (relating to Required Medical Examination);

(iv) a doctor performing a designated doctor examination in accordance with Labor Code §408.0041; or

(C) the health care was unrelated to the compensable injury, in accordance with §124.2 of this title (relating to Carrier Reporting and Notification Requirements).

(3) the prescribing doctor, if different from the health care provider identified in paragraph (1) of this subsection, when payment is denied for pharmaceutical services because of any reason relating to the compensability of, liability for, extent of, or relatedness to the compensable injury, or for reasons relating to the reasonableness or medical necessity of the pharmaceutical services.

(f) The paper form of an explanation of benefits under subsection (e) of this section, §133.250 of this title (relating to Reconsideration for Payment of Medical Bills), or §133.260 of this title (relating to Refunds) shall include the following elements:

(1) division claim number, if known;

(2) insurance carrier claim number;

(3) injured employee's name;

(4) last four digits of injured employee's social security number;

(5) date of injury;

(6) health care provider's name and address;

(7) health care provider's federal tax ID or national provider identifier if the health care provider's federal tax ID is the same as the health care provider's social security number;

(8) patient control number if included on the submitted medical bill;

(9) insurance carrier's name and address;

(10) insurance carrier control number;

(11) date of bill review/refund request;

(12) diagnosis code(s);

(13) name and address of company performing bill review;

(14) name and telephone number of bill review contact;

(15) workers' compensation health care network name (if applicable);

(16) pharmacy, durable medical equipment, or home health care services informal or voluntary network name (if applicable) pursuant to Labor Code §408.0281 and §408.0284;

(17) health care service information for each billed health care service, to include:

(A) date of service;

(B) the CPT, HCPCS, NDC, or other applicable product or service code;

(C) CPT, HCPCS, NDC, or other applicable product or service code description;

(D) amount charged;

(E) unit(s) of service;

(F) amount paid;

(G) adjustment reason code that conforms to the standards described in §133.500 and §133.501 of this title if total amount paid does not equal total amount charged;

(H) explanation of the reason for reduction/denial if the adjustment reason code was included under subparagraph (G) of this paragraph and if applicable;

(18) a statement that contains the following text: "Health care providers shall not bill any unpaid amounts to the injured employee or the employer, or make any attempt to collect the unpaid amount from the injured employee or the employer unless the injury is finally adjudicated not to be compensable, or the insurance carrier is relieved of the liability under Labor Code §408.024. However, pursuant to §133.250 of this title, the health care provider may file an appeal with the insurance carrier if the health care provider disagrees with the insurance carrier's determination";

(19) if the insurance carrier is requesting a refund, the refund amount being requested and an explanation of why the refund is being requested; and

(20) if the insurance carrier is paying interest in accordance with §134.130 of this title (relating to Interest for Late Payment on Medical Bills and Refunds), the interest amount paid through use of an unspecified product or service code and the number of days on which interest was calculated by using a unit per day.

(g) When the insurance carrier pays a health care provider for health care for which the division has not established a maximum allowable reimbursement, the insurance carrier shall explain and document the method it used to calculate the payment in accordance with §134.1 of this title (relating to Medical Reimbursement) or §134.503 of this title (relating to Pharmacy Fee Guideline).

(h) An insurance carrier shall have filed, or shall concurrently file, the applicable notice required by Labor Code §409.021, and §124.2 and §124.3 of this title (relating to Investigation of an Injury and Notice of Denial/Dispute) if the insurance carrier reduces or denies payment for health care provided based solely on the insurance carrier's belief that:

(1) the injury is not compensable;

(2) the insurance carrier is not liable for the injury due to lack of insurance coverage; or

(3) the condition for which the health care was provided was not related to the compensable injury.

(i) If dissatisfied with the insurance carrier's final action, the health care provider may request reconsideration of the bill in accordance with §133.250 of this title.

(j) If the health care provider is requesting reconsideration of an adverse determination, the request for reconsideration constitutes an appeal for the purposes of §19.2011 of this title (relating to Written Procedures for Appeal of Adverse Determinations). If dissatisfied with the reconsideration outcome, the health care provider may request medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills).

(k) Health care providers, injured employees, employers, attorneys, and other participants in the system shall not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an explanation of benefits except as provided in §133.250 and Chapter 133, Subchapter D of this title.

(l) All payments of medical bills that an insurance carrier makes on or after the 60th day after the date the insurance carrier originally received the complete medical bill shall include interest calculated in accordance with §134.130 of this title without any action taken by the division. The interest payment shall be paid at the same time as the medical bill payment.

(m) Except as provided by Insurance Code §1305.153, when [~~When~~] an insurance carrier remits payment to a health care provider agent, the agent shall remit to the health care provider the full amount that the insurance carrier reimburses. If the insurance carrier remits payment under Insurance Code §1305.153, then the payment must be made in accordance with that section.

(n) When an insurance carrier remits payment to a pharmacy processing agent, the pharmacy processing agent's reimbursement from the insurance carrier shall be made in accordance with §134.503 of this title. The pharmacy's reimbursement shall be made in accordance with the terms of its contract with the pharmacy processing agent.

(o) An insurance carrier commits an administrative violation if the insurance carrier fails to pay, reduce, deny, or notify the health care provider of the intent to audit a medical bill in accordance with Labor Code §408.027 and division rules.

(p) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title. Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.

(q) When denying payment due to an adverse determination under this section, the insurance carrier shall comply with the requirements of §19.2009 of this title (relating to Notice of Determinations Made in Utilization Review). Additionally, in any instance where the insurance carrier is questioning the medical necessity or appropriateness of the health care services, the insurance carrier shall comply with the requirements of §19.2010 of this title (relating to Requirements Prior to Issuing Adverse Determination), including the requirement that prior to issuance of an adverse determination the insurance carrier shall afford the health care provider a reasonable opportunity to discuss the billed health care with a doctor or, in cases of a dental plan or chiropractic services, with a dentist or chiropractor, respectively.

[~~(q) This section is effective July 1, 2012.~~]

§133.250. Reconsideration for Payment of Medical Bills.

(a) If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill, the health care provider may request that the insurance carrier reconsider its action. If the health care provider is requesting reconsideration of a bill denied based on an adverse determination, the request for reconsideration constitutes an appeal for the purposes of §19.2011 of this title (relating to Written

Procedures for Appeal of Adverse Determinations) and may be submitted orally or in writing.

(b) The health care provider shall submit the request for reconsideration no later than 10 months from the date of service.

(c) A health care provider shall not submit a request for reconsideration until:

(1) the insurance carrier has taken final action on a medical bill; or

(2) the health care provider has not received an explanation of benefits within 50 days from submitting the medical bill to the insurance carrier.

(d) A written [~~The~~] request for reconsideration shall:

(1) reference the original bill and include the same billing codes, date(s) of service, and dollar amounts as the original bill;

(2) include a copy of the original explanation of benefits, if received, or documentation that a request for an explanation of benefits was submitted to the insurance carrier;

(3) include any necessary and related documentation not submitted with the original medical bill to support the health care provider's position; and

(4) include a bill-specific, substantive explanation in accordance with §133.3 of this title (relating to Communication Between Health Care Providers and Insurance Carriers) that provides a rational basis to modify the previous denial or payment.

(e) An oral request for reconsideration must clearly identify the health care service(s) denied based on an adverse determination and include a substantive explanation in accordance with §133.3 of this title that provides a rational basis to modify the previous denial or payment. Not later than the fifth working day after the date of receipt of the request for reconsideration, the insurance carrier must send to the requesting party a letter acknowledging the date of the receipt of the oral request that includes a reasonable list of documents the requesting party is required to submit. This subsection applies to reconsideration requests made on or after six months from the effective date of this rule.

(f) [~~(e)~~] An insurance carrier shall review all written reconsideration requests for completeness in accordance with subsection (d) of this section and may return an incomplete written reconsideration request no later than seven days from the date of receipt. A health care provider may complete and resubmit its written request to the insurance carrier.

(g) [~~(f)~~] The insurance carrier shall take final action on a reconsideration request within 30 days of receiving the request for reconsideration. The insurance carrier shall provide an explanation of benefits:

(1) in accordance with §133.240(e) - (f) of this title (relating to Medical Payments and Denials) for all items included in a reconsideration request in the form and format prescribed by the division when there is a change in the original, final action; or

(2) in accordance with [~~of~~] §133.240(e)(1) and §133.240(f) of this title when there is no change in the original, final action.

(h) [~~(g)~~] A health care provider shall not resubmit a request for reconsideration earlier than 35 days from the date the insurance carrier received the original request for reconsideration or after the insurance carrier has taken final action on the reconsideration request.

(i) [~~(h)~~] If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill after reconsideration, the health care provider may request medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills).

(j) [~~(i)~~] For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with, or a utilization review agent that is certified by, the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title. Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.

(k) In any instance where the insurance carrier is questioning the medical necessity or appropriateness of the health care services, the insurance carrier shall comply with the requirements of §19.2010 of this title (relating to Requirements Prior to Adverse Determination) and §19.2011 of this title, including the requirement that prior to issuance of an adverse determination on the request for reconsideration the insurance carrier shall afford the health care provider a reasonable opportunity to discuss the billed health care with a doctor or, in cases of a dental plan or chiropractic services, with a dentist or chiropractor, respectively.

[~~(j) This section is effective July 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.

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Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

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SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §133.305

The amendments are proposed under Labor Code §§402.00111, 402.00128, 402.061, 408.0281, 408.0284, 413.011, 413.0115; and Government Code §2001.036.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. 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. Section 408.0281 concerns reimbursement for pharmaceutical services and, in part, defines "informal network" and "voluntary network" for the provision of pharmaceutical services. Section 408.0284 concerns reimbursement for durable medical equipment and home health care services

and defines, in part, "informal network" and "voluntary network" for the provision of durable medical equipment or home health care services. Section 413.011 provides requirements for reimbursement policies and guidelines, treatment guidelines and protocols, subsections (d-1) - (d-3) of this section have expired. Section 413.0115 concerns requirements for certain voluntary or informal networks and provides, in part, that "informal network" means a health care provider network described by §413.011(d-1). Section 413.0115 also provides, in part that "voluntary network" means a voluntary workers' compensation health care delivery network established by an insurance carrier under former Labor Code §408.0223, as that section existed before repeal by Chapter 265, Acts of the 79th Legislature, Regular Session, 2005.

Government Code §2001.036 provides, in part, that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state.

The following statute is affected by this proposal: §133.305 - Labor Code §§408.0281, 408.0284, 413.011, 413.0115; and Government Code §2001.036.

§133.305. MDR-General.

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

[~~(1) Adverse determination--A determination by a utilization review agent that the health care services furnished or proposed to be furnished to a patient are not medically necessary, as defined in Insurance Code §4201.002.~~]

(1) [~~(2)~~] First responder--As defined in Labor Code §504.055(a).

(2) [~~(3)~~] Life-threatening--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted, as defined in Insurance Code §4201.002.

(3) [~~(4)~~] Medical dispute resolution (MDR)--A process for resolution of one or more of the following disputes:

(A) a medical fee dispute; or

(B) a medical necessity dispute, which may be:

(i) a preauthorization or concurrent medical necessity dispute; or

(ii) a retrospective medical necessity dispute.

(4) [~~(5)~~] Medical fee dispute--A dispute that involves an amount of payment for non-network health care rendered to an injured employee that has been determined to be medically necessary and appropriate for treatment of that injured employee's compensable injury. The dispute is resolved by the division pursuant to division rules, including §133.307 of this title (relating to MDR of Fee Disputes). The following types of disputes can be a medical fee dispute:

(A) a health care provider, or a qualified pharmacy processing agent as described in Labor Code §413.0111, dispute of an insurance carrier reduction or denial of a medical bill;

(B) an injured employee dispute of reduction or denial of a refund request for health care charges paid by the injured employee; and

(C) a health care provider dispute regarding the results of a division or insurance carrier audit or review which requires the health care provider to refund an amount for health care services previously paid by the insurance carrier.

(5) [~~(6)~~] Network health care--Health care delivered or arranged by a certified workers' compensation health care network, including authorized out-of-network care, as defined in Insurance Code Chapter 1305 and related rules.

(6) [~~(7)~~] Non-network health care--Health care not delivered or arranged by a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 and related rules. "Non-network health care" includes health care delivered pursuant to Labor Code §408.0281 and §408.0284 [~~§413.011(d-1) and §413.0115~~].

(7) [~~(8)~~] Preauthorization or concurrent medical necessity dispute--A dispute that involves a review of adverse determination of network or non-network health care requiring preauthorization or concurrent utilization review. The dispute is reviewed by an independent review organization (IRO) pursuant to the Insurance Code, the Labor Code and related rules, including §133.308 of this title (relating to MDR of Medical Necessity Disputes [~~by Independent Review Organizations~~]).

(8) [~~(9)~~] Requestor--The party that timely files a request for medical dispute resolution with the division; the party seeking relief in medical dispute resolution.

(9) [~~(10)~~] Respondent--The party against whom relief is sought.

(10) [~~(11)~~] Retrospective medical necessity dispute--A dispute that involves a review of the medical necessity of health care already provided. The dispute is reviewed by an IRO pursuant to the Insurance Code, Labor Code and related rules, including §133.308 of this title.

(11) [~~(12)~~] Serious bodily injury--As defined by §1.07, Penal Code.

(b) Dispute Sequence. If a dispute regarding compensability, extent of injury, liability, or medical necessity exists for the same service for which there is a medical fee dispute, the disputes regarding compensability, extent of injury, liability, or medical necessity shall be resolved prior to the submission of a medical fee dispute for the same services in accordance with Labor Code §413.031 and §408.021.

(c) Division Administrative Fee. The division may assess a fee, as published on the division's website, in accordance with Labor Code §413.020 when resolving disputes pursuant to §133.307 and §133.308 of this title if the decision indicates the following:

(1) the health care provider billed an amount in conflict with division rules, including billing rules, fee guidelines or treatment guidelines;

(2) the insurance carrier denied or reduced payment in conflict with division rules, including reimbursement or audit rules, fee guidelines or treatment guidelines;

(3) the insurance carrier has reduced the payment based on a contracted discount rate with the health care provider but has not made the contract or the health care provider notice required under Labor Code §408.0281 available upon the division's request;

(4) the insurance carrier has reduced or denied payment based on a contract that indicates the direction or management of health care through a health care provider arrangement that has not been certified as a workers' compensation network, in accordance with Insurance Code Chapter 1305 or through a health care provider arrangement authorized under Labor Code §504.053(b)(2); or

(5) the insurance carrier or healthcare provider did not comply with a provision of the Insurance Code, Labor Code or related rules.

(d) Confidentiality. Any documentation exchanged by the parties during MDR that contains information regarding a patient other than the injured employee for that claim must be redacted by the party submitting the documentation to remove any information that identifies that patient.

(e) Severability. If a court of competent jurisdiction holds that any provision of §§133.305, 133.307, or 133.308 of this title is inconsistent with any statutes of this state, unconstitutional, or invalid for any reason, the remaining provisions of these sections remain in full effect.

~~[(f) This section is effective July 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.

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Dirk Johnson
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Texas Department of Insurance, Division of Workers' Compensation
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CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §§134.110, 134.502, and 134.600, concerning guidelines for medical services, charges and payments. These amendments are primarily necessary to harmonize and make conforming changes to these sections with the Department's recently adopted amendments to 28 Texas Administrative Code (TAC) Chapter 19, Agent's Licensing, Subchapter U, §§19.2001 - 19.2017, concerning Utilization Reviews for Health Care Provided Under Workers' Compensation Coverage (Subchapter U), adopted and published in the February 15, 2013, issue of the *Texas Register.* Harmonization of these proposed sections with Subchapter U is beneficial because consistency whenever possible benefits both regulated entities and consumers. Because there are statutes that specifically govern utilization review for workers' compensation coverage, there are differences between Subchapter U and 28 TAC Chapter 19, Agent's Licensing, Subchapter R, §§19.1701 - 19.1719, concerning Utilization Review for Health Care Provided Under a Health Benefit Plan or Health Insurance Policy (Subchapter R) as needed to implement and maintain consistency with the relevant statutes. However, because there are utilization review agents that might be subject to both subchapters and these proposed sections, the Division recognizes the importance of consistency for ease of interpretation and compliance. Uniform standards offer a more consistent and efficient utilization review process for enrollees and injured employees, who are equally entitled to the highest quality of utilization review. Furthermore, the proposed amendments to these sections are also important for reasons set out in the adoption order of 28 TAC Chapter 19, Agent's Licensing, Subchapter R, §§19.1701 - 19.1719, and Subchapter U, §§19.2001 - 19.2017, published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 892). The Division proposes these amendments in conjunction with its proposed amendments to 28 TAC §133.2, concerning Definitions; §133.240, concerning Medical Payments and Denials; 133.250, concerning Reconsideration for Payment of Medical Bills; and §133.305, concerning MDR-General, published in this issue of the *Texas Register.*

Labor Code §402.00116, concerning Chief Executive, requires the Division to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the Division. The amendments to these proposed rules related to Subchapter U are necessary for the Division to comply with the requirement of Labor Code §413.00114 to regulate and administer the business of workers' compensation in this state and ensure that Labor Code Title 5 and other laws regarding workers' compensation are executed. Additionally, Labor Code §402.00116 requires the Division to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the Division.

Subchapter U became effective on February 20, 2013. The new sections in Subchapter U were necessary, in part, to: (1) implement House Bill (HB) 4290, 81st Legislature, Regular Session, effective September 1, 2009, which revised the definition of "utilization review" in Insurance Code Chapter 4201 to include retrospective reviews; and (2) make other changes necessary for clarity and effective implementation and enforcement of Insurance Code Chapter 4201.

Because the amendments to Subchapter U, in part, apply to prospective and concurrent utilization review and requests for reconsideration under the Texas Workers' Compensation Act, the Division proposes these amendments to §134.600 to harmonize with newly adopted Subchapter U. Primarily, the Division proposes these amendments to: (1) define and incorporate current procedural requirements concerning "adverse determinations" and "reasonable opportunity" and (2) reference the requirements for specifically complying with 28 TAC §19.2009 concerning Notice of Determinations Made in Utilization Review which requires the insurance carrier to include the preauthorization approval number in an approval; §19.2010 concerning Requirements Prior to Issuing Adverse Determination; §19.2011 concerning Written Procedures for Appeal of Adverse Determinations; and §19.2012 concerning URA's Telephone Access and Procedures for Certain Drug Requests and Post-Stabilization Care; all of which address the requirements of issuing an adverse determination.

The Division proposes amendments to §134.110 that are necessary to update this section to conform to other Division rules and Labor Code §408.004 and §408.0041.

The Division also proposes amendments to §134.502 that are necessary to update the language to correspond to the meaning of "adverse determination" in 28 TAC §19.2003(b)(1) concerning Definitions and update the rule to conform to other Division rules and statutes.

An informal draft of this proposal was published on the Division's website from July 29, 2013 to August 19, 2013 and the Division received and considered informal comments. Non-substantive changes have been made throughout the rule text to conform to current nomenclature, re-letter and renumber, and correct typographical and grammatical errors. Non-substantive changes include adding the word "insurance" to "carrier," "injured" to "em-

ployee," and deleting the word "Texas" prior to the term "Labor Code."

Proposed Amended §134.110.

Proposed amended §134.110(a)(2) clarifies that an injured employee may request reimbursement from the insurance carrier if the injured employee has incurred travel expenses when the distance traveled to attend a designated doctor examination, required medical examination, or post designated doctor treating or referral doctor examination is greater than 30 miles one-way. Proposed amended §134.110(a)(2) aligns with the provisions in 28 TAC §126.6 and §126.17, concerning Required Medical Examination and Guidelines for Examination by a Treating Doctor or Referral Doctor After a Designated Doctor Examination to Address Issues Other Than Certification of Maximum Medical Improvement and the Evaluation of Permanent Impairment, respectively, and Labor Code §408.004 and §408.0041. 28 TAC §126.6 requires injured employees to submit to required medical examinations and requires insurance carriers to pay for reasonable travel expenses incurred by the employees in submitting to required medical examinations, as specified in 28 TAC Chapter 134 concerning Benefits--Guidelines for Medical Services, Charges, and Payments. 28 TAC §126.17 requires the insurance carriers to reimburse injured employees for all reasonable travel expenses as specified in 28 TAC Chapter 134, Subchapter B, concerning Miscellaneous Reimbursement. Labor Code §408.004(c) pertains to medical examinations that injured employees may be required to submit to and requires insurance carriers pay for those examinations and the reasonable expenses incident to the employees submitting to those examinations. Labor Code §408.0041(h) requires insurance carriers to pay for designated doctor examinations described in Labor Code §408.0041(a), (f), and (f-2), unless it is otherwise prohibited by law, and the reasonable expenses incident to the employee in submitting to the examination.

The effective date in existing §134.110(g) is proposed for deletion because it is no longer necessary. Section 134.110 will become effective 20 days after the date it is filed in the office of the secretary of state in accordance with Government Code §2001.036.

Proposed Amended §134.502.

The proposed amendment to §134.502(b) updates the rule to clarify that doctors shall prescribe in accordance with 28 TAC §134.530 and §134.540 concerning requirements for use of the closed formulary for claims not subject to certified networks and claims subject to certified networks. 28 TAC §134.530 and §134.540 were adopted, effective January 17, 2011, in the December 17, 2010, issue of the *Texas Register* (35 TexReg 11344).

Proposed amendments to §134.502(d) change the word "pharmacists" to "pharmacies and pharmacy processing agents" to be consistent with other Division rules and statutes related to pharmacy billing. Labor Code §413.0111, relating to processing agents, requires that rules adopted by the commissioner for the reimbursement of prescription medications and services authorize pharmacies to use agents or assignees to process claims and act on the behalf of the pharmacies under terms and conditions agreed on by the pharmacies. 28 TAC §133.307, concerning MDR of Fee Disputes, allows qualified pharmacy processing agents to be requestors in medical fee disputes over the reimbursement of medical bills. 28 TAC §133.10, concerning Required Billing Forms/Formats, contains required billing forms and formats for pharmacies and pharmacy processing agents. Proposed amendments to §134.502(d) also update a rule citation by deleting the outdated citation to 28 TAC §134.800(d) and cite to 28 TAC Chapters 133 and 134.

The proposed amendment to §134.502(e) changes the language from "reasonableness or medical necessity" to "an adverse determination" to correspond with the definition for "adverse determination" in 28 TAC §19.2003(b)(1) and its definition in proposed new §134.600(a)(1).

The proposed amendment to §134.502(f) deletes the word "working" so that the prescribing doctor is required to provide a statement of medical necessity to the requesting party no later than the 14th calendar day after receipt of the request. This change is necessary because the provision of 14 working days unnecessarily delays the receipt of statements of medical necessity from prescribing doctors by pharmacy billing managers and pharmacy processing agents who are required to comply with timeframes contained in Division rules. Additionally, this change from "working" to "calendar" days will allow system participants to more easily monitor the timeframe to provide a statement of medical necessity under the rule for compliance purposes.

Proposed amendments to §134.502(g) delete the citation to 28 TAC §133.304 and add the citation of 28 TAC §133.240 because 28 TAC §133.304, concerning Medical Payments and Denials was repealed and re-codified as 28 TAC §133.240 concerning Medical Payments and Denials in the April 28, 2006, issue of the *Texas Register,* effective May 2, 2006 (31 TexReg 3544). Proposed amendments to §134.502(g) change the language from "reasonableness or medical necessity" to "an adverse determination" to correspond with the definition for "adverse determination" in 28 TAC §19.2003(b)(1) and its definition in proposed new §134.600(a)(1).

Proposed Amended §134.600(a).

The proposed amendment to §134.600(a)(1) defines "adverse determination" as "a determination by a utilization review agent made on behalf of a payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the failure to request prospective or concurrent utilization review. An adverse determination does not include a determination that health care services are experimental or investigational." This definition corresponds with the definition of that term in 28 TAC §19.2003(b)(1); however, this definition deviates from the statutory definition of "adverse determination" in Insurance Code §4201.002(1) concerning Definitions. The Division must exclude "experimental or investigational services" from the definition of "adverse determination," because Labor Code §408.021 entitles an injured employee subject to either network coverage or non-network coverage to all medically necessary health care services, including experimental and investigational health care services. In addition, pursuant to Insurance Code §4201.054(c), Labor Code, Title 5 prevails if it conflicts with Insurance Code Chapter 4201. The Division also notes that experimental or investigational health care services for injured employees subject to non-network coverage must be preauthorized pursuant to Labor Code §413.014.

The proposed amendment to §134.600(a)(3) adds the word "utilization" and clarifies that concurrent utilization review is "a form of utilization review for on-going health care listed in subsection (q) of this section for an extension of treatment

beyond previously approved health care listed in subsection (p) of this section." This definition corresponds with the definition for "concurrent utilization review" in 28 TAC §19.2003(b)(8). Conforming changes inserting the word "utilization" within the context of concurrent utilization review are also proposed in the proposed title of §134.600 and proposed subsections (a)(3), (a)(5), (a)(10), (c)(1)(C), (e), (f), (i)(2), (l), (o), (q), (r), and (t) of proposed §134.600.

The proposed amendment to §134.600(a)(8) redefines "preauthorization" as "a form of prospective utilization review by a payor or a payor's utilization review agent of health care services proposed to be provided to an injured employee." This definition corresponds with the definition of that term in 28 TAC §19.2003(b)(26).

Proposed new §134.600(a)(9) defines "reasonable opportunity" which corresponds with the definition of that term in 28 TAC §19.2003(b)(28).

Proposed Amended §134.600(e).

The proposed amendment to §134.600(e) requires insurance carriers and utilization review agents to comply with the requirements of 28 TAC §19.2012. This amendment is necessary to clarify the combined applications of proposed §134.600(e), 28 TAC §19.2012, and Division rules in 28 TAC Chapter 134, Subchapter F, concerning Pharmaceutical Benefits. This conforming change addresses insurance carriers and utilization review agents who are required to have and implement procedures when responding to requests for drugs that require preauthorization if the injured employee has received or is currently receiving the requested drugs and the adverse determination could lead to a medical emergency. The language "by the insurance carrier" has been deleted because the Division recognizes that the party directly responding to requests for preauthorization may be the insurance carrier if the insurance carrier is a certified utilization review agent or the insurance carrier's utilization review agent.

Proposed Amended §134.600(g).

The proposed amendment to §134.600(g)(3) deletes the language "medical necessity and/or" and "injury/diagnosis." Proposed amended §134.600(g)(3) requires that if denying the request, the insurance carrier shall indicate whether it is issuing an adverse determination, and/or whether the denial is based on an unrelated injury or diagnosis in accordance with §134.600(m). The language has been updated to correspond with the definition for "adverse determination" in 28 TAC §19.2003(b)(1) and to make a non-substantive grammatical change to the term "injury/diagnosis."

Conforming changes to subsections (g)(3) - (5), (h), (i), (m), (o), (o)(1) - (2), (o)(5), and (t) of this section update the use of the term "adverse determination", and delete and replace the outdated terminology referring to denials and issues of medical necessity.

The proposed amendment to §134.600(g)(4) deletes the language "injury/diagnosis" and "the issue of medical necessity." Proposed amended §134.600(g)(4) allows the requestor or injured employee to file an extent of injury dispute upon receipt of an insurance carrier's response which includes a denial due to an unrelated injury or diagnosis, regardless of whether an adverse determination was also issued. The language has been updated to correspond with the definition for "adverse determination" in 28 TAC §19.2003(b)(1) and to make a non-substantive grammatical change to the language "injury/diagnosis."

The proposed amendment to §134.600(g)(5) deletes the language "injury/diagnosis" and "a denial based on medical necessity." Proposed amended §134.600(g)(5) provides that requests which include a denial due to an unrelated injury or diagnosis may not proceed to medical dispute resolution based on the denial of unrelatedness. However requests which include the dispute of an adverse determination may proceed to medical dispute resolution for the issue of medical necessity in accordance with §134.600(o). The language has been updated to correspond with the definition for "adverse determination" in 28 TAC §19.2003(b)(1) and to make a non-substantive grammatical change to the language "injury/diagnosis."

Proposed Amended §134.600(h).

The proposed amendment to §134.600(h) deletes the words "deny requests" to correspond with the definition for "adverse determination" in 28 TAC §19.2003(b)(1), but does not make a substantive change because the new definition of "adverse determination" requires the denial to be based on medical necessity. The proposed amendment to §134.600(h) requires the insurance carrier to "either approve or based solely on the medical necessity of the health care required to treat the injury, issue an adverse determination on each request received by the insurance carrier..." This clarification is necessary to ensure that the requestor is appropriately informed about the utilization review decision of each health care treatment or service listed in the request.

Proposed Amended §134.600(i).

Proposed amendments to §134.600(i) require the insurance carrier to contact the requestor or injured employee within the required timeframes by telephone, facsimile, or electronic transmission with its decision to approve the preauthorization or concurrent utilization review request; issue an adverse determination on the request; or deny the request under §134.600(g) because it relates to an unrelated injury or diagnosis. This amendment is necessary to update the terminology in §134.600(i) to correspond with the definition for "adverse determination" in 28 TAC §19.2003(b)(1). Proposed amendments to §134.600(i)(1) - (2) delete the word "within" because the language "within the following timeframes" has been added to §134.600(i) to clarify the rule.

Proposed Amended §134.600(j).

The proposed amendment to §134.600(j) provides that the insurance carrier is to send written notification of the approval of the request; adverse determination on the request; or denial of the request under §134.600(g) because of an unrelated injury or diagnosis. This amendment is necessary to update the terminology in §134.600(j) to correspond with the definition for "adverse determination" in 28 TAC §19.2003(b)(1).

Proposed Amended §134.600(l).

The proposed amendment to §134.600(l)(4) adds a fourth requirement for insurance carrier approvals, which requires insurance carriers to include the insurance carrier's preauthorization approval number in its approval of a preauthorization request. This amendment provides that the preauthorization approval number must conform to the standards described in 28 TAC §19.2009(a)(4). This amendment is also necessary to align the requirements of this proposed rule with the medical billing requirements of recently adopted Division rules in 28 TAC

Chapter 133, Subchapters B and G, concerning Health Care Provider Billing Procedures; and Electronic Medical Billing, Reimbursement, and Documentation; respectively, which require the inclusion of a preauthorization number on medical bills, if applicable.

Proposed Amended §134.600(m).

The proposed amendment to §134.600(m) requires insurance carriers to comply with 28 TAC §19.2010 and afford requestors a reasonable opportunity to discuss the clinical basis for the adverse determination prior to issuing the insurance carrier issuing the adverse determination. Further, the notice of adverse determination must comply with the requirements of 28 TAC §19.2009 and include a plain language description of the complaint and appeal process. This amendment is necessary to streamline the requirements of this section and harmonize with Insurance Code §4201.456 and 28 TAC §19.2010 and §19.2009. These conforming changes will enable the monitoring of whether a reasonable opportunity for discussion was offered and collecting of information on peer-to-peer discussion results to ensure compliance with utilization review rule requirements.

Proposed amendments to §134.600(m)(1) - (5) delete the required elements that should be included in a denial of medical necessity because the notice of adverse determination must comply with the requirements of 28 TAC §19.2009(b) which contains the required elements that must be included in the notice of adverse determination. If preauthorization is denied based on Labor Code §408.0042 because the treatment is for an injury or diagnosis unrelated to the compensable injury, the notice of adverse determination is to include notification to the injured employee and health care provider of entitlement to file an extent of injury dispute in accordance with 28 TAC Chapter 141 concerning Dispute Resolution--Benefit Review Conference.

Proposed Amended §134.600(o).

Proposed amendments to §134.600(o) allow the requestor or injured employee to request reconsideration of an adverse determination orally or in writing if the initial response is an adverse determination of preauthorization or concurrent utilization review. This proposed amendment is consistent with the requirements of Insurance Code §1305.354, concerning Reconsideration of Adverse Determination, which allow requests for reconsideration of adverse determinations to be made orally or in writing. Further, proposed amendments to subsection (o) conform to the requirement that a request for reconsideration under this section constitutes an appeal for the purposes of 28 TAC §19.2011. 28 TAC §19.2003(b)(2) defines "appeal" to mean "The URA's formal process by which an injured employee, an injured employee's representative, or an injured employee's provider of record may request reconsideration of an adverse determination. For the purposes of this subchapter the term also applies to reconsideration processes prescribed by Labor Code Title 5 and applicable rules for workers' compensation." Further, requests for reconsideration must be made in accordance with the requirements of this section and 28 TAC §19.2011.

Proposed amendments to §134.600(o)(1) - (5) delete the terms "initial denial", "denial", and "denied" and replace them with the phrase "an adverse determination" to update the terminology to conform to the definition for "adverse determination" in 28 TAC §19.2003(b)(1). The term "adverse determination" is defined in 28 TAC §19.2003(b)(1) and proposed amended §134.600(a)(1) to mean "A determination by a utilization review agent made on behalf of a payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the failure to request prospective or concurrent utilization review. An adverse determination does not include a determination that health care services are experimental or investigational."

The proposed amendment to §134.600(o)(3) adds a harmonizing reference to 28 TAC §19.2011.

The proposed amendment to §134.600(o)(4) requires insurance carriers that are questioning the medical necessity or appropriateness of health care to comply with the requirements of 28 TAC §19.2010 and §19.2011, including the requirement that the insurance carrier afford the requestor a reasonable opportunity to discuss the proposed health care with a doctor or, in cases of a dental plan with a dentist, or in cases of a chiropractic service with a chiropractor, prior to issuance of an adverse determination on the request for reconsideration. This amendment is necessary to clarify the combined application of proposed §134.600(o)(4), 28 TAC §19.2010 and §19.2011 to insurance carriers and utilization review agents.

The proposed amendment to §134.600(t) deletes the phrase "approval/denial" and adds the words "approval or adverse determination" to delete the word "denial" and update the terminology to conform to the definition for "adverse determination" in 28 TAC §19.2003(b)(1) and proposed §134.600(a)(1).

The effective date of existing subsection (v) is proposed for deletion because it is no longer necessary. Section 134.600 will become effective 20 days after the date it is filed in the office of the secretary of state in accordance with Government Code §2001.036.

Matthew Zurek, Executive Deputy Commissioner of Health Care Management and System Monitoring, has determined that for each year of the first five years the proposed rules will be in effect there will be minimal fiscal implications to state or local governments as a result of enforcing or administering the proposed sections. There also will be no measurable effect on local employment or the local economy as a result of the proposed rules.

Mr. Zurek has determined that for each year of the first five years the sections are in effect, the public benefit as a result of the proposed amendments will be the updating of Division rules to comply or harmonize with provisions of Insurance Code Chapters 1305 and 4201 and 28 TAC Chapter 19, Subchapter U, and implement the provisions of HB 4290. These amendments will result in a clearer, more consistent regulatory framework and, therefore, in better and more efficient compliance by system participants. Because the costs relating to the requirements in proposed amended §§134.110, 134.502, and 134.600 are a result of the enactment of HB 4290, existing statutory requirements, and existing regulatory requirements in 28 TAC Chapter 19, Subchapter U, any additional costs of compliance are not the result of the proposed rules. The Division does not add any additional costs. The Division agrees with the Department's costs associated with complying with the requirements of 28 TAC Chapter 19, Subchapter U which are detailed in the proposal of 28 TAC Chapter 19, Agent's Licensing, Subchapter R, §§19.1701 - 19.1719, and Subchapter U, §§19.2001 - 19.2017, published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6466), and are applicable to proposed amended §§133.4.110, 134.502, 134.600.

As required by Government Code §2006.002(c), the Division has determined that the proposal will not have an adverse

economic effect on small and micro-businesses that qualify as small or micro-businesses for the purposes of Government Code §2006.001. Additionally, the cost of compliance with the proposal will not vary between large businesses.

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

REQUEST FOR PUBLIC COMMENT

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on December 2, 2013. Comments may be submitted via the internet through the Division's website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

A request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. CST by the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

SUBCHAPTER B. MISCELLANEOUS REIMBURSEMENT

28 TAC §134.110

The amendments are proposed under Labor Code §§402.00111, 402.00128, 402.061, 408.004, 408.0041; and Government Code §2001.036.

Government Code §2001.036 provides, in part, that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. 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. Section 408.004 requires insurance carriers to pay for medical examinations that injured employees may be required to submit to and the reasonable expenses incident to the employees submitting to those examinations. Labor Code §408.0041 requires insurance carriers to pay for designated doctor examinations described in Labor Code §408.0041(a), (f), and (f-2), unless it is otherwise prohibited by law, and the reasonable expenses incident to the employee in submitting to the examination.

The following statutes are affected by this proposal: §134.110 - Labor Code §408.004 and §408.0041, and Government Code §2001.036

§134.110. Reimbursement of Injured Employee for Travel Expenses Incurred.

(a) An injured employee may request reimbursement from the insurance carrier if the injured employee has incurred travel expenses when:

(1) medical treatment for the compensable injury is not reasonably available within 30 miles from where the injured employee lives[~~:~~] and

[~~(2)~~] the distance traveled to secure medical treatment is greater than 30 miles[~~,~~] one-way; or [~~.~~]

(2) the distance traveled to attend a designated doctor examination, required medical examination, or post designated doctor treating or referral doctor examination is greater than 30 miles one-way.

(b) The injured employee shall submit the request for reimbursement to the insurance carrier within one year of the date the injured employee incurred the expenses.

(c) The injured employee's request for reimbursement shall be in the form and manner required by the division [~~Division~~] and shall include documentation or evidence (such as itemized receipts) of the amount of the expense the injured employee incurred.

(d) The insurance carrier shall reimburse the injured employee based on the travel rate for state employees on the date travel occurred, using mileage for the shortest reasonable route.

(1) Travel mileage is measured from the actual point of departure to the health care provider's location when the point of departure is:

(A) the employee's home; or

(B) the employee's place of employment.

(2) If the point of departure is not the employee's home or place of employment, then travel mileage shall be measured from the health care provider's location to the nearest of the following locations:

(A) the employee's home;

(B) the place of employment; or

(C) the actual point of departure.

(3) Total reimbursable mileage is based on round trip mileage.

(4) When an injured employee's travel expenses reasonably include food and lodging, the insurance carrier shall reimburse for the actual expenses not to exceed the current rate for state employees on the date the expense is incurred.

(e) The insurance carrier shall pay or deny the injured employee's request for reimbursement submitted in accordance with subsection (c) of this section within 45 days of receipt.

(f) If the insurance carrier does not reimburse the full amount requested, partial payment or denial of payment shall include a plain language explanation of the reason(s) for the reduction or denial. The insurance carrier shall inform the injured employee of the injured employee's right to request a benefit review conference in accordance with §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference).

[~~(g) This section shall apply to all dates of travel on or after May 2, 2006.~~]

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 October 21, 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

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SUBCHAPTER F. PHARMACEUTICAL BENEFITS

28 TAC §134.502

The amendments are proposed under Labor Code §§402.00111, 402.00114, 402.00116, 402.00128, 402.061, 406.010, 408.021(a), 408.027, 408.028, 413.002, 413.011, 413.0111, 413.013, 413.017, 413.031; and Insurance Code §4201.054.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00114 requires the division to regulate and administer the business of workers' compensation in this state and ensure that Labor Code, Title 5 and other laws regarding workers' compensation are executed. Section 402.00116 requires the commissioner of workers' compensation to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the division. Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. 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. Section 406.010 authorizes the division to adopt rules necessary to specify the requirements for carriers to provide claims service and establishes that a person commits a violation if the person violates a rule adopted under this section. Section 408.021(a) states that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Section 408.027 establishes the timeframe for a health care provider's claim submission, the timeframes for an insurance carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during the pendency of an audit, and the applicability of §408.027 to all delivered health care. Section 408.028 requires health care practitioners providing care to an employee to prescribe any necessary prescription drugs in accordance with the applicable state law. Section 408.028(b) requires the commissioner by rule to adopt a closed formulary under Labor Code §413.011 and requires the rules adopted to allow an appeals process for claims in which a treating doctor determines and documents that a drug not included in the formulary is necessary to treat an injured employee's compensable injury. Labor Code §408.028(f) requires the commissioner by rule to adopt a fee schedule for pharmacy and pharmaceutical services that will provide reimbursement rates that are fair and reasonable, assure adequate access to medications and services for injured workers, minimize costs to employees and insurance carriers, and take into consideration the increased security of payment afforded by Labor Code Title 5. Section 413.002 requires the division to monitor health care providers, insurance carriers, independent review organizations, and workers' compensation claimants who receive medical services to ensure compliance with division rules relating to health care, including medical policies and fee guidelines. Section 413.011 requires the commissioner to adopt health care reimbursement policies and guidelines. Section 413.0111 requires that rules adopted by the commissioner for the reimbursement of prescription medications and services must authorize pharmacies to use agents or assignees to process claims and act on the behalf of the pharmacies under terms and conditions agreed on by the pharmacies. Section 413.013(1), (2) and (3) require the division by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services, a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review under the medical policies of the division to ensure the medical policies and guidelines are not exceeded, and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the division. Section 413.017 establishes a presumption of reasonableness of medical services consistent with the medical policies and fee guidelines adopted by the division and medical services that are provided subject to prospective, concurrent, or retrospective review ad required by the medical policies of the division and that are authorized by an insurance carrier. Section 413.031 entitles a party, including a health care provider, to a review of a medical service provided or for which authorization of payment is sought if a health care provider has been denied payment, paid a reduced amount for the medical service rendered, or denied authorization for the payment for the service required or performed if authorization is required or allowed by Labor Code Title 5 or division rules.

Insurance Code §4201.054 provides that Chapter 4201 applies to utilization review of a health care service provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code; the commissioner of workers' compensation shall regulate as provided by Chapter 4201 a person who performs utilization review of a medical benefit provided under Title 5, Labor Code; Title 5, Labor Code, prevails in the event of a conflict between Chapter 4201 and Title 5, Labor Code; and the commissioner of workers' compensation may adopt rules as necessary to implement §4201.054.

The following statutes are affected by this proposal: §134.502 - Labor Code §413.0111 and Government Code §2001.036.

§134.502. Pharmaceutical Services.

(a) A doctor providing care to an injured employee shall prescribe for the employee medically necessary prescription drugs and over-the-counter medication (OTC) alternatives as clinically appropriate and applicable in accordance with applicable state law and as provided by this section.

(1) It shall be indicated on the prescription that the prescription is related to a workers' compensation claim.

(2) When prescribing an OTC medication alternative to a prescription drug, the doctor shall indicate on the prescription the appropriate strength of the medication and the approximate quantity of the OTC medication that is reasonably required by the nature of the compensable injury.

(3) The doctor shall prescribe generic prescription drugs when available and clinically appropriate. If in the medical judgment of the prescribing doctor a brand-name drug is necessary, the doctor must specify on the prescription that brand-name drugs be dispensed in accordance with applicable state and federal law, and must maintain documentation justifying the use of the brand-name drug, in the patient's medical record.

(4) The doctor shall prescribe OTC medications in lieu of a prescription drug when clinically appropriate.

(b) When prescribing, the doctor shall prescribe in accordance with §134.530 and §134.540 of this title (relating to Requirements for Use of the Closed Formulary for Claims Not Subject to Certified Networks and Requirements for Use of the Closed Formulary for Claims Subject to Certified Networks, respectively). [~~choose medications and drugs from the formulary adopted by the commission.~~]

(c) The pharmacist shall dispense no more than a 90-day supply of a prescription drug.

(d) Pharmacies and pharmacy processing agents [~~Pharmacists~~] shall submit bills for pharmacy services in accordance with Chapter 133 (relating to General Medical Provisions) and Chapter 134 (relating to Benefits--Guidelines for Medical Services, Charges, and Payments). [~~§134.800(d) of this title (relating to Required Billing Forms and Information).~~]

(1) Health care providers shall bill using national drug codes (NDC) when billing for prescription drugs.

(2) Compound drugs shall be billed by listing each drug included in the compound and calculating the charge for each drug separately.

(3) A pharmacy may contract with a separate person or entity to process bills and payments for a medical service; however, these entities are subject to the direction of the pharmacy and the pharmacy is responsible for the acts and omissions of the person or entity. Except as allowed by [~~Texas~~] Labor Code §413.042, the injured employee shall not be billed for pharmacy services.

(e) The insurance carrier, injured employee, or pharmacist may request a statement of medical necessity from the prescribing doctor. If an insurance [a] carrier requests a statement of medical necessity, the insurance carrier shall provide the sender of the bill a copy of the request at the time the request is made. An insurance [~~A~~] carrier shall not request a statement of medical necessity unless in the absence of such a statement the insurance carrier could reasonably support a denial based upon extent of, or relatedness to the compensable injury, or based upon an adverse determination. [~~reasonableness or medical necessity.~~]

(f) The prescribing doctor shall provide a statement of medical necessity to the requesting party no later than the 14th [~~working~~] day after receipt of request. The prescribing doctor shall not bill for nor shall the insurance carrier reimburse for the statement of medical necessity.

(g) In addition to the requirements of §133.240 of this title [~~§133.304,~~] (relating to Medical Payments and Denials) regarding explanation of benefits (EOB), at the time an insurance carrier denies payment for medications for any reason related to compensability of, liability for, extent of, or relatedness to the compensable injury, or for reasons related to an adverse determination [~~reasonableness or medical necessity~~], the insurance carrier shall also send the EOB to the injured employee, and the prescribing doctor.

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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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

28 TAC §134.600

The amendments are proposed under Labor Code §§402.00111, 402.00114, 402.00116, 402.00128, 402.061, 408.021, 408.027, 413.013, 413.014, and 413.031; and Insurance Code §4201.456 and §4201.054.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00114 requires the division to regulate and administer the business of workers' compensation in this state and ensure that Labor Code, Title 5 and other laws regarding workers' compensation are executed. Section 402.00116 requires the division to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the division. Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. 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. Section 408.021, in part, entitles an employee who sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed and specifically entitles the employee to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Section 408.027 provides requirements for payment of health care providers by insurance carriers and requires the commissioner to adopt rules as necessary to implement the provisions of §408.027 and §408.0271. Section 413.013(1), (2) and (3) require the division by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services, a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review under the medical policies of the division to ensure the medical policies and guidelines are not exceeded, and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the division. Section 413.014 provides, in part, that division rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for any investigational or experimental

services or devices. Section 413.031 entitles a party, including a health care provider, to a review of a medical service provided or for which authorization of payment is sought if a health care provider has been denied payment, paid a reduced amount for the medical service rendered, or denied authorization for the payment for the service required or performed if authorization is required or allowed by Labor Code Title 5 or division rules.

Insurance Code §4201.054 provides that Chapter 4201 applies to utilization review of a health care service provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code; the commissioner of workers' compensation shall regulate as provided by Chapter 4201 a person who performs utilization review of a medical benefit provided under Title 5, Labor Code; Title 5, Labor Code, prevails in the event of a conflict between Chapter 4201 and Title 5, Labor Code; and the commissioner of workers' compensation may adopt rules as necessary to implement §4201.054. Section 4201.456 provides that subject to the notice requirements of Insurance Code, Chapter 4201, Subchapter G, before an adverse determination is issued by a specialty utilization review agent who questions the medical necessity or appropriateness, or the experimental or investigational nature, of a health care service, the agent shall provide the health care provider who ordered the service a reasonable opportunity to discuss the patient's treatment plan and the clinical basis for the agents determination with a health care provider who is of the same specialty as the agent.

Government Code §2001.036 provides, in part, that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state.

The following statutes are affected by this proposal: §134.600 - Labor Code §§408.021, 408.027, and 413.014; Insurance Code §4201.054; and Government Code §2001.036.

§134.600. Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care.

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

(1) Adverse determination: A determination by a utilization review agent made on behalf of a payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the failure to request prospective or concurrent utilization review. An adverse determination does not include a determination that health care services are experimental or investigational.

(2) [~~(1)~~] Ambulatory surgical services: surgical services provided in a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

(3) [~~(2)~~] Concurrent utilization review: a form of utilization review for [~~of~~] on-going health care listed in subsection (q) of this section for an extension of treatment beyond previously approved health care listed in subsection (p) of this section.

(4) [~~(3)~~] Diagnostic study: any test used to help establish or exclude the presence of disease/injury in symptomatic individuals. The test may help determine the diagnosis, screen for specific disease/injury, guide the management of an established disease/injury, and formulate a prognosis.

(5) [~~(4)~~] Division exempted program: a Commission on Accreditation of Rehabilitation Facilities (CARF) accredited work conditioning or work hardening program that has requested and been granted an exemption by the division from preauthorization and concurrent utilization review requirements except for those provided by subsections (p)(4) and (q)(2) of this section.

(6) [~~(5)~~] Final adjudication: the commissioner has issued a final decision or order that is no longer subject to appeal by either party.

(7) [~~(6)~~] Outpatient surgical services: surgical services provided in a freestanding surgical center or a hospital outpatient department to patients who do not require overnight hospital care.

(8) [~~(7)~~] Preauthorization: a form of prospective utilization review by a payor or a payor's utilization review agent of health care services proposed to be provided to an injured employee. [~~prospective approval obtained from the insurance carrier by the requestor or injured employee prior to providing the health care treatment or services (health care).~~]

(9) Reasonable opportunity: At least one documented good faith attempt to contact the provider of record that provides an opportunity for the provider of record to discuss the services under review with the utilization review agent during normal business hours prior to issuing a prospective, concurrent, or retrospective utilization review adverse determination:

(A) no less than one working day prior to issuing a prospective utilization review adverse determination;

(B) no less than five working days prior to issuing a retrospective utilization review adverse determination; or

(C) prior to issuing a concurrent or post-stabilization review adverse determination.

(10) [~~(8)~~] Requestor: the health care provider or designated representative, including office staff or a referral health care provider or health [~~provider/health~~] care facility that requests preauthorization, concurrent utilization review, or voluntary certification.

(11) [~~(9)~~] Work conditioning and work hardening: return-to-work rehabilitation programs as defined in this chapter.

(b) When division-adopted treatment guidelines conflict with this section, this section prevails.

(c) The insurance carrier is liable for all reasonable and necessary medical costs relating to the health care:

(1) listed in subsection (p) or (q) of this section only when the following situations occur:

(A) an emergency, as defined in Chapter 133 of this title (relating to General Medical Provisions);

(B) preauthorization of any health care listed in subsection (p) of this section that was approved prior to providing the health care;

(C) concurrent utilization review of any health care listed in subsection (q) of this section that was approved prior to providing the health care; or

(D) when ordered by the commissioner;

(2) or per subsection (r) of this section when voluntary certification was requested and payment agreed upon prior to providing the health care for any health care not listed in subsection (p) of this section.

(d) The insurance carrier is not liable under subsection (c)(1)(B) or (C) of this section if there has been a final adjudication

that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury.

(e) The insurance carrier shall designate accessible direct telephone and facsimile numbers and may designate an electronic transmission address for use by the requestor or injured employee to request preauthorization or concurrent utilization review during normal business hours. The direct number shall be answered or the facsimile or electronic transmission address responded to [~~by the insurance carrier~~] within the time limits established in subsection (i) of this section. The insurance carrier shall also comply with any additional requirements of §19.2012 of this title (relating to URA's Telephone Access and Procedures for Certain Drug Requests and Post-Stabilization Care).

(f) The requestor or injured employee shall request and obtain preauthorization from the insurance carrier prior to providing or receiving health care listed in subsection (p) of this section. Concurrent utilization review shall be requested prior to the conclusion of the specific number of treatments or period of time preauthorized and approval must be obtained prior to extending the health care listed in subsection (q) of this section. The request for preauthorization or concurrent utilization review shall be sent to the insurance carrier by telephone, facsimile, or electronic transmission and, include the:

(1) name of the injured employee;

(2) specific health care listed in subsection (p) or (q) of this section;

(3) number of specific health care treatments and the specific period of time requested to complete the treatments;

(4) information to substantiate the medical necessity of the health care requested;

(5) accessible telephone and facsimile numbers and may designate an electronic transmission address for use by the insurance carrier;

(6) name of the requestor and requestor's professional license number or national provider identifier, or injured employee's name if the injured employee is requesting preauthorization;

(7) name, professional license number or national provider identifier of the health care provider who will render the health care if different than paragraph (6) of this subsection and if known;

(8) facility name, and the facility's national provider identifier if the proposed health care is to be rendered in a facility; and

(9) estimated date of proposed health care.

(g) A health care provider may submit a request for health care to treat an injury or diagnosis that is not accepted by the insurance carrier in accordance with Labor Code §408.0042.

(1) The request shall be in the form of a treatment plan for a 60 day timeframe.

(2) The insurance carrier shall review requests submitted in accordance with this subsection for both medical necessity and relatedness.

(3) If denying the request, the insurance carrier shall indicate whether it is issuing an adverse determination, and/or whether the denial is based on an [~~medical necessity and/or~~] unrelated injury or diagnosis [~~injury/diagnosis~~] in accordance with subsection (m) of this section.

(4) The requestor or injured employee may file an extent of injury dispute upon receipt of an insurance carrier's response which includes a denial due to an unrelated injury or diagnosis [~~injury/diagnosis~~], regardless of whether an adverse determination was also issued [~~the issue of medical necessity~~].

(5) Requests which include a denial due to an unrelated injury or diagnosis [~~injury/diagnosis~~] may not proceed to medical dispute resolution based on the denial of unrelatedness. However, requests which include the dispute of an adverse determination [~~a denial based on medical necessity~~] may proceed to medical dispute resolution for the issue of medical necessity in accordance with subsection (o) of this section.

(h) Except for requests submitted in accordance with subsection (g) of this section, the insurance carrier shall either approve or [~~deny requests~~] based solely on [~~upon~~] the medical necessity of the health care required to treat the injury, issue an adverse determination on each request received by the insurance carrier, regardless of:

(1) unresolved issues of compensability, extent of or relatedness to the compensable injury;

(2) the insurance carrier's liability for the injury; or

(3) the fact that the injured employee has reached maximum medical improvement.

(i) The insurance carrier shall contact the requestor or injured employee within the following timeframes by telephone, facsimile, or electronic transmission with the decision to approve [~~or deny~~] the request; issue an adverse determination on a request; or deny a request under subsection (g) of this section because of an unrelated injury or diagnoses as follows:

(1) [~~within~~] three working days of receipt of a request for preauthorization; or

(2) [~~within~~] three working days of receipt of a request for concurrent utilization review, except for health care listed in subsection (q)(1) of this section, which is due within one working day of the receipt of the request.

(j) The insurance carrier shall send written notification of the approval of the request, adverse determination on the request, or denial of the request under subsection (g) of this section because of an unrelated injury or diagnosis [~~or denial of the request~~] within one working day of the decision to the:

(1) injured employee;

(2) injured employee's representative; and

(3) requestor, if not previously sent by facsimile or electronic transmission.

(k) The insurance carrier's failure to comply with any timeframe requirements of this section shall result in an administrative violation.

(l) The insurance carrier shall not withdraw a preauthorization or concurrent utilization review approval once issued. The approval shall include:

(1) the specific health care;

(2) the approved number of health care treatments and specific period of time to complete the treatments; [~~and~~]

(3) a notice of any unresolved dispute regarding the denial of compensability or liability or an unresolved dispute of extent of or relatedness to the compensable injury; and[~~.~~]

(4) the insurance carrier's preauthorization approval number that conforms to the standards described in §19.2009(a)(4) of this title (relating to Notice of Determinations Made in Utilization Review).

(m) In accordance with §19.2010 of this title (relating to Requirements Prior to Issuing Adverse Determination), the [~~The~~] insurance carrier shall afford the requestor a reasonable opportunity to discuss the clinical basis for the adverse determination prior to issuing the adverse determination. The notice of adverse determination must comply with the requirements of §19.2009 of this title and if preauthorization is denied under Labor Code §408.0042 because the treatment is for an injury or diagnosis unrelated to the compensable injury the notice must include notification to the injured employee and health care provider of entitlement to file an extent of injury dispute in accordance with Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference). [~~a denial with the appropriate doctor or health care provider performing the review prior to the issuance of a preauthorization or concurrent review denial. The denial shall include:~~]

[~~(1) the clinical basis for the denial;~~]

[~~(2) a description or the source of the screening criteria that were utilized as guidelines in making the denial;~~]

[~~(3) the principle reasons for the denial, if applicable;~~]

[~~(4) a plain language description of the complaint and appeal processes, if denial was based on Labor Code §408.0042, include notification to the injured employee and health care provider of entitlement to file an extent of injury dispute in accordance with Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference); and~~]

[~~(5) after reconsideration of a denial, the notification of the availability of an independent review.~~]

(n) The insurance carrier shall not condition an approval or change any elements of the request as listed in subsection (f) of this section, unless the condition or change is mutually agreed to by the health care provider and insurance carrier and is documented.

(o) If the initial response is an adverse determination [~~a denial~~] of preauthorization or concurrent utilization review, the requestor or injured employee may request reconsideration orally or in writing. A request for reconsideration under this section constitutes an appeal for the purposes of §19.2011 of this title (relating to Written Procedures for Appeal of Adverse Determinations).

(1) The requestor or injured employee may within 30 days of receipt of a written adverse determination [~~initial denial~~] request the insurance carrier to reconsider the adverse determination [~~denial~~] and shall document the reconsideration request.

(2) The insurance carrier shall respond to the request for reconsideration of the adverse determination [~~denial~~]:

(A) as soon as practicable but not later than the 30th day after receiving a request for reconsideration of an adverse determination of [~~denied~~] preauthorization; or

(B) within three working days of receipt of a request for reconsideration of an adverse determination of [~~denied~~] concurrent utilization review, except for health care listed in subsection (q)(1) of this section, which is due within one working day of the receipt of the request.

(3) In addition to the requirements in this section and §19.2011 of this title, the insurance carrier's reconsideration procedures shall include a provision that the period during which the reconsideration is to be completed shall be based on the medical or clinical immediacy of the condition, procedure, or treatment.

(4) In any instance where the insurance carrier is questioning medical necessity or appropriateness prior to issuance of an adverse determination on the request for reconsideration, the insurance carrier shall comply with the requirements of §19.2010 and §19.2011 of this title, including the requirement that the insurance carrier afford the requestor a reasonable opportunity to discuss the proposed health care with a doctor or, in cases of a dental plan or chiropractic services, with a dentist or chiropractor, respectively.

(5) [~~(4)~~] The requestor or injured employee may appeal the denial of a reconsideration request regarding an adverse determination [~~medical necessity~~] by filing a dispute in accordance with Labor Code §413.031 and related division rules.

(6) [~~(5)~~] A request for preauthorization for the same health care shall only be resubmitted when the requestor provides objective clinical documentation to support a substantial change in the injured employee's medical condition or that demonstrates that the injured employee has met clinical prerequisites for the requested health care that had not been previously met before submission of the previous request. The insurance carrier shall review the documentation and determine if any substantial change in the injured employee's medical condition has occurred or if all necessary clinical prerequisites have been met. A frivolous resubmission of a preauthorization request for the same health care constitutes an administrative violation.

(p) Non-emergency health care requiring preauthorization includes:

(1) inpatient hospital admissions, including the principal scheduled procedure(s) and the length of stay;

(2) outpatient surgical or ambulatory surgical services as defined in subsection (a) of this section;

(3) spinal surgery;

(4) all work hardening or work conditioning services requested by:

(A) non-exempted work hardening or work conditioning programs; or

(B) division exempted programs if the proposed services exceed or are not addressed by the division's treatment guidelines as described in paragraph (12) of this subsection;

(5) physical and occupational therapy services, which includes those services listed in the Healthcare Common Procedure Coding System (HCPCS) at the following levels:

(A) Level I code range for Physical Medicine and Rehabilitation, but limited to:

(i) Modalities, both supervised and constant attendance;

(ii) Therapeutic procedures, excluding work hardening and work conditioning;

(iii) Orthotics/Prosthetics Management;

(iv) Other procedures, limited to the unlisted physical medicine and rehabilitation procedure code; and

(B) Level II temporary code(s) for physical and occupational therapy services provided in a home setting;

(C) except for the first six visits of physical or occupational therapy following the evaluation when such treatment is rendered within the first two weeks immediately following:

(i) the date of injury; or

(ii) a surgical intervention previously preauthorized by the insurance carrier;

(6) any investigational or experimental service or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care;

(7) all psychological testing and psychotherapy, repeat interviews, and biofeedback, except when any service is part of a preauthorized or division exempted return-to-work rehabilitation program;

(8) unless otherwise specified in this subsection, a repeat individual diagnostic study:

(A) with a reimbursement rate of greater than $350 as established in the current Medical Fee Guideline; or

(B) without a reimbursement rate established in the current Medical Fee Guideline;

(9) all durable medical equipment (DME) in excess of $500 billed charges per item (either purchase or expected cumulative rental);

(10) chronic pain management/interdisciplinary pain rehabilitation;

(11) drugs not included in the applicable division formulary;

(12) treatments and services that exceed or are not addressed by the commissioner's adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the insurance carrier. This requirement does not apply to drugs prescribed for claims under §§134.506, 134.530 or 134.540 of this title (relating to Pharmaceutical Benefits);

(13) required treatment plans; and

(14) any treatment for an injury or diagnosis that is not accepted by the insurance carrier pursuant to Labor Code §408.0042 and §126.14 of this title (relating to Treating Doctor Examination to Define the Compensable Injury).

(q) The health care requiring concurrent utilization review for an extension for previously approved services includes:

(1) inpatient length of stay;

(2) all work hardening or work conditioning services requested by:

(A) non-exempted work hardening or work conditioning programs; or

(B) division exempted programs if the proposed services exceed or are not addressed by the division's treatment guidelines as described in subsection (p)(12) of this section;

(3) physical and occupational therapy services as referenced in subsection (p)(5) of this section;

(4) investigational or experimental services or use of devices;

(5) chronic pain management/interdisciplinary pain rehabilitation; and

(6) required treatment plans.

(r) The requestor and insurance carrier may voluntarily discuss health care that does not require preauthorization or concurrent utilization review under subsections (p) and (q) of this section respectively.

(1) Denial of a request for voluntary certification is not subject to dispute resolution for prospective review of medical necessity.

(2) The insurance carrier may certify health care requested. The carrier and requestor shall document the agreement. Health care provided as a result of the agreement is not subject to retrospective utilization review of medical necessity.

(3) If there is no agreement between the insurance carrier and requestor, health care provided is subject to retrospective utilization review of medical necessity.

(s) An increase or decrease in review and preauthorization controls may be applied to individual doctors or individual workers' compensation claims[,] by the division in accordance with Labor Code §408.0231(b)(4) and other sections of this title.

(t) The insurance carrier shall maintain accurate records to reflect information regarding requests for preauthorization, or concurrent utilization review approval or adverse determination [~~approval/denial~~] decisions, and appeals, including requests for reconsideration and requests for medical dispute resolution, if any. The insurance carrier shall also maintain accurate records to reflect information regarding requests for voluntary certification approval/denial decisions. Upon request of the division, the insurance carrier shall submit such information in the form and manner prescribed by the division.

(u) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with, or a utilization review agent that is certified by, the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title (relating to Agents' Licensing). Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.

[~~(v) This section is effective July 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 October 21, 2013.

TRD-201304777
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board ("TWDB" or "Board") proposes an amendment to §358.6 regarding Water Loss Audits.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

In 2013, the 83rd Texas Legislature passed House Bill 857, amending Texas Water Code §16.0121, effective September 1, 2013, regarding the water loss audit that is required of all retail public utilities providing potable water. Prior to HB 857, annual water loss audits were required only for those utilities that were receiving financial assistance from the TWDB. All other utilities were required to perform a water loss audit every five years. Following the passage of HB 857, all such utilities are required to perform and file with the TWDB a water loss audit annually, with the exception that those utilities that are providing service to 3,300 or fewer connections and are not receiving financial assistance from the TWDB are required to perform and file with the TWDB a water loss audit every five years. The first annual water loss audit must be submitted to the TWDB by May 1, 2014.

DISCUSSION OF PROPOSED AMENDMENTS.

The proposed amendments to subsection (a) specify that the water loss audit shall be performed for the preceding calendar year unless a different 12-month period is allowed by the Executive Administrator. Most utilities perform their water loss audits on a calendar year basis, as this provides ample time to complete the water loss audit and file it by May 1. The intent of this rule amendment is to allow a utility to use a different 12-month period if it has a legitimate reason for doing so.

The proposed amendments delete current subsection (a)(2) and (3) and add new subsection (a)(1) and (2). Proposed new subsection (a)(1) specifies which utilities are required to file annual water loss audits and sets a due date of May 1. Proposed new subsection (a)(2) specifies which utilities are required to file water loss audits every five years and sets a due date of May 1, 2016, and every five years thereafter by May 1, consistent with the five-year schedule starting in 2006 that was established by the TWDB under Texas Water Code §16.0121.

The proposed amendments renumber subsection (a)(1) to (a)(3) and amend the text to remove the requirement that the Executive Administrator provide the necessary forms and methodologies at least one year prior to the required filing via first class mail or electronic mail, because the forms and methodologies are available on the TWDB's website and the vast majority of utilities currently file their water loss audits electronically.

The proposed amendments to subsection (b) allow the Executive Administrator more flexibility to provide a timeframe within which a utility must correct deficiencies in its water loss audit so that it can be eligible for financial assistance from the TWDB for water supply projects. Currently, subsection (b) requires the Executive Administrator to return an incomplete water loss audit, and the utility has 30 days to correct any deficiencies. The amendment will change these requirements to only require the Executive Administrator to notify the utility of the deficiencies, and the utility must correct those deficiencies in the timeframe provided by the Executive Administrator.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments in their capacity as state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. The rule amendment implements a statutory change to Texas Water Code §16.0121 that will require certain retail public utilities to perform and submit a water loss audit on an annual basis rather than on the five-year basis. There could be some economic cost to some local governments that also are retail public utilities because it is estimated that 261 retail public utilities providing potable water that formerly performed water loss audits on a five-year schedule are now required to perform them annually. According to a previous TWDB study, the costs to a retail public utility for staff time to complete an annual water loss audit range from less than $1,000 to $20,000 depending on the size of the utility and its records system. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from this rule.

PUBLIC BENEFITS AND COSTS

Ms. Trevino has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it implements a statutory change to Texas Water Code §16.0121 that will require 261 retail public utilities to perform and submit a water loss audit on an annual basis rather than on a five-year basis. Under Texas Water Code §16.015, a regional planning group for a regional planning area shall use the information to identify appropriate water management strategies in the development of a regional water plan, which is a public benefit. There could be some economic cost to persons required to comply with the rule because it is estimated that 261 retail public utilities providing potable water that formerly performed water loss audits on a five-year schedule are now required to perform them annually. According to a previous TWDB study, the costs to a retail public utility for staff time to complete an annual water loss audit range from less than $1,000 to $20,000 depending on the size of the utility and its records system.

LOCAL EMPLOYMENT IMPACT STATEMENT

The TWDB has 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 because it will impose no new requirements on local economies. The Board also has determined that there should be no significant adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The rule implements a statutory change to Texas Water Code §16.0121 that affects only retail public utilities providing potable water with greater than 3,300 connections or that are receiving financial assistance from the TWDB and requires these retail public utilities to perform and submit a water loss audit on an annual basis rather than on a five-year basis. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY ANALYSIS

The TWDB has determined that the proposed rulemaking is not subject to Texas Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT

The TWDB has determined that the promulgation and enforcement of this proposed rule will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule does not burden or restrict or limit the owner's right to or use of property. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

SUBMISSION OF COMMENTS

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, *rulescomments@twdb.texas.gov* or by fax at (512) 475-2053.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB; and Texas Water Code §16.0121, which requires the TWDB to develop appropriate methodologies and submission dates for a water loss audit required under that statute.

Cross-reference to statute: Texas Water Code Chapters 6 and 16.

§358.6. Water Loss Audits.

(a) In accordance with Texas Water Code §16.0121, a retail public utility, as defined by Texas Water Code §13.002, that provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding calendar year, unless a different 12-month period is allowed by the executive administrator. The water loss audit may be submitted electronically.

(1) Audit required annually. The utility must file the water loss audit with the executive administrator annually by May 1 if the utility:

(A) has greater than 3,300 connections; or

(B) is receiving financial assistance from the board, regardless of the number of connections. A retail public utility is receiving financial assistance from the board if it has an outstanding loan, loan forgiveness agreement, or grant agreement from the board.

(2) Audit required every five years. The utility must file the water loss audit with the executive administrator by May 1, 2016, and every five years thereafter by May 1st if the utility has 3,300 or fewer connections and is not receiving financial assistance from the board.

(3) [~~(1)~~] The water loss audit shall be performed in accordance with methodologies developed by the executive administrator based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the executive administrator. The [~~At least one year prior to the required filing, the~~] executive administrator will provide the necessary forms and methodologies [~~approved by the board~~] to the retail public utility [~~via first-class mail, electronic mail, or both~~].

[~~(2) Every five years, a retail public utility that provides potable water and that does not receive financial assistance from the board shall perform and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding year. The water loss audit is due by May 1, 2016, and May 1st every five years thereafter.~~]

[~~(3) A retail public utility providing potable water that receives financial assistance from the board shall perform and file a water loss audit with the executive administrator annually. For purposes of this rule, a retail public utility has received financial assistance upon closing and funding of a loan, loan forgiveness, or grant from the board. A retail public utility providing potable water that received financial assistance from the board prior to September 1, 2011, and that has an outstanding loan from the board or active loan forgiveness or grant agreement with the board shall submit a water loss audit to the executive administrator by May 1, 2013, and by May 1st annually thereafter during the term of the loan or the loan forgiveness or grant agreement. A retail public utility providing potable water that receives financial assistance from the board after September 1, 2011, shall submit a water loss audit no later than May 1st after the passage of one year following the receipt of financial assistance, and by May 1st annually thereafter during the term of the loan or the loan forgiveness or grant agreement. The water loss audit may be submitted electronically.~~]

(4) The executive administrator shall compile the information included in the water loss audits according to category of retail public utility and according to regional water planning area.

(b) The executive administrator shall determine if the water loss audit is administratively complete. A water loss audit is administratively complete if all required responses are provided. In the event the executive administrator determines that a retail public utility's water loss audit is incomplete, the executive administrator shall notify [~~incomplete audit will be returned to~~] the utility. [~~The retail public utility will then have 30 days from the new postmark date or electronic mail sent date to complete the items found deficient and return a complete water loss audit to the executive administrator.~~] A retail public utility that provides potable water that fails to submit a water loss audit or that fails to [~~timely~~] correct a water loss audit that is not administratively complete within the timeframe provided by the executive administrator is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, J, O, Q, and R; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit has been filed with and accepted by the executive administrator.

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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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-8061

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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 §3.365

The Comptroller of Public Accounts proposes an amendment to §3.365, concerning Sales Tax Holiday--Clothing, Shoes, and School Supplies. This section is amended to implement Senate Bill 485, 83rd Legislature, 2013.

Subsection (a)(4) contains corrections for grammatical errors. No substantive change is intended.

Subsection (b)(1)(B) is amended to reflect the statutory changes to Tax Code, §151.326(a)(2), that provide a limited period of time for a sales tax holiday relating to clothing, footwear, and school supplies. Accordingly, the limited time period is calculated based on Education Code, §25.0811(a)

Subsection (m) contains corrections for grammatical errors. No substantive change is intended.

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 clearly describing the effective dates for the annual sales tax holiday. 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 Interpretations & Publications 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.*

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

This amendment implements Tax Code, §151.326.

§3.365. Sales Tax Holiday--Clothing, Shoes, and School Supplies.

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

(1) Clothing or footwear--An article of apparel that the article manufacturer designs for wear on or about the human body. Except as provided under paragraph (3) of this subsection, for the purposes of this section, the term does not include accessories, such as jewelry, handbags, purses, briefcases, luggage, wallets, watches, and similar items that are carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing.

(2) Eligible item--For the purposes of this section, an article of clothing or footwear, a school backpack, or school supplies that are eligible for the sales tax exemption established under Tax Code, §151.326 and §151.327.

(3) School backpack--A pack with straps that one wears on the back, including a backpack with wheels (provided it may also be worn on the back like a traditional backpack) or a messenger bag, that is purchased for use by a student in a public or private elementary or secondary school. The term does not include an item that is commonly considered luggage, a briefcase, an athletic bag, a duffle bag, a gym bag, a computer bag, or a framed backpack.

(4) School supply--The term "school supply" has the meaning assigned by the Streamlined Sales and Use Tax Agreement adopted November 12, 2002, including all amendments made to the Agreement on or before December 14, 2006. The items set out in the following all-inclusive list are school supplies for the purpose of this exemption: binders, book bags, calculators, cellophane tape, blackboard chalk, compasses, composition books, crayons, erasers, expandable folders, pocket folders, plastic folders, [~~and~~] manila folders, glue, paste, paste sticks, highlighters, index cards, index card boxes, legal pads, lunch boxes, markers, notebooks, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, [~~and~~] construction paper, pencil boxes and other school supply boxes, pencil sharpeners, pencils, pens, protractors, rulers, scissors, and writing tablets. School supply items not on this list, for example, computers and textbooks, are not eligible for the exemption.

(b) Exempt sales.

(1) Sales or use tax is not due on the sale of an eligible item if:

(A) the sales price of the eligible item is less than $100; and

(B) [~~under Tax Code, §151.326,~~] the sale takes place during the period that begins at 12:01 a.m. on the Friday before the fifteenth [~~eighth~~] day preceding the fourth Monday in August [~~earliest district-wide date on which any school district, other than a district operating a year-round system, may begin instruction for the school year under Education Code, §25.0811(a)~~], and ends at 12:00 a.m. (midnight) on [~~of~~] the following Sunday.

(i) Using 2013 as an example, the fourth Monday in August falls on August 26. The fifteenth day preceding August 26 is Sunday, August 11th. The Friday before August 11 is August 9. The sales tax holiday will begin at 12:01 a.m. on Friday, August 9 and end at 12:00 a.m. (midnight) on Sunday, August 11 [~~The earliest district-wide school starting date under Education Code, §25.0811(a)(2), is the fourth Monday in August~~].

(ii) In 2014, the sales tax holiday will begin at 12:01 a.m. on Friday, August 8 and end at 12:00 a.m. (midnight) on Sunday, August 10 [~~Using 2012 as an example, the fourth Monday in August falls on August 27. The eighth day preceding August 27 is Sunday, August 19. The Friday before August 19 is August 17. The sales tax holiday will begin at 12:01 a.m. on Friday, August 17 and end at 12:00 a.m. (midnight) Sunday, August 19~~].

(iii) In 2015, the sales tax holiday will begin at 12:01 a.m. on Friday, August 7 and end at 12:00 a.m. (midnight) on Sunday, August 9 [~~In 2013, the sales tax holiday will begin at 12:01 a.m. on Friday, August 16 and end at 12:00 a.m. (midnight) Sunday, August 18~~].

~~(iv)~~ ~~In 2014, the sales tax holiday will begin at 12:01 a.m. on Friday, August 15 and end at 12:00 a.m. (midnight) Sunday, August 17.~~]

(2) The exemption applies to each eligible item that sells for less than $100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for $80 each, then both items qualify for the exemption, even though the customer's total purchase price ($160) exceeds $99.99.

(3) The exemption does not apply to the first $99.99 of an otherwise eligible item that sells for more than $99.99. For example, if a customer purchases a pair of pants that costs $110, then sales tax is due on the entire $110.

(c) Taxable sales. The exemption under this section does not apply to:

(1) any special clothing or footwear that the manufacturer primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which the manufacturer designed the article. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and thus qualify for the exemption;

(2) accessories, such as jewelry, handbags, purses, briefcases, luggage, athletic bags, duffle bags, gym bags, computer bags, framed backpacks, umbrellas, wallets, watches, and similar items that are carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing;

(3) school supplies and backpacks that are not purchased for use by elementary or secondary school students;

(4) school supplies not listed in subsection (a)(4) of this section;

(5) the rental of clothing or footwear. For example, the exemption under this section does not apply to the rental of formal wear, costumes, uniforms, diapers, or bowling shoes;

(6) taxable services that are performed on clothing or footwear, such as repair, remodeling, or maintenance services, and cleaning or laundry services. For example, sales tax is due on alterations to clothing, even though the alterations may be sold or invoiced, and the customer pays such invoice, at the same time as the clothing is being altered. If a customer purchases a pair of pants for $90 and pays $15 to have the pants cuffed, then the $90 charge for the pants is exempt, but tax is due on the $15 alterations charge; and

(7) purchases of items that are used to make or repair eligible items, including fabric, thread, yarn, buttons, snaps, hooks, and zippers.

(d) Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for $150, then the pair cannot be split in order to sell each shoe for $75 to qualify for the exemption. If a suit is normally priced at $225 on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than $100 in order to qualify for the exemption. However, components that are normally priced as separate articles may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than $100.

(e) Sales of pre-packaged combinations containing both exempt and taxable items.

(1) When an eligible item is sold together with taxable merchandise in a pre-packaged combination or single unit and the predominant cost of the set or unit is taxable, then the full price is subject to sales tax unless the price of the eligible item is separately stated. For example, if a boxed gift set that consists of a French-cuff dress shirt, cufflinks, and a tie tack is sold for a single price of $95, the full price of the boxed gift set is taxable if the cufflinks and tie tack are the predominant cost and the price of the shirt and tie are not separately stated.

(2) When an eligible item is sold in a pre-packaged combination that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the eligible item may qualify for the exemption under this section. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item that is being sold is the tie, which is exempt from tax if the tie is sold for less than $100 during the exemption period. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price that the retailer paid for the item.

(f) Discounts and coupons.

(1) A retailer may offer discounts to reduce the sales price of an item. If the discount reduces the sales price of an item to $99.99 or less, the item may qualify for the exemption under this section. For example, a customer buys a $150 dress and a $100 blouse from a retailer who offers a 10% discount. After application of the 10% discount, the final sales price of the dress is $135, and the blouse is $90. The dress is taxable (its price is over $99.99), and the blouse is exempt (its price is less than $100.00).

(2) When retailers accept coupons as a part of the sales price of any taxable item, the value of the coupon is excludable from the tax as a cash discount, regardless of whether the retailer is reimbursed for the amount that the coupon represents. Therefore, a coupon can be used to reduce the sales price of an item to $99.99 or less in order to qualify for the exemption under this section. For example, if a customer purchases a pair of shoes priced at $110 with a coupon worth $20, the final sales price of the shoes is $90, and the shoes qualify for the exemption.

(g) Buy one, get one free or for a reduced price. The total price of items that are advertised as "buy one, get one free," or "buy one, get one for a reduced price," cannot be averaged in order for both items to qualify for the exemption under this section. The following examples illustrate how such sales should be handled.

(1) A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at $120; the second pair of pants is free. Tax is due on $120. Having advertised that the second pair is free, the store cannot register the charge for each pair of pants at $60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50% off, and sells each pair of $120 pants for $60, each pair of pants qualifies for the exemption. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price that the retailer paid for the item.

(2) A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for $100; the second pair is sold for $50 (half price). Tax is due on the $100 shoes, but not on the $50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for $75 in order for the items to qualify for the exemption under this section. However, if the retailer advertises the shoes for 25% off, and thereby sells each pair of $100 shoes for $75, then each pair of shoes qualifies for the exemption.

(h) Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a

sweater for $110 and receives a $12 rebate from the manufacturer. The retailer must collect tax on the $110 sales price of the sweater.

(i) Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the merchandise. An order is accepted for layaway by the retailer when the retailer removes the goods from normal inventory or clearly identifies the items as sold to the customer. The sale of an eligible item under a layaway plan qualifies for exemption when either:

(1) final payment on a layaway order is made by, and the merchandise is given to, the customer during the exemption period; or

(2) the customer selects the eligible item and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

(j) Rain checks. Eligible items that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

(k) Exchanges.

(1) If a customer purchases an eligible item during the exemption period, but later exchanges the item for an item of a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.

(2) If a customer purchases an eligible item during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.

(3) If a customer purchases an eligible item before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different eligible item, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

(4) Examples:

(A) A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the $35 price of the shirt.

(B) A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for a $35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the $35 price of the jacket.

(C) During the exemption period, a customer purchases a $90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $90 dress for a $150 dress. Tax is due on the $150 dress. The $90 credit from the returned item cannot be used to reduce the sales price of the $150 item to $60 for exemption purposes.

(D) During the exemption period, a customer purchases a $60 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $60 dress for a $95 dress. Tax is not due on the $95 dress because it was also purchased during the exemption period and otherwise meets the qualifications for the exemption.

(l) Returned merchandise. For a 30-day period after the temporary exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the retailer has sufficient documentation to show that tax was paid on the specific item. This 30-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 30-day period is not intended to change a retailer's policy on the time period during which the retailer will accept returns.

(m) Mail, telephone, e-mail, Internet orders, and custom orders. Under the Texas sales tax law, a sale of tangible personal property occurs when a purchaser receives title to or possession of the property for consideration. Therefore, an eligible item may qualify for this exemption if:

(1) the item is both delivered to and paid for by the customer during the exemption period; or

(2) the customer orders and pays for the item and the retailer accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The retailer accepts an order when the retailer has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order, or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the company.

(n) Shipping and handling charges.

(1) Shipping and handling charges are included as part of the sales price of an eligible item, regardless of whether the charges are separately stated. Except as provided in paragraph (2) of this subsection, if multiple items are shipped on a single invoice, the shipping and handling charge must be proportionately allocated to each item ordered, and separately identified on the invoice, to determine if any items qualify for the exemption. The following examples illustrate the way these charges should be handled.

(A) A customer orders a jacket for $95. The shipping charge to deliver the jacket to the customer is $5.00. The sales price of the jacket is $100. Tax is due on the full sales price.

(B) A customer orders a suit for $285 and a shirt for $95. The charge to deliver the items is $15. The $15 shipping charge must be proportionately and separately allocated between the items: $285 / $380 = 75%; therefore, 75% of the $15 shipping charge, or $11.25, must be allocated to the suit, and separately identified on the invoice as such. The remaining 25% of the $15 shipping charge, or $3.75, must be allocated to the shirt, and separately identified on the invoice as such. The sales price of the shirt is $95 plus $3.75, which totals $98.75; therefore, the shirt qualifies for the exemption.

(C) A customer orders a suit for $285 and a shirt for $95. The charge to deliver the items is $20. The $20 shipping charge must be proportionately and separately allocated between the items: $285 / $380 = 75%; therefore, 75% of the $20 shipping charge, or $15, must be allocated to the suit, and separately identified on the invoice as such. The remaining 25% of the $20 shipping charge, or $5.00, must be allocated to the shirt, and separately identified on the invoice as such. The sales price of the shirt is $95 plus $5.00, which totals $100; because the sales price of the shirt exceeds $99.99, the purchase of the shirt is taxable.

(2) If the shipping and handling charge is a flat rate per package and the amount charged is the same regardless of how many items are included in the package, for purposes of this exemption the total charge may be attributed to one of the items in the package rather than proportionately and separately allocated between the items. For example, a customer orders five shirts, with four priced at $98 and one at $85. The retailer charges $10 for shipping and handling the order. The retailer would have charged the same amount for shipping and handling whether the customer ordered one shirt or five shirts. The retailer may choose to attribute the $10 shipping and handling charge to the shirt that was sold for $85 rather than allocate the charge proportionately and separately between the shirts. If the charge is attributed to the $85 shirt, the sales price of that shirt is $95, and all of the shirts will qualify for the exemption.

(o) Documenting exempt sales.

(1) Except as provided in paragraphs (2) and (3) of this subsection, a retailer is not required to obtain an exemption certificate on sales of eligible items during the exemption period; however, the retailer's records should clearly identify the type of item sold, the date on which the item was sold, and the sales price of the item.

(2) A retailer who sells more than 10 backpacks to a customer at the same time must obtain an exemption certificate from the customer verifying that the backpacks are being purchased for use by elementary or secondary school students.

(3) If the purchaser is buying the school supplies under a business account, the retailer must obtain an exemption certificate from the purchaser certifying that the items are purchased for use by an elementary or secondary school student. "Under a business account" means the purchaser is using a business credit card or business check rather than a personal credit card or personal check; is being billed under a business account maintained at the retailer; or is using a business membership at a retailer that is membership based.

(p) Reporting exempt sales. No special reporting procedures are necessary to report exempt sales made during the exemption period. Sales should be reported as currently required by law.

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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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.442

The Comptroller of Public Accounts proposes an amendment to §3.442, concerning Bad Debts or Accelerated Credit for Non-payment of Taxes. Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a). Subsequent subsections are re-lettered and corrections to subsections referenced are made throughout the section.

In addition, subsections are being amended to implement House Bill 2148, 83rd Legislature, 2013. Re-lettered subsections (a), (d), and (f) are amended to included compressed natural gas and liquefied natural gas dealers.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the bad debt refund and credit requirements for CNG and LNG dealers. 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 Interpretations & Publications 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 amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §§162.113, 162.116, 162.126, 162.214, 162.217, 162.228, and 162.366.

§3.442. Bad Debts or Accelerated Credit for Non-payment of Taxes.

~~[(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004, under Tax Code, Chapter 162. Motor fuel transactions that occur before January 1, 2004, are governed by provisions of Chapter 3, Subchapter L of this title, and promulgated under Tax Code, Chapter 153.]~~

(a) ~~[(b)]~~ Bad Debt Deductions. A licensed distributor, supplier, ~~[or]~~ permissive supplier, or compressed natural gas and liquefied natural gas dealer may file a claim for refund on the monthly return of taxes paid on fuel that was sold on account that is later determined to be uncollectible, worthless, and previously written off as bad debt at the time that the distributor, supplier, ~~[or]~~ permissive supplier, or compressed natural gas and liquefied natural gas dealer held an active license.

(1) The claim for refund must be in writing, state the fuel type (gasoline, ~~[or]~~ diesel, compressed natural gas, or liquefied natural gas), state the beginning and ending date of sales on which the bad debt is claimed, the number of gallons, and the dollar amount of bad debts. The licensed distributor, supplier, ~~[or]~~ permissive supplier, or compressed natural gas and liquefied natural gas dealer must establish the bad debt amount by providing information on the form required by the comptroller. Required information includes but is not limited to the following:

(A) the date of sale or invoice date;

(B) invoice fuel amount, and invoice fuel tax amount;

(C) the name and address of the purchaser, and if applicable, the licensed number of the purchaser;

(D) all payments or credits applied to the account of the purchaser; and

(E) uncollected amounts in the purchaser's account that were written off as bad debt in the distributor's, supplier's, or permissive supplier's records, including the number of gallons of fuel represented by the motor fuel portion of the bad debt.

(2) All payments and credits made by the purchaser must be applied to the purchaser's account to determine the bad debt amount, and if the purchaser's account also contains purchases of goods other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods sold to the purchaser. The comptroller will only allow a claim for refund of tax on the number of gallons represented by the motor fuel portion of the bad debt. The maximum amount of refund claimed cannot exceed the tax paid on the fuel sold on account that has been written off as a bad debt.

(3) A claim for refund of taxes based on a bad debt must be filed within four years from the date the account is entered in the distributor's, supplier's, [~~or~~] permissive supplier's, or compressed natural gas and liquefied natural gas dealer's books as a bad debt.

(b) [~~(c)~~] Accelerated Credit. If a licensed supplier or permissive supplier reported and remitted taxes on a tax return for fuel sold on account to a purchaser who is licensed as a distributor or importer at the time of the transaction and who subsequently fails to pay the taxes to the seller, the licensed supplier or permissive supplier may take a credit against tax liability on a subsequent tax return if the licensed supplier or permissive supplier notifies the comptroller of the default.

(1) The notification to the comptroller for credits claimed before June 19, 2009, must be made no later than 60 days after the date of default. The notification to the comptroller for credits claimed on or after June 19, 2009, must be made no later than 15 days after the date of default.

(2) The notification to the comptroller may be made by taking a credit on an original or amended return or in writing. If the notification is in writing the credits may be taken beginning with the return for the reporting month in which the notification is made. When credits are taken on a return, the licensed supplier or permissive supplier must submit with that return information required by the comptroller.

(3) A licensed supplier or permissive supplier who fails to notify the comptroller of the default within the prescribed period in paragraph (1) of this subsection cannot take a credit on a return, but may seek a refund of taxes based on bad debts subject to the requirements provided by subsection (a) [~~(b)~~] of this section.

(4) For credits claimed before June 19, 2009, all payments and credits made by the purchaser must be applied to the purchaser's account to determine that non-payment amount, and if the purchaser's account contains the purchase of goods or items other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods or items sold to the purchaser. The comptroller will only allow a credit of tax on the number of gallons represented by the motor fuel portion of the unpaid amount. The maximum amount of credit taken cannot exceed the tax paid on the fuel sold on account that has been unpaid. For credits claimed on or after June 19, 2009, the supplier or permissive supplier may claim credit on the amount of the deferred tax payment defaulted by the distributor or import.

(5) If the notification of default was timely made to the comptroller as prescribed by paragraph (1) of this subsection, credits for taxes that were not collected from the licensed purchaser must be taken within four years from the date of default.

(6) A distributor or importer whose right to defer payment of tax to a supplier or permissive supplier has been suspended before June 19, 2009, may seek reinstatement of the right to defer payment when all motor fuel tax liability has been satisfied and considered in good standing with the comptroller. The distributor or importer must request that the comptroller issue a notice of good standing for motor fuel taxes.

(7) A distributor or importer on which a supplier or permissive supplier has notified the comptroller of default of the deferred tax payment on or after June 19, 2009, loses the right to defer payment of tax to that supplier or permissive supplier for one year following the date that the supplier or permissive supplier notified the comptroller of default. The distributor or importer may seek reinstatement of the right to defer payment if the supplier or permissive supplier erroneously claimed a credit or the default was due to circumstances beyond the distributor's or importer's control, such as a bank error. Request for reinstatement of the right to defer taxes should be made to the comptroller in writing.

(c) [~~(d)~~] Credit card sales. The refund for bad debts or credit for non-payment of taxes allowed under this section does not apply to sales of fuel that is delivered into the supply tank of a motor vehicle or motorboat when payment is made through the use and acceptance of a credit card. For purpose of this section, a credit card is defined as any card, plate, key, or like device by which credit is extended to and charged to the purchaser's account. Sales made through the use and acceptance of a fuel access card, where the only use of the access card is to record the quantity and type of fuel or other information acquired merely for the purpose of reconciling accounts and no credit is extended to the holder are eligible for the bad debt credit. Credit sales to commercial or agricultural customers at locations not open to the general public are eligible to the bad debt credit.

(d) [~~(e)~~] A supplier, permissive supplier, [~~or~~] distributor, or compressed natural gas and liquefied natural gas dealer who collects all or part of an account that was written off as a bad debt for which a refund was sought under subsection (a) [~~(b)~~] of this section or who collects all or part of the unpaid tax after a credit was taken under subsection (b) [~~(c)~~] of this section, must report and remit the collected amount on the return that is due for the reporting period in which the bad debt was originally claimed. The comptroller may assess a deficiency, including 10% penalty at the rate provided by Tax Code, §111.060, if the amount recovered is not reported and tax is not paid to the state during the month in which the recovery is made. Interest will accrue from the date the credit was taken.

(e) [~~(f)~~] If the comptroller determines that a taxpayer obtained a refund from the comptroller or took a credit on a return when he knew or should reasonably have known that the account or tax was collectible, the comptroller may issue a deficiency for the tax plus 10% penalty and interest imposed from the date the refund was granted or the credit taken. In addition, other penalties provided by this section or by Tax Code, Chapters 111 or 162, may be imposed.

(f) [~~(g)~~] The comptroller may issue a deficiency assessment for tax, plus penalty and interest applicable under Tax Code, Chapter 111, against the purchaser whose account was the subject of a refund for bad debt obtained or a credit claimed by a distributor, supplier, [~~or~~] permissive supplier, or compressed natural gas and liquefied natural gas dealer.

(g) [~~(h)~~] Criminal and civil penalties for issuing bad checks.

(1) A person commits an offense if he issues a check to a licensed distributor, licensed supplier, or permissive supplier for the payment of fuel knowing that his account with the bank on which the check is drawn has insufficient funds and if the payment is for an obli-

gation that includes tax imposed by Tax Code, Chapter 162, that is required to be collected by the licensed distributor or licensed supplier. The offense is a Class C misdemeanor.

(2) If a licensed distributor, licensed supplier, or permissive supplier receives an insufficient fund check causing a refund to be sought or a credit taken in accordance with the provisions in this section, the licensed distributor or licensed supplier may notify the comptroller of the receipt of the insufficient fund check. When making the notification, a photocopy of both sides of the returned check should be furnished.

(3) A person who issues an insufficient fund check to a licensed distributor, licensed supplier, or permissive supplier for payment of an obligation that includes tax imposed by Tax Code, Chapter 162, that is required to be collected by the licensed distributor, licensed supplier, or permissive supplier may be assessed a penalty equal to 100% of the total amount of tax not paid to the licensed distributor, licensed supplier, or permissive supplier. This penalty is in addition to any penalties, interest, and collection actions authorized by the Tax Code.

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 October 18, 2013.

TRD-201304710
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 475-0387

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34 TAC §3.447

The Comptroller of Public Accounts proposes an amendment to §3.447, concerning Reports, Due Dates, Bonding Requirements, and Qualifications for Annual Filers.

Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a). Subsequent subsections are re-lettered.

Re-lettered subsection (a) is being amended to implement House Bill 2148, 83rd Legislature, 2013. New paragraph (4) is added to provide guidelines for filing the compressed natural gas and liquefied natural gas dealer return quarterly or annually. New paragraph (5) is added to require sales of compressed natural gas and liquefied natural gas from September 1, 2013, through December 31, 2013, be reported on the 2013 annual return.

Re-lettered subsection (b) is being amended to add new paragraph (2), which identifies the due date for quarterly returns. The subsequent paragraph is re-numbered accordingly.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the reporting requirements for CNG and LNG dealers. 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 Interpretations & Publications 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 amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §162.362.

§3.447. Reports, Due Dates, Bonding Requirements, and Qualifications for Annual Filers [~~(Tax Code, §§162.212, 162.215, 162.302, and 162.310)~~].

~~[(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.]~~

(a) [~~(b)~~] Reports required.

(1) A dyed diesel fuel bonded user with an average quarterly tax liability of $600 or less has the option to file reports each quarter or each year. After a dyed diesel fuel bonded user has selected a method of reporting, the method cannot be changed without permission from the comptroller unless the dyed diesel fuel bonded user's tax liability for a year exceeds $2,400, or the comptroller deems change otherwise necessary. If the dyed diesel fuel bonded user's diesel fuel tax liability during a year exceeds $2,400, the dyed diesel fuel bonded user must file a report for all previous quarters of that year. Future reports must be filed on a quarterly basis.

(2) Dyed diesel fuel bonded users with an average quarterly tax liability of more than $600 must file quarterly reports.

(3) Liquefied gas dealers and liquefied gas interstate truckers must file annual reports.

(4) Compressed natural gas and liquefied natural gas dealers with an average quarterly tax liability of $600 or less have the option to file reports each quarter or each year. After a compressed natural gas and liquefied natural gas dealer has selected a method of reporting, the dealer cannot change the method without permission from the comptroller, unless the compressed natural gas and liquefied natural gas dealer's tax liability for a year exceeds $2,400. The comptroller may require a compressed natural gas and liquefied natural gas dealer to change its method of reporting when the comptroller deems change otherwise necessary. If the compressed natural gas and liquefied natural gas dealer's tax liability during a year exceeds $2,400, the compressed natural gas and liquefied natural gas dealer must file a report for all previous quarters of that year. Future reports must be filed on a quarterly basis.

(5) The report and payment of tax on sales of compressed natural gas and liquefied natural gas sales made from September 1, 2013, through December 31, 2013, are to be included with the 2013 annual return.

(b) [~~(c)~~] Due dates.

(1) The due date for all annual reports is January 25th.

(2) The due date for all quarterly reports is the 25th day of the month following the calendar quarter.

(3) [~~(2)~~] If the report is filed by the due date, a request for refund of taxes paid on liquefied gas used out-of-state must be made on the annual report.

(c) [~~(d)~~] Bonding requirements. Dyed diesel fuel bonded users that report annually will be required to post security in the amount of two times the annual tax liability on taxable uses of diesel fuel. The minimum bond is $10,000. The bond may be waived if it is determined that the bond is not necessary to protect the state.

(d) [~~(e)~~] Qualifications.

(1) A license holder that is going out of business or whose license is cancelled must file a report on or before the 25th day of the month following the calendar quarter in which business ceased.

(2) Dyed diesel fuel bonded users will be notified each March of any filing status change based on the dyed diesel fuel bonded user's previous-year reports.

(e) [~~(f)~~] Liquefied gas reports. Licensed liquefied gas dealers who are also liquefied gas interstate truckers registered under a multistate tax agreement must file their liquefied gas dealer report with the same frequency that they report their interstate trucker operations under the multistate tax agreement.

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 October 18, 2013.

TRD-201304711
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 27. CRIME RECORDS
SUBCHAPTER B. MISSING PERSON AUTOMATED FILE

37 TAC §27.21

The Texas Department of Public Safety (the department) proposes amendments to §27.21, concerning Criteria for Entry. This rule relates to the acceptable documentation a law enforcement agency must possess before entering an endangered child into the missing person automated file. These amendments are necessary pursuant to the 83rd Legislative Session, Senate Bill 742 which added Texas Code of Criminal Procedure, Article 63.0091.

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 improved compliance by law enforcement agencies with the statutes and rules pertaining to entering an endangered child into the missing person automated file.

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 Louis Beaty, 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 proposed amendment is made under Texas Code of Criminal Procedure, Article 63.0091(a), which authorizes the director of the department to adopt rules regarding the procedures for a local law enforcement agency on receiving a report of a missing child.

Texas Code of Criminal Procedure, Article 63.0091, is affected by this proposal.

§27.21. Criteria for Entry.

(a) General. An agency entering missing person information in the National Crime Information Center (NCIC) and Texas Crime Information Center (TCIC) automated file must have in its possession documentation from a source other than the investigating police agency at the time of entry supporting the stated conditions under which the person is declared missing for NCIC [~~National Crime Information Center~~] and TCIC [~~Texas Crime Information Center~~] purposes. This documentation in the record will be reassurance that the rights to privacy of the individual will not be violated.

(b) Criteria for entry in NCIC [~~National Crime Information Center~~] and TCIC [~~Texas Crime Information Center~~] missing person automated file.

(1) Acceptable documentation for a person of any age who is missing and who is under proven physical or mental disability or is senile, thereby subjecting himself or others to personal and immediate

danger, is a written statement from a physician or other authoritative source corroborating the missing person's physical or mental disability.

(2) Acceptable documentation for a person of any age who is missing under circumstances indicating that the disappearance was not voluntary is a written statement from parent, legal guardian, family member, or other authoritative source advising that the missing person's disappearance was not voluntary.

(3) Acceptable documentation for a person of any age who is in the company of another person under circumstances indicating that his physical safety is in danger is a written statement from parent, legal guardian, family member, or other authoritative source advising that the missing person is in the company of another person under circumstances indicating that his physical safety is in danger.

(4) Acceptable documentation for a person who is declared unemancipated as defined by the laws of his state of residence and does not meet any of the entry criteria set forth above is a written statement from parent or legal guardian confirming that the person is missing and verifying the date of birth.

(c) Criteria for entry of information relating to an endangered child in the TCIC missing person automated file.

(1) Acceptable documentation for an endangered child who has been reported missing on four or more occasions in the 24-month period preceding the date of the current entry consists of copies of prior missing person reports from law enforcement and/or a written statement from parent, legal guardian, family member, or other authoritative source confirming prior incidents.

(2) Acceptable documentation for an endangered child who is in foster care or in the conservatorship of the Department of Family and Protective Services and has been reported missing on two or more occasions in the 24-month period preceding the date of the current entry consists of copies of prior missing person reports from law enforcement and/or a written statement from parent, legal guardian, family member, or other authoritative source confirming prior incidents and a written statement from parent, legal guardian, family member, the Department of Family and Protective Services or other authoritative source confirming the missing individual is in foster care or in conservatorship.

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 October 15, 2013.

TRD-201304575
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 424-5848

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PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §211.1, concerning Definitions. Subsection (a)(12) is amended to conform "Commission" definition to statutory agency name change amendment. Subsection (a)(16) and (35) are amended to clarify and conform definitions of "Contractual training provider" and "Law enforcement academy" to Commission's longstanding practice of entering into contractual relationships with training providers. Subsection (a)(43) is amended to change 3 to 5 power the frame mounted optical enhancing sighting device defined in "Patrol rifle." Subsection (a)(48) is amended to change 3 to 5 power the frame mounted optical enhancing sighting device defined in "Precision rifle." Subsection (a)(54) is added to define "School marshal" according to newly added statute. Subsection (a)(54) - (65) have been re-numbered. Newly re-numbered subsection (a)(65) is amended to include any other authorized training provider. Subsection (b) is updated to reflect effective date of the changes.

This amendment is necessary to conform and clarify Commission rule definitions to statutory amendments. The amendment to subsection (a)(16), (35), and (65) are necessary to conform with rule changes related to training provider contracts. The amendment to subsection (a)(43) and (48) are necessary to broaden the range of optics allowed on patrol rifles.

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 rule definitions.

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 this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

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

§211.1. Definitions.

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

(1) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools and the Texas Higher Education Coordinating Board [~~Higher Texas Education Board~~], authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(2) Academic provider--A school, accredited by the Southern Association of Colleges and Schools and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges, or an international college or university evaluated and accepted by a United States accredited college or university.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the commission.

(5) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(6) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(7) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status.

(8) Background investigation--A pre-employment background investigation that meets or exceeds the commission developed questionnaire/history statement.

(9) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(10) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(11) Chief administrator--The head or designee of a law enforcement agency.

(12) Commission--The Texas Commission on Law Enforcement [~~Officer Standards and Education~~].

(13) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(14) Commissioners--The nine commission members appointed by the governor.

(15) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(16) Contractual training provider--A law enforcement agency or academy, a law enforcement association, alternative delivery trainer, distance education, academic alternative, or proprietary training provider [~~contractor~~] that conducts specific education and training under a contract with the commission.

(17) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(18) Court-ordered community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(19) Diploma mill--An entity that offers for a fee with little or no coursework, degrees, diplomas, or certificates that may be used to represent to the general public that the individual has successfully completed a program of secondary education or training.

(20) Distance education--Study, at a distance, with an educational provider that conducts organized, formal learning opportunities for students. The instruction is offered wholly or primarily by distance study, through virtually any media. It may include the use of: videotapes, DVD, audio recordings, telephone and email communications, and Web-based delivery systems.

(21) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(22) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(23) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(24) Family Violence--In this chapter, has the meaning assigned by Chapter 71, Texas Family Code.

(25) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(26) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity.

(27) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(28) Fit for duty review--A formal specialized examination of an individual, appointed to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status, to determine if the appointee is able to safely and/or effectively perform essential job functions. The basis for these examinations should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical and/or psychological condition or impairment. Objective evidence may include direct observation, credible third party reports; or other reliable evidence. The review should come after other options have been deemed inappropriate in light of the facts of the case. The selected Texas licensed medical doctor or psychologist, who is familiar with the duties of the appointee, conducting an examination should be consulted to ensure that a review is indicated. This review may include psychological and/or medical fitness examinations.

(29) High School Diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development test indicating a high school graduation level. Documentation from diploma mills is not acceptable.

(30) Home School Diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home. (Texas Education Code §29.916)

(31) Individual--A human being who has been born and is or was alive.

(32) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Texas Government Code §511.0092.

(33) Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(34) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(35) Law enforcement academy--A school operated by a governmental entity [~~that has been licensed by the commission,~~] which may provide basic licensing courses and continuing education under contract with the commission.

(36) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Texas Transportation Code, §546.003 and §547.702.

(37) Lesson plan--A plan of action consisting of a sequence of logically linked topics that together make positive learning experiences. Elements of a lesson plan include: measurable goals and objectives, content, a description of instructional methods, tests and activities, assessments and evaluations, and technologies utilized.

(38) License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(39) Licensee--An individual holding a license issued by the commission.

(40) Line of duty--Any lawful and reasonable action, which an officer identified in Texas Government Code, Chapter 3105 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(41) Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(42) Officer--A peace officer or reserve identified under the provisions of the Texas Occupations Code, §1701.001.

(43) Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 5 [~~3~~] power or less, that is carried by the individual officer in an official capacity.

(44) Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Texas Occupations Code, §1701.001.

(45) Personal Identification Number (PID)--A unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(46) Placed on probation--Has received an adjudicated or deferred adjudication probation for a criminal offense.

(47) POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(48) Precision rifle--Any rifle with a frame mounted optical sighting device greater than 5 [~~3~~] power that is carried by the individual officer in an official capacity.

(49) Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(50) Public security officer--A person employed or appointed as an armed security officer identified under the provisions of the Texas Occupations Code, §1701.001.

(51) Reactivate--To make a license issued by the commission active after a license becomes inactive. A license becomes inactive at the end of the most recent unit or cycle in which the licensee is not appointed and has failed to complete legislatively required training.

(52) Reinstate--To make a license issued by the commission active after disciplinary action or failure to obtain required continuing education.

(53) Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Texas Occupations Code, §1701.001.

(54) School marshal--A person employed and appointed by the board of trustees of a school district or the governing body of an open-enrollment charter school under Texas Code of Criminal Procedure, Article 2.127 and in accordance with and having the rights provided by Texas Education Code, §37.0811.

(55) [~~(54)~~] Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(56) [~~(55)~~] Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated, reported on the form currently prescribed by the commission, in accordance with Texas Occupations Code, §1701.452.

(57) [~~(56)~~] SOAH--The State Office of Administrative Hearings.

(58) [~~(57)~~] Successful completion--A minimum of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(59) [~~(58)~~] TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

(60) [~~(59)~~] Telecommunicator--A person employed as a telecommunicator under the provisions of the Texas Occupations Code, §1701.001.

(61) [~~(60)~~] Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title.

(62) [~~(61)~~] Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

(63) [~~(62)~~] Training hours--Classroom or distance education hours reported in one-hour increments.

(64) [~~(63)~~] Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(65) [~~(64)~~] Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by or authorized under a training provider contract with the commission to provide preparatory or continuing training for licensees or potential licensees.

(66) [~~(65)~~] Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is February 1, 2014 [~~January 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 October 18, 2013.

TRD-201304702
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
For further information, please call: (512) 936-7713

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37 TAC §211.27

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas 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 §211.27, concerning Reporting Responsibilities for Individuals. 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. It also clarifies that a single military, not F-5 Report of Separation, dishonorable, or bad conduct discharge is a disqualifier or violation.

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 ensuring licensed telecommunicators are properly reported to the Commission.

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 this chapter.

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

§211.27. Reporting Responsibilities of Individuals.

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 October 17, 2013.

TRD-201304628
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
For further information, please call: (512) 936-7713

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37 TAC §211.27

The Texas Commission on Law Enforcement (Commission) proposes new §211.27, concerning Reporting Responsibilities for Individuals.

This new section 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.

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 cost would be occurred by departments that choose to pay for reporting agency appointments or separations.

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 telecommunicators are properly reported to the Commission.

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 En-

forcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

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

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

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

§211.27. Reporting Responsibilities of Individuals.

(a) Within thirty days, a licensee or person meeting the requirements of a licensee shall report to the commission:

(1) any name change;

(2) a permanent mailing address other than an agency address;

(3) all subsequent address changes;

(4) an arrest, charge, or indictment for a criminal offense above the grade of Class C misdemeanor, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, including the name of the arresting agency, the style, court, and cause number of the charge or indictment, if any;

(5) the final disposition of the criminal action; and

(6) receipt of a dishonorable or other discharge based on misconduct which bars future military service.

(b) The effective date of this section is February 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 October 16, 2013.

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

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37 TAC §211.33

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §211.33, concerning Law Enforcement Achievement Awards. Subsection (a) is amended to include telecommunicators licensed by the Commission. Subsection (d) is amended to reflect the effective date of the changes.

This amendment is necessary to conform the rule to amended telecommunicator licensee statute by including "telecommunicator" as a licensee eligible for an achievement award.

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 including telecommunicators for eligibility.

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

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.401, Professional Achievement.

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

§211.33. Law Enforcement Achievement Awards.

(a) The commission shall issue achievement awards to qualified peace officers, reserve law enforcement officers, or 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 [~~March 1, 2001~~].

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 October 17, 2013.

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

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS

37 TAC §215.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the 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 §215.1, concerning Licensing of Training Providers. This section is being replaced by a new rule which substitutes licensing of training providers to entering into contracts with providers. The new rule removes redundant information and encompasses specific types of providers.

This repeal is necessary in order to propose a new section to set out the Commission's discretionary authority to enter into a contract with a training provider. The new section creates no substantive changes to a training provider applicant's previous responsibilities or duties under the current rule. This repeal helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 the practice of entering into contracts with training providers and omitting redundant information.

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 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 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 this chapter.

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

§215.1. Licensing of Training Providers.

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 October 17, 2013.

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

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37 TAC §215.1

The Texas Commission on Law Enforcement (Commission) proposes new §215.1, concerning Commission Authorization of Training Providers. This new rule allows the Commission discretionary authority to enter into a contract with a training provider applicant.

This new rule is necessary to set out the Commission's discretionary authority to enter into a contract with a training provider. This new rule creates no substantive changes to a training provider applicant's previous responsibilities or duties under the current rule. This new rule helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 clarifying the practice of entering into contracts with training providers and omitting redundant information.

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors.

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

§215.1. Commission Authorization of Training Providers.

(a) The commission may enter into a contract with:

(1) a law enforcement academy training provider;

(2) a law enforcement association, distance education, or proprietary training provider; or

(3) an academic alternative training provider.

(b) To enter into a contract with the commission, a training provider must be approved after completing all requirements for application and eligibility.

(c) A training provider applicant must use the electronic application process and submit any required fee.

(d) The effective date of this section is February 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 October 17, 2013.

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

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37 TAC §215.2

The Texas Commission on Law Enforcement (Commission) proposes new §215.2, concerning General Application and Approval Process.

This 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 the current rule. This new rule helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 providing clear and concise instructions for becoming an approved training provider.

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors.

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

§215.2. General Application and Approval Process.

(a) In addition to all other respective entity specific application requirements of this chapter, training provider applicants must comply with the provisions of this section.

(b) All training provider applicants must pass an inspection of facilities and instructional materials. The inspection shall be conducted by commission staff or by a team of training provider coordinators as appointed by the executive director.

(c) A training provider applicant must have and maintain:

(1) qualified instructors and staff to conduct successful training;

(2) instructional resources to conduct successful training, to include, but not limited to, convenient access to a law enforcement reference library or sufficient number of computers for student and staff use;

(3) access to current and appropriate teaching tools and electronic equipment, including video players, projection equipment, computer hardware, software, and the Internet;

(4) a proprietary interest in or a written contract providing for a firing range suitable for the course of fire required in the current basic peace officer course, with safety rules clearly posted, secure storage and first aid equipment while on the premises; and

(5) a proprietary interest in or a written contract providing for at least one facility to conduct police driving training, to include at least one law enforcement automobile for training.

(d) A training provider applicant shall submit:

(1) documentation of compliance with the electronic reporting requirements of §1701.1523 of the Texas Occupations Code;

(2) documentation that an advisory board has already been appointed as required by this chapter and §1701.252 of the Texas Occupations Code;

(3) advisory board minutes that show the advisory board has complied with the requirements of this chapter;

(4) the name and PID of the proposed training coordinator;

(5) documentation that the training coordinator is in compliance with all responsibilities required under law; and

(6) at the request of the executive director, submit each board member's resume for approval. Law enforcement training providers excepted, applicants may alternatively submit at least one copy of the learning objectives of each course covered by the contract.

(e) The chief administrator and proposed training coordinator of a law enforcement academy, law enforcement association, distance education, or proprietary training provider applicant must appear before the commissioners to respond to questions prior to action being taken on the application.

(f) The dean or chair and the proposed training coordinator of an academic alternative applicant must appear before the commissioners to respond to questions prior to action being taken on the application.

(g) The effective date of this section is February 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.

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TRD-201304621
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
For further information, please call: (512) 936-7713

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37 TAC §215.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the 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 §215.3, concerning Academy Licensing. This section is being replaced by a new rule which reorganizes information and deletes redundant information.

This repeal is necessary in order to propose a new section to set out the Commission's general approval process for all prospective training provider applicants. The new section creates no substantive changes to a training provider applicant's previous responsibilities or duties under the current rule. This repeal helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 law enforcement academies.

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 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 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 this chapter.

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

§215.3. Academy Licensing.

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

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37 TAC §215.3

The Texas Commission on Law Enforcement (Commission) proposes new §215.3, concerning Law Enforcement Academy Training Provider. This new rule establishes specific requirements for a law enforcement academy training provider applicant.

This 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 the current rule. This new rule helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 clarifying requirements for law enforcement academies.

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 En-

forcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

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

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors.

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

§215.3. Law Enforcement Academy Training Provider.

(a) In addition to any other application requirements under this chapter, a law enforcement academy training provider applicant shall comply with all provisions of this section.

(b) An entity applying for a law enforcement academy training provider contract must be based on at least one of the following sponsoring organizations:

(1) a law enforcement agency with a minimum of 75 full-time paid peace officers, county jailers, or telecommunicators under current appointment;

(2) an institution recognized by the Texas Higher Education Coordinating Board; or

(3) a regional planning commission or councils of governments' (COG) board. The commission will enter into only one academy contract within each regional planning commission or councils of governments' area at any one time.

(c) A law enforcement academy training provider applicant shall submit:

(1) the proposed formal name of the academy, which must not misrepresent the status of the academy or be confusing to law enforcement or to the public;

(2) a proposed course schedule to show that training will be conducted on a continuing basis;

(3) a schedule of tuition and fees that will be charged, if any;

(4) the physical location and a description of the proposed training facility and any satellite sites; and

(5) documentation of any contract an academy may have as cosponsor with law enforcement agencies and other entities to conduct continuing education classes or basic county corrections training.

(d) A training needs assessment must be completed and submitted for commission approval and shall include:

(1) a description of whom the academy will serve, including the identity of each law enforcement agency the academy expects to serve, the number of officers the academy expects to train annually from each agency, and the basis for the academy's expectations;

(2) the number and types of courses that will be offered; and

(3) proof of notification by e-mail to all academies within the regional planning commission or councils of governments' area of their intent to apply for an academy contract and what specific training needs the applicant intends to meet.

(e) The effective date of this section is February 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.

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

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37 TAC §215.5

(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 §215.5, concerning Contractual Training. This section is being replaced by a new rule which reorganizes information and deletes redundant information.

This repeal is necessary in order to propose a new section to set out the Commission's general approval process for all prospective training provider applicants. The new section creates no substantive changes to a training provider applicant's previous responsibilities or duties under the current rule. This repeal helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 training providers.

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 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 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 this chapter.

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

§215.5. Contractual Training.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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37 TAC §215.5

The Texas Commission on Law Enforcement (Commission) proposes new §215.5, concerning Other Training Providers. This new rule establishes specific requirements for academy training provider applicants.

This 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 the current rule. This new rule helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 providing clear and concise instructions for becoming an approved training provider.

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors.

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

§215.5. Other Training Providers.

(a) In addition to any other application requirements under this chapter, a law enforcement association, distance education, or proprietary training provider applicant shall comply with all provisions of this section.

(b) A law enforcement association, distance education, or proprietary training provider applicant shall submit a schedule of tuition and fees that will be charged, if any.

(c) A training needs assessment must be completed and submitted for commission approval and shall include:

(1) what specific training needs are to be addressed by the proposed contract; and

(2) the number and types of courses that will be offered during the first quarter of the executed contract.

(d) The effective date of this section is February 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.

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37 TAC §215.6

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the 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 §215.6, concerning Academic Alternative Licensing. This section is being replaced by a new rule which reorganizes information and deletes redundant information.

This repeal is necessary in order to propose a new section 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 section creates no substantive changes to an academic alternative training provider applicant's previous responsibilities or duties under the current rule. This repeal helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 removing redundant information.

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 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 repeal is proposed 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.

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

§215.6. Academic Alternative Licensing.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

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37 TAC §215.6

The Texas Commission on Law Enforcement (Commission) proposes new §215.6, concerning Academic Alternative Training Provider. This new rule establishes specific requirements for academic alternative training provider applicants.

This 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, this new rule creates no substantive changes to an academic alternative training provider applicant's previous responsibilities or duties under the current rule. This new rule helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 clarifying the practice of entering into contracts with academic alternative training providers.

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors.

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

§215.6. Academic Alternative Training Provider.

(a) In addition to any other application requirements under this chapter, an academic alternative applicant shall comply with all provisions of this section.

(b) A Texas college or university that is accredited by the Southern Association of Colleges and Schools (SACS) and which has a criminal justice or law enforcement program approved by the Texas Higher Education Coordinating Board (THECB) may make application to conduct training for licensees under a training provider contract.

(c) An academic alternative applicant shall submit:

(1) documentation of approval from THECB for a criminal justice or law enforcement program;

(2) a proposed course schedule to show that training will be conducted;

(3) documentation of any contractual provision the applicant may have with a contract academy to provide the sequence courses; and

(4) provisions for the Registrar to approve all students qualified for the state basic licensing exam in a timely manner.

(d) A training needs assessment must be submitted to the commission for approval and must include:

(1) a description of whom the alternative academic provider will serve and the number of students they expect to train annually;

(2) the basis for these expectations; and

(3) proof of notification by e-mail to all academies within the area of the applicant's intent to apply for an academic alternative provider contract.

(e) An academic alternative program shall conduct a comprehensive review subject to commission approval prior to licensing exam.

(f) The effective date of this section is February 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 October 17, 2013.

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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

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37 TAC §215.7

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §215.7, concerning Training Provider Advisory Board. Subsection (f)(3) is amended to conform rule with longstanding practice and/or other provisions by replacing "license" with "contract." Subsection (l) is updated to reflect the effective date of the changes.

This amendment is necessary to conform the rule with the Commission's longstanding practice of entering into contracts with training providers by replacing "license" with "contract."

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 conforming to Commission practice.

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

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors and §1701.252, Program and School Requirements; Advisory Board.

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

§215.7. Training Provider Advisory Board.

(a) All training providers approved by the commission must establish and maintain an advisory board, as required by §1701.252 of the Texas Occupations Code. The board must have at least three members who are appointed by the sponsoring organization. Board membership must not fall below a quorum for more than 30 days. A quorum of the advisory board is defined as a minimum of 51% of the voting membership.

(b) The board may have members who are law enforcement personnel; however, one-third of the members must be public members, as defined in §1701.052 of the Texas Occupations Code, having the same qualification as any commissioner who is required by law to be a member of the general public. The chief administrator, or head of the sponsoring organization, and the designated training coordinator may only serve as ex-officio, non-voting members. Board members are required to successfully complete the commission developed advisory board training course within one year of appointment to an advisory board.

(c) The chief administrator, or head or the sponsoring organization, may appoint a board chair, or the board may elect a board member to serve as the board chair. The board may elect other officers and set its own rules of procedure. A quorum must be present in order to conduct business.

(d) A board must meet at least once each calendar year. More frequent meetings may be called by the board chair, the training coordinator, or the person who appoints the board.

(e) A board will keep written minutes of all meetings. These minutes must be retained for at least five years and a copy forwarded to the commission upon request.

(f) Board members will be appointed by the following authority:

(1) for an agency academy, by the chief administrator as defined in §211.1 of this title;

(2) for a college academy, by the dean or other person who appoints the training coordinator;

(3) for a regional academy, by the head of the council of governments or other sponsoring entity holding the academy contract [~~license~~] from names submitted by chief administrators from that area;

(4) for a contractual training provider, by the chief administrator; or

(5) for an academic alternative provider, by the dean or other person who appoints the training coordinator.

(g) A member may be removed by the appointing authority.

(h) A board is generally responsible for advising on the development of curricula and any other related duty that may be required by the commission.

(i) The board must, as specific duties:

(1) discharge its responsibilities and otherwise comply with commission rules;

(2) advise on the need to study, evaluate, and identify specific training needs;

(3) advise on the determination of the types, frequency, and location of courses to be offered;

(4) advise on the establishment of the standards for admission, prerequisites, minimum and maximum class size, attendance, and retention; and

(5) advise on the order of preference among employees or prospective appointees of the sponsoring organization and other persons, if any.

(j) No person may be admitted to a training course without meeting the admission standards. The admission standards for licensing courses must be available for review by the commission upon request.

(k) A board may, when discharging its responsibilities, request that a report be made or some other information be provided to them by a training or course coordinator.

(l) The effective date of this section is February 1, 2014 [~~July 14, 2011~~].

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

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37 TAC §215.13

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §215.13, concerning Risk Assessment. Subsections (a)(10), (b)(8), and (c)(8) are amended to conform rule with longstanding practice and/or other provisions by replacing "license" with "contract." Subsection (h) is amended to reflect the effective date of the changes.

This amendment is necessary to conform the rule with the Commission's longstanding practice of entering into contracts with training providers by replacing "license" with "contract."

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 clarifying rule.

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

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.254, Risk Assessment and Inspections.

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

§215.13. Risk Assessment.

(a) A training provider may be found at risk and placed on at-risk probationary status if:

(1) for those providing licensing courses, the passing rate on a licensing exam for first attempts for any three consecutive state fiscal years, beginning with state fiscal year 2007 (September 1, 2006 through August 31, 2007) is less than 80 percent of the students attempting the licensing exam;

(2) courses taught by academic alternative providers are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) commission required learning objectives are not taught;

(4) lesson plans for classes conducted are not on file;

(5) examination and other evaluative scoring documentation is not on file;

(6) the training provider submits false reports to the commission;

(7) the training provider makes repeated errors in reporting;

(8) the training provider does not respond to commission requests for information;

(9) the training provider does not comply with commission rules or other applicable law;

(10) the training provider does not achieve the goals identified in its application for a contract [~~license~~];

(11) the training provider does not meet the needs of the officers and law enforcement agencies served; or

(12) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(b) A training [~~contractual~~] provider may be found at risk and placed on at-risk probationary status if:

(1) the contractor provides licensing courses and fails to comply with the passing rates in subsection (a)(1) of this section;

(2) lesson plans for classes conducted are not on file;

(3) examination and other evaluative scoring documentation is not on file;

(4) the provider submits false reports to the commission;

(5) the provider makes repeated errors in reporting;

(6) the provider does not respond to commission requests for information;

(7) the provider does not comply with commission rules or other applicable law;

(8) the provider does not achieve the goals identified in its application for a [~~license or~~] contract;

(9) the provider does not meet the needs of the officers and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(c) An academic alternative provider may be found at risk and placed on at-risk probationary status if:

(1) the academic alternative provider fails to comply with the passing rates in subsection (a)(1) of this section;

(2) courses are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) the commission required learning objectives are not taught;

(4) the program submits false reports to the commission;

(5) the program makes repeated errors in reporting;

(6) the program does not respond to commission requests for information;

(7) the program does not comply with commission rules or other applicable law;

(8) the program does not achieve the goals identified in its application for a [~~license or~~] contract;

(9) the program does not meet the needs of the students and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concern-

ing the quality of education or failure to meet education needs for the service area.

(d) If at risk, the chief administrator of the sponsoring organization, or the training coordinator, must report to the commission in writing within 30 days what steps are being taken to correct deficiencies and on what date they expect to be in compliance.

(e) The chief administrator of the sponsoring organization, or the training coordinator, shall report to the commission the progress toward compliance within the timelines provided in the management response as provided in subsection (d) of this section.

(f) The commission shall place providers found at-risk on probationary status for one year. If the provider remains at-risk after a 12-month probationary period, the commission shall begin the revocation process. If a provider requests a settlement agreement, the commission may enter into an agreement in lieu of revocation.

(g) A training or educational program placed on at-risk probationary status must notify all students and potential students of their at-risk status.

(h) The effective date of this section is February 1, 2014 [~~January 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.

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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

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37 TAC §215.15

(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 §215.15, concerning Basic Licensing Enrollment Standards. This section is being replaced by a new rule which deletes redundant information, conforms disqualifying family violence language with current suspension and revocation rules, is amended to clarify 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 in order to propose a new section to set out the Commission's general approval process for all basic licensing enrollment applicants.

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 enrollment.

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 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 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 this chapter.

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

§215.15. Basic Licensing Enrollment Standards.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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37 TAC §215.16

(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 §215.16, concerning Telecommunicator Enrollment Standards. This section is being replaced by a new rule which deletes redundant information, conforms disqualifying family violence language with current suspension and revocation rules, and is amended to clarify longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct.

This repeal is necessary in order to propose a new section to set out the Commission's general approval process for all basic licensing enrollment telecommunicator applicants.

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 enrollment.

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 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 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 this chapter.

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

§215.16. Telecommunicator Enrollment Standards.

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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37 TAC §215.17

The Texas Commission on Law Enforcement (Commission) proposes new §215.17, concerning General Contract Procedures and Provisions. This new rule consolidates and establishes general contract provisions with approved training provider applicants.

This new rule is necessary to consolidate and set out the Commission's general contract provisions with approved training provider applicants. This new rule creates no substantive changes to training provider applicant's previous responsibilities or duties under the current rule. This new rule helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 clarifying the practice of entering into contracts with training providers and omitting redundant information.

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors.

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

§215.17. General Contract Procedures and Provisions.

(a) Once an application is approved, the commission and a training provider may enter into a training provider contract for a term no longer than five years.

(b) To renew a contract, the training provider must apply to the commission using the current renewal application and at least six months prior to expiration of a contract.

(c) The commission may renew a training provider contract for any term deemed appropriate and dependent upon an evaluation which includes an assessment of the provider's compliance with: commission standards; terms of the contract; and program performance.

(d) A contract may approve courses and the number of times they will be offered.

(e) The commission will award training credit for any course conducted by a training provider unless:

(1) training was not conducted as required by contract or commission rules;

(2) courses were not conducted in compliance with other applicable governing standards, including Texas Higher Education Coordinating Board (THECB) guidelines;

(3) training is not related to a commission license;

(4) an advisory board, academy, training coordinator, course coordinator, or instructor failed to discharge any responsibility required by contract or commission rule;

(5) credit was claimed by deceitful or untruthful means;

(6) distance education courses of a proprietary nature, equivalency, or the distance education portion of a basic licensing course were not submitted and approved under commission distance education guidelines; or

(7) the training provider has not complied with terms of a contract.

(f) Once under contract, the chief administrator of the sponsoring organization or the training coordinator must submit a written report within thirty days of:

(1) any change in the chief administrator or training coordinator;

(2) any failure to meet commission rules and standards by the academy, training coordinator, instructors, or advisory board;

(3) when non-compliance with federal or state requirements is discovered;

(4) any change in name, physical location, mailing address, electronic mail address, or telephone number; or

(5) any change in the department dean, Southern Association of Colleges and Schools, or THECB status for academic alternative training providers.

(g) The effective date of this section is February 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.

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

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37 TAC §215.19

The Texas Commission on Law Enforcement (Commission) proposes new §215.19, concerning Contract Cancellation, Suspension, and Termination. This new rule streamlines contracts with training providers.

This new rule is necessary to consolidate and set out training provider contract cancellation, suspension, and termination provisions. This new rule creates no substantive changes to training provider applicant's previous responsibilities or duties under the current rule. This new rule helps delete, renumber, and organize information regarding training provider application, approval, and contract provisions.

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 clarifying the practice of entering into contracts with training providers and omitting redundant information.

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors.

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

§215.19. Contract Cancellation, Suspension, and Termination.

(a) The commission may cancel a contract issued in error or based on false or incorrect information.

(b) The commission may suspend operation of a contract for a training provider's noncompliance with the terms of the contract or any commission rule or law. Operation of the contract may be suspended for a period of time, including a period pending outcome of an investigation or until remedial compliance with applicable standards has been met.

(c) The commission may terminate a training provider contract if the:

(1) training coordinator intentionally or knowingly submits, or causes the submission of, a falsified document or a false written statement or representation to the commission;

(2) provider has not met the needs of the communities or agencies it serves;

(3) provider fails to comply with any term of a contract or violation of a commission rule or law, including when a provider has been classified as at risk under this chapter for a twelve-month period without complying with commission rules;

(4) provider has failed to conduct training within a calendar year without a waiver from the commission; or

(5) provider has lost accreditation, including Southern Association of Colleges and Schools or Texas Higher Education Coordinating Board approval.

(d) A contract may be terminated with ten days written notice by the commission or training provider. A training provider contract shall incorporate by reference all requirements and standards under Texas Occupations Code Chapter 1701, commission rules, and any other applicable law.

(e) The effective date of this section is February 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.

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CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.1

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.1, concerning Minimum Standards for Initial Licensure. Subsection (a)(7) is amended to conform disqualifying family violence language with current suspension and revocation rules. Subsection (a)(13) is amended to clarify and reflect longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct. Subsection (l) is updated to reflect effective date.

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 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 ensures 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 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 this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

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

§217.1. Minimum Standards for Initial Licensure.

(a) The commission shall issue a license to an applicant who meets the following standards:

(1) age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

(i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or

(ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers is 18 years of age;

(2) minimum educational requirements:

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

(B) holds a high school diploma;

(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 licensure, 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 licensure, 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 family violence as defined under Chapter 71, Texas Family Code [~~of any family violence offense~~];

(8) is not prohibited by state or federal law from operating a motor vehicle;

(9) is not prohibited by state or federal law from possessing firearms or ammunition;

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

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that pro-

fessional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code §501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

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

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

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

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

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

(18) 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) A person must meet the training and examination requirements:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course(s);

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s); and

(4) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission shall issue a license to any person who is otherwise qualified for that license, even if that person is not subject to the licensing law or rules by virtue of election or appointment to office under the Texas Constitution.

(g) A sheriff who first took office on or after January 1, 1994, must meet the licensing requirements of Texas Occupations Code §1701.302.

(h) A constable taking office after August 30, 1999, must meet the licensing requirements of Texas Local Government Code §86.0021.

(i) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. 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 provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency; or

(3) on failure to comply with the terms stipulated in the provisional license approval.

(j) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the ap-

proval of the application, the commission will issue a temporary jailer license. A temporary jailer license expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the jailer licensing examination.

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

(l) The effective date of this section is February 1, 2014 [~~January 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 October 17, 2013.

TRD-201304647
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
For further information, please call: (512) 936-7713

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37 TAC §217.5

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.5, concerning Denial and Cancellation. Subsection (b) is amended to include school districts. Subsection (e) is updated to reflect effective date.

This amendment is necessary to conform with statutory amendments by adding "school districts" to list of entities who may not appoint an unqualified person under Commission standards. School districts are added under the legislatively created "School Marshal" program.

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 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 to ensure individuals qualified to carry firearms on school campuses are licensed by the Commission.

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 this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

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

§217.5. Denial and Cancellation.

(a) The commission may deny an application for any license and may refuse to accept a report of appointment if the:

(1) applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) applicant has not affixed any required signature;

(3) required forms or documentation are incomplete, illegible, or are not attached;

(4) application is not submitted or signed by a chief administrator, or designee with authority to appoint the applicant to the position reported;

(5) application is not submitted by the appointing agency or entity;

(6) agency reports the applicant in a capacity that does not require the license sought;

(7) agency fails to provide documentation, if requested, of the agency's creation or authority to appoint persons in the capacity of the license sought or the agency is without such authority;

(8) application contains a false assertion by any person; or

(9) applicant is subject to pending administrative action against a commission-issued license.

(b) An agency chief administrator or school district may not appoint an applicant subject to pending administrative action based on:

(1) enrollment or licensure ineligibility; or

(2) statutory suspension or revocation.

(c) If an application is found to be incorrect or subject to denial under subsection (a) of this section, any license issued to the applicant by the commission is subject to cancellation.

(d) Any such document may expire or be cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated. Mere possession of the physical document does not necessarily mean that the person:

(1) currently holds, has ever held, or has any of the powers of the office indicated on the document; or

(2) still holds an active, valid license, or certificate.

(e) The effective date of this section is February 1, 2014 [~~January 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 October 17, 2013.

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

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37 TAC §217.7

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.7, concerning Reporting Appointment and Separation of a Licensee or Telecommunicator. The rule title is amended to remove "or Telecommunicator". Subsection (d) is amended to remove redundant cross-referencing to other rule numbers. Subsection (e) is amended to remove redundant cross-referencing to other rule numbers. Subsection (j) is updated to reflect effective date.

This 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.

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 removing redundant information.

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

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

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

§217.7. Reporting Appointment and Separation of a Licensee [~~or Telecommunicator~~].

(a) Before a law enforcement agency may hire a person licensed under Texas Occupations Code Chapter 1701, the agency head or the agency head's designee must:

(1) make a request to the commission for any employment termination report(s) regarding the person maintained by the commission under this chapter; and

(2) submit to the commission in a manner prescribed by the commission confirmation that the agency:

(A) conducted in the manner prescribed by the commission a background investigation of the person on a form that meets or exceeds the form prescribed by the commission;

(B) obtained the person's written consent on a form prescribed by the commission for the agency to view the person's employment records;

(C) obtained from the commission any service or education records regarding the person maintained by the commission; and

(D) contacted each of the person's previous law enforcement employers.

(b) A request submitted electronically under this section must contain identifying information, acceptable to the commission, for verification.

(c) A law enforcement agency that obtains a consent form described by subsection (a)(2)(B) of this section shall make the person's employment records available to a hiring law enforcement agency on request.

(d) An agency that appoints an individual with less than a 180-day break in service who already holds a valid, active license appropriate to that position must notify the commission of such appointment not later than 30 days after the date of appointment. The appointing agency must have on file:

(1) documentation that the agency has met the requirements in subsection (a) of this section; and

(2) documentation that a peace officer is compliant with weapons qualification standards [~~according to §217.21 of this chapter~~] within the last 12 months.

(e) If the appointment is made after a 180-day break in service, the agency must have the following on file and readily accessible to the commission:

(1) documentation that the agency has met the requirements in subsection (a) of this section;

(2) a new criminal history check by name, sex, race and date of birth from both TCIC and NCIC;

(3) a new declaration of psychological and emotional health;

(4) a new declaration of lack of any drug dependency or illegal drug use;

(5) one completed applicant fingerprint card or, pending receipt of such card, an original sworn, notarized affidavit by the applicant of their complete criminal history; such affidavit to be maintained by the agency while awaiting the return of completed applicant fingerprint card; and

(6) for peace officers, weapons qualification standards [~~according to §217.21 of this chapter~~] within the last 12 months.

(f) When an individual licensed by the commission separates from appointment with an agency, the agency shall submit a report to the commission and to the licensee in the currently prescribed commission format that reports the separation. The report shall be submitted no later than the seventh business day after the licensee resigns, retires, is terminated, or separates from the agency and if applicable, exhausts all administrative appeals available to the licensee.

(g) Agencies must report the employment and separation of telecommunicators on a form prescribed by the commission. The reports must be submitted under the following guidelines:

(1) within 30 days of employment; or

(2) no later than the seventh business day after separation and if applicable, after all administrative appeals are exhausted.

(h) An agency must retain records kept under this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(i) All information submitted under subsection (f) of this section is exempt from disclosure under the Public Information Act, Texas Government Code Chapter 552, unless the individual resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, and is subject to subpoena only in a judicial proceeding.

(j) The effective date of this section is February 1, 2014 [~~July 12, 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 October 17, 2013.

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

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37 TAC §217.8

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.8, concerning Contesting an Employment Termination Report. Subsection (a) is amended to remove redundant cross-referencing to other rule numbers. Subsection (e) is amended to clarify how reports of separation will be changed after an F-5 Report of Separation hearing. Subsections (f) through (j) are re-lettered. New subsection (k) is updated to reflect effective date.

This 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.

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 necessary changes to orders are implemented as ordered by an administrative law judge of the State Office of Administrative Hearings.

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

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.4525, Petition for Correction of Report; Hearing; Administrative Penalty.

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

§217.8. Contesting an Employment Termination Report.

(a) A person who is the subject of an employment termination report [~~described in §217.7 of this chapter~~] is entitled to file a petition contesting information included in the employment termination report. The written petition for correction of the report must be filed with the executive director on a form currently prescribed by the commission and a copy must be served on the law enforcement agency.

(b) A petition described in subsection (a) of this section must be received by the executive director not later than the 30th day after the person receives a copy of the report of separation.

(c) Upon receipt of the petition the executive director will refer the dispute to SOAH.

(d) A proceeding conducted pursuant to subsection (c) of this section is a contested case under Chapter 2001, Texas Government Code. The parties to the proceeding shall be the person contesting the employment termination and the chief administrative officer of the law enforcement agency. The Commission is not considered a party in a proceeding conducted by SOAH. The chief administrative officer of the law enforcement agency shall have the burden of proof by a preponderance of the evidence. Following the contested case hearing, the administrative law judge shall issue a final order on the petition.

(e) If the alleged misconduct is not supported by a preponderance of the evidence, the administrative law judge shall order the commission to change the report. The commission shall send the changed report to the law enforcement agency that prepared the original employment termination report. The law enforcement agency shall replace the original employment termination report with the changed report.

(f) [~~(e)~~] Any party to a proceeding described in subsection (d) of this section may file exceptions to the administrative law judge's final order in accordance with SOAH rules and procedures.

(g) [~~(f)~~] The results of a hearing described in subsection (d) of this section are enforceable by the commission pursuant to Chapter 1701, Texas Occupations Code and Chapter 2001, Texas Government Code.

(h) [~~(g)~~] The results of a hearing described in subsection (d) of this section are appealable in accordance with Chapter 2001, Texas Government Code.

(i) [~~(h)~~] A chief administrative officer of a law enforcement agency who fails to comply with the results of a hearing after all appeals available to the agency have been exhausted is subject to disciplinary action pursuant to Chapter 1701, Texas Occupations Code, and Chapter 223 of this title.

(j) [~~(i)~~] All information submitted under subsection (d) of this section is exempt from disclosure under the Public Information Act, Chapter 552, Texas Government Code, unless the individual resigned

or was terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses, and is subject to subpoena only in a judicial proceeding.

(k) [~~(j)~~] The effective date of this section is February 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.

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

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37 TAC §217.9

(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 §217.9, concerning Continuing Education Credit for Licensees. This section is being replaced by a new rule for organizational purposes.

This 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 a continuing education responsibilities or duties under rule. This repeal helps renumber and organize rules regarding licensee continuing education requirements.

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 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 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 this chapter.

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

§217.9. Continuing Education Credit 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.

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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

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37 TAC §217.13

(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 §217.13, concerning Reporting Legislatively Required Continuing Education. This section is being replaced by a new rule for organizational purposes.

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 a continuing education reporting responsibilities or duties under rule. This repeal helps renumber and organize rules regarding licensee continuing education requirements.

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 reporting 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 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 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 this chapter.

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

§217.13. Reporting Legislatively Required Continuing Education.

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

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37 TAC §217.15

(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 §217.15, concerning Waiver of Legislatively Required Continuing Education. This section is being replaced by a new rule for organizational purposes.

This repeal is necessary to set out the Commission's general approval process for a waiver from continuing education credit for licensees. This repeal creates no substantive changes to a continuing education reporting responsibilities or duties under rule. This repeal helps renumber and organize rules regarding licensee continuing education waiver requirements.

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 section.

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 ensuring clear and concise continuing education waiver requirements 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 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 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 this chapter.

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

§217.15. Waiver of Legislatively Required Continuing Education.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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37 TAC §217.19

(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 §217.19, concerning Reactivation of a License. This section is being replaced by a new rule under a new chapter.

This repeal is necessary to move current rule §217.19 to new rule §219.11 under Chapter 219, Prelicensing, Reactivation, Tests, and Endorsements.

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 an 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 ensuring proper organization of rules to minimize redundancy and maximize clarification.

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 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 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 this chapter.

The rule repeal as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.316, Reactivation of Peace Officer License.

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

§217.19. Reactivation of a License.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
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37 TAC §217.20

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the 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 §217.20, concerning Retired Peace Officer Reactivation. This section is being replaced by a new rule under a new chapter.

This repeal is necessary to move current §217.20, with amendment, to new §219.13 under Chapter 219, Prelicensing, Reactivation, Tests, and Endorsements.

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 or 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 ensuring proper organization of rules to minimize redundancy and maximize clarification.

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 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 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 this chapter.

The repeal as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.3161, Reactivation of Peace Officer License; Retired Peace Officers.

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

§217.20. Retired Peace Officer Reactivation.

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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37 TAC §217.21

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the 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 §217.21, concerning Firearms Proficiency Requirements. This section is being replaced by a new rule to clarify time period and types of weapons required for proficiency qualification.

This repeal is necessary in order to propose a new section to set out the Commission's general approval process for firearms qualifications. The new section creates no substantive changes to continuing education responsibilities or duties under the current rule. This repeal helps renumber and organize rules regarding firearms qualifications.

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 firearm qualification requirements.

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 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 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 this chapter.

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

§217.21. Firearms Proficiency Requirements.

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 October 17, 2013.

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

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37 TAC §217.23

The Texas Commission on Law Enforcement (Commission) proposes new §217.23, concerning Basic Licensing Enrollment Standards.

This 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.

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

The Commission has determined that for each year of the first five years the new rule as proposed will be in effect, there will be a positive benefit to the public by ensuring qualified applicants for enrollment into licensing courses.

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.255, Enrollment Qualifications.

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

§217.23. Basic Licensing Enrollment Standards.

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation that the individual meets the following standards:

(1) minimum educational requirements:

(A) a high school diploma;

(B) a high school equivalency certificate; or

(C) for the basic peace officer training course, an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;

(2) the individual has been subjected to a search of local, state, and national records to disclose any criminal record;

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

(B) community supervision history:

(i) has never been on court-ordered community supervision or probation for any criminal offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

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

(C) conviction history:

(i) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

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

(D) for 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:

(i) another penal provision of Texas law; or

(ii) a penal provision of any other state, federal, military, or foreign jurisdiction;

(E) 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 law;

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

(4) has never received a dishonorable or other discharge based on misconduct which bars future military service;

(5) for peace officers and jailers, is not prohibited by state or federal law from operating a motor vehicle;

(6) for peace officers and jailers, is not prohibited by state or federal law from possessing firearms or ammunition; and

(7) is a U.S. citizen.

(b) 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.

(c) Psychological and physical examination requirements:

(1) the individual has been examined by a physician, selected by the appointing, employing agency, or the academy, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of enrollment, acceptance, or entry into the licensing course to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought; and

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(2) the individual has been examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face-to-face interview conducted after the instruments have been scored. The individual must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of enrollment, acceptance, or entry into the licensing course.

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by §501.004, Texas Occupations Code. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed.

(d) The enrollment standards established in this section do not preclude the provider from establishing additional requirements or standards for enrollment.

(e) The effective date of this section is February 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.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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37 TAC §217.25

The Texas Commission on Law Enforcement (Commission) proposes new §217.25, concerning Telecommunicator Enrollment Standards.

This 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.

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

The Commission has determined that for each year of the first five years the new rule as proposed will be in effect, there will be a positive benefit to the public by ensuring qualified applicants for enrollment into telecommunicator licensing courses.

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

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 this chapter.

The new rule 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.

§217.25. Telecommunicator Enrollment Standards.

(a) In order for an individual to enroll in any basic telecommunicator course the provider must have on file documentation that the individual meets the following standards:

(1) minimum educational requirements:

(A) a high school diploma; or

(B) a high school equivalency certificate;

(2) the individual has been subjected to a search of local, state, and national records to disclose any criminal record;

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

(B) community supervision history:

(i) has never been on court-ordered community supervision or probation for any criminal offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(ii) the commission may approve the application of an individual who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to enrollment 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;

(C) conviction history:

(i) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(ii) the commission may approve the application of an individual who was convicted of a Class B misdemeanor at least five (5) years prior to enrollment 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.

(D) for 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:

(i) another penal provision of Texas law; or

(ii) a penal provision of any other state, federal, military, or foreign jurisdiction;

(E) 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 law;

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

(4) has never received a dishonorable or other discharge based on misconduct which bars future military service; and

(5) is a U.S. citizen.

(b) 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.

(c) The enrollment standards established in this section do not preclude the provider from establishing additional requirements or standards for enrollment.

(d) The effective date of this section is February 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.

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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

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37 TAC §217.27

The Texas Commission on Law Enforcement (Commission) proposes new §217.27, concerning Appointment Eligibility of a Telecommunicator. This new rule adds appointment requirements.

This new rule is necessary to conform with statutory amendments by adding "telecommunicator" appointment eligibility requirements similar to other licensees. It is necessary to ensure the public is served by telecommunicators who meet the same high standards as other Commission licensees.

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 proving eligibility requirements for telecommunicators.

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 this chapter.

The new rule 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.

§217.27. Appointment Eligibility of a Telecommunicator.

(a) An 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 proposal and found it to be within the state agency's legal authority to adopt.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.1

The Texas Commission on Law Enforcement (Commission) proposes new §218.1, concerning Continuing Education Credit for Licensees.

This new rule is necessary to set out the Commission's general approval process for all continuing education credit for licensees. This new rule creates no substantive changes to continuing education responsibilities or duties under the current rule. This new rule helps to organize rules regarding licensee continuing education requirements.

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

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

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 this chapter.

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

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

§218.1. Continuing Education Credit for Licensees.

(a) A continuing education course is any training course that is recognized by the commission, specifically:

(1) legislatively required continuing education curricula and learning objectives developed by the commission;

(2) training in excess of basic licensing course requirements;

(3) training courses consistent with assigned duties; or

(4) training not included in a basic licensing course.

(b) A law enforcement agency submitting continuing education courses under the chief administrator's approval through a departmental report of training, must have the following on file and readily accessible to the commission:

(1) lesson plans; or

(2) certificate of completion with hours indicated on the certificate;

(3) attendees' critique of the course that includes:

(A) written evaluation of the instructor; and

(B) an assessment of how this training was applicable to their assigned duties;

(4) number of students attending from the agency;

(5) copy of course outline (if available); and

(6) copy of available handouts.

(c) The commission may refuse credit for:

(1) a course that does not contain a final examination or other skills test, if appropriate, as determined by the training provider;

(2) annual firearms proficiency;

(3) an out-of-state course not approved by that state's POST;

(4) training that fails to meet any commission established length and published learning objectives;

(5) an instructor claiming credit for a basic licensing course or more than one presentation of a non-licensing course by an instructor, per 24 month unit of a training cycle;

(6) course(s) claimed by deceitful means;

(7) courses provided by the same training provider and taken more than two times within one training unit; or

(8) legislatively mandated or certification courses reported by unlicensed or non-contractual training providers.

(d) The training provider or agency must report to the commission and keep on file in a format readily accessible to the commission, a copy of all continuing education course training reports.

(e) The effective date of this section is February 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.

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TRD-201304657

Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

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37 TAC §218.5

The Texas Commission on Law Enforcement (Commission) proposes new §218.5, concerning Reporting Legislatively Required Continuing Education.

This new rule is necessary to set out the Commission's general approval process for reporting education credit for licensees. This new rule creates no substantive changes to continuing education reporting responsibilities or duties under the current rule. This new rule helps to organize rules regarding licensee continuing education requirements.

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

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

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.353, Continuing Education Procedures.

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

§218.5. Reporting Legislatively Required Continuing Education.

(a) Each agency, academy, or training provider shall maintain proof of a licensee's completion of legislatively required continuing education training in a format currently accepted by the commission. The report of training shall be submitted to the commission within 30 days following completion of the training. Failure to report training to the commission within 30 days is a violation of commission rules. Upon receipt of a properly completed report of training, the commission will make the appropriate entry into the training records of the licensee.

(b) 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.

(c) The effective date of this section is February 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.

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37 TAC §218.7

The Texas Commission on Law Enforcement (Commission) proposes new §218.7, concerning Waiver of Legislatively Required Continuing Education.

This new rule is necessary to set out the Commission's general approval process for a waiver from continuing education credit for licensees. This new rule creates no substantive changes to continuing education reporting responsibilities or duties under the current rule. This new rule helps to organize rules regarding licensee continuing education waiver requirements.

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

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

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.351, Continuing Education Required for Peace Officers.

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

§218.7. Waiver of Legislatively Required Continuing Education.

(a) The executive director may waive the legislatively required continuing education for a licensee, as required by the Texas Occupations Code, Chapter 1701, if the licensee demonstrates the existence of mitigating circumstances justifying the licensee's failure to obtain the legislatively required continuing education.

(b) Mitigating circumstances are defined as:

(1) catastrophic illness or injury that prevents the licensee from performing active duty for longer than 12 months; or

(2) active duty with the armed forces of the United States, or a reserve component of the armed forces of the United States for a time period in excess of 12 months.

(c) A request for a waiver of the legislatively required continuing education due to mitigating circumstances shall be in writing, accompanied by verifying documentation, and shall be submitted to the executive director with a copy to the chief administrator of the licensee's appointing agency not less than 30 days prior to the end of the training unit.

(d) Absent mitigating circumstances, a request for a waiver under this section shall be submitted to the executive director not less than 90 days prior to the end of the training unit.

(e) The commission may waive the requirement for civil process training if not less than 90 days prior to the end of the training cycle:

(1) the constable requests a waiver for the deputy constable based on a representation that the deputy constable's duty assignment does not involve civil process responsibilities; or

(2) the constable or deputy constable requests a waiver because of hardship and the commission determines that a hardship exists.

(f) Within 20 days of receiving a request for a waiver under this section, the executive director shall notify the licensee and the chief administrator of the licensee's appointing agency, whether the request has been granted or denied.

(g) A licensee, whose request for a waiver under this section is denied, is entitled to a hearing in accordance with Texas Government Code, Chapter 2001. The licensee must request a hearing within 20 days of the waiver being denied. In a hearing pursuant to this subsection, the licensee is the petitioner and the executive director is the respondent. The burden of proof shall be on the licensee to show why he or she is entitled to a waiver of the legislatively required continuing education requirement.

(h) The effective date of this section is February 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.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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37 TAC §218.9

The Texas Commission on Law Enforcement (Commission) proposes new §218.9, concerning Continuing Firearms Proficiency Requirements.

This 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.

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

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

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.308, Weapons Proficiency and §1701.355, Continuing Demonstration of Weapons Proficiency.

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

§218.9. Continuing Firearms Proficiency Requirements.

(a) Each agency or entity that employs at least one peace officer shall:

(1) require each peace officer that it employs to successfully complete the current firearms proficiency requirements at least once each calendar year for each type of firearm carried;

(2) designate a firearms proficiency officer to be responsible for the documentation of annual firearms proficiency. The documentation for each officer shall include:

(A) date of qualification;

(B) identification of officer;

(C) firearm manufacturer, model;

(D) results of qualifying; and

(E) course(s) of fire;

(3) keep on file and in a format readily accessible to the commission a copy of all records of this proficiency.

(b) The annual firearms proficiency requirements shall include:

(1) an external inspection by the proficiency officer, range officer, firearms instructor, or gunsmith to determine the safety and functioning of the weapon(s);

(2) a proficiency demonstration in the care and cleaning of the weapon(s) used; and

(3) a course of fire that meets or exceeds the minimum standards.

(c) The minimum standards for the annual firearms proficiency course of fire shall be:

(1) handguns - a minimum of 50 rounds, including at least five rounds of ammunition, fired at ranges from point-blank to at least

15 yards with at least 20 rounds at or beyond seven yards, including at least one timed reload;

(2) shotguns - a minimum of five rounds of ammunition fired at a range of at least 15 yards;

(3) precision rifles - a minimum of 20 rounds of ammunition fired at a range of at least 100 yards; however, an agency may, in its discretion, allow a range of less than 100 yards but not less than 50 yards if the minimum passing percentage is raised to 90;

(4) patrol rifles - a minimum of 30 rounds of ammunition fired at a range of at least 50 yards, including at least one timed reload; however, an agency may, in its discretion, allow a range of less than 50 yards but not less than 10 yards if the minimum passing percentage is raised to 90;

(5) fully automatic weapons - a minimum of 30 rounds of ammunition fired at ranges from seven to at least 10 yards, including at least one timed reload, with at least 25 rounds fired in full automatic (short bursts of two or three rounds), and at least five rounds fired semi-automatic, if possible with the weapon.

(d) The minimum passing percentage shall be 70 for each firearm.

(e) The executive director may, upon written agency request, waive a peace officer's demonstration of weapons proficiency based on a determination that the requirement causes a hardship.

(f) The effective date of this section is February 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.

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CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

37 TAC §219.1

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §219.1, concerning Eligibility to Take State Examinations. The amendment to subsections (b) and (c) removes redundant cross-referencing to other rule numbers. Subsection (h) is added to conform with school marshal amendment by, when applicable and in addition to §219.1, making school marshal licenses subject to reactivation requirements. Re-lettered subsection (i) is amended to reflect the effective date of the changes.

This amendment is necessary to conform to statutory amendments by adding school marshal licenses and removing redundant cross-referencing to other rule numbers.

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 section.

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 having highly trained and 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 this chapter.

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.

§219.1. 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 [~~in §217.19 of this title~~] if the individual is currently licensed;

(3) meet the requirements for reinstatement [~~in §223.17 of this title~~] if the individual is currently licensed;

(4) meet the requirements [~~in §219.2 of this chapter~~] 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 [~~identified by §215.15 of this title~~]; or if previously licensed, meet [~~the~~] minimum initial licensing standards [~~identified by §217.1 of this title~~].

(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 181th 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) [~~(h)~~] The effective date of this section is February 1, 2014 [~~July 12, 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 October 18, 2013.

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

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37 TAC §219.11

The Texas Commission on Law Enforcement (Commission) proposes new §219.11, concerning Reactivation of a License. The new rule establishes reactivation procedures for licenses to include school marshal licenses.

This new rule is necessary to conform to statutory amendments by adding school marshal licenses to licensees subject to the reactivation and renewal procedures.

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

The Commission has determined that for each year of the first five years the new rule as proposed will be in effect, there will be a positive benefit to the public by having highly trained and qualified individuals holding licenses.

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

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

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.316, Reactivation of Peace Officer Licenses; and §1701.3161, Reactivation of Peace Officer Licenses; Retired Peace Officers.

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

§219.11. Reactivation of a License.

(a) The commission will place all licenses in an inactive status at the end of the most recent training unit or cycle in which the licensee:

(1) was not appointed at the end of the unit or cycle; and

(2) did not meet continuing education requirements.

(b) The holder of an inactive license is unlicensed for all purposes.

(c) This section includes any permanent peace officer qualification certificate with an effective date before September 1, 1981.

(d) A licensee with less than two years from last appointment held must:

(1) meet current licensing standards;

(2) successfully complete continuing education requirements; and

(3) make application and submit any required fee(s) in the format currently prescribed by the commission.

(e) A licensee with two years but less than five years from last appointment held must:

(1) meet current licensing standards;

(2) successfully complete an approved supplementary peace officer training course;

(3) make application and submit any required fee(s); and

(4) pass the licensing exam.

(f) A licensee with five years or more from last appointment held must:

(1) meet current enrollment standards;

(2) meet current licensing standards;

(3) successfully complete the applicable basic licensing course;

(4) make application and submit any required fee(s); and

(5) pass the licensing exam.

(g) School marshal licenses are subject to the reactivation and renewal procedures related to school marshals under of Chapter 227 of this title.

(h) The effective date of this section is February 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.

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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

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37 TAC §219.13

The Texas Commission on Law Enforcement (Commission) proposes new §219.13, concerning Retired Peace Officer Reactivation. The new rule establishes reactivation procedures for retired peace officers.

This new rule is necessary to reorganize rules regarding licensee reactivation requirements for retired peace officers.

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

The Commission has determined that for each year of the first five years the new rule as proposed will be in effect, there will be a positive benefit to the public by having highly trained and qualified individuals holding licenses.

The Commission has determined that for each year of the first five years the new rule 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 new rule.

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

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.316, Reactivation of Peace Officer Licenses; and §1701.3161, Reactivation of Peace Officer Licenses; Retired Peace Officers.

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

§219.13. Retired Peace Officer Reactivation.

(a) A retired peace officer's license becomes inactive at the end of the most recent training unit or cycle in which the licensee:

(1) was not appointed at the end of the unit or cycle; and

(2) did not meet the continuing education requirements.

(b) The holder of an inactive license is unlicensed for all purposes.

(c) In order for a retired peace officer to reactivate a license, a retiree must:

(1) meet current licensing standards;

(2) meet current continuing education requirements; and

(3) make application and submit any required fee(s).

(d) This section does not apply to licensees exempted by Texas Occupations Code, §1701.356.

(e) The effective date of this section is February 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.

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

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37 TAC §219.25

The Texas Commission on Law Enforcement (Commission) proposes new §219.25, concerning License Requirements for Persons with Military Special Forces Training.

This 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.

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

The Commission has determined that for each year of the first five years the new rule as proposed will be in effect, there will be a positive benefit to the public by allowing qualified former special forces members be licensed.

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

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

§219.25. License Requirements for Persons with Military Special Forces Training.

(a) In this section, "special forces" means a special forces component of the United States armed forces, including:

(1) the United States Army Special Forces;

(2) the United States Navy SEALs;

(3) the United States Air Force Pararescue;

(4) the United States Marine Corps Force Reconnaissance; and

(5) any other component of the United States Special Operations Command approved by the commission.

(b) The commission shall adopt rules to allow an applicant to qualify to take an examination described by Texas Occupations Code, §1701.304 if the applicant:

(1) has served in the special forces for 2 continuous years within the 4 years prior to application;

(2) has successfully completed a special forces training course and provides to the commission documentation verifying completion of the course;

(3) completes a supplemental peace officer training course; and

(4) completes any other training required by the commission after the commission has reviewed the applicant's military training.

(c) Commission rules adopted under subsection (b) of this section shall include rules:

(1) to determine acceptable forms of documentation that satisfy the requirements of subsection (b) of this section;

(2) under which the commission may waive any other license requirement for an applicant described by subsection (b) of this section based on other relevant military training the applicant has received, as determined by the commission, including intelligence or medical training; and

(3) to establish an expedited application process for an applicant described by subsection (b) of this section.

(d) The commission shall review the content of the training course for each special forces component described by subsection (a) of this section and in adopting rules under subsection (b) of this section specify the training requirements an applicant who has completed that training course must complete and the training requirements from which an applicant who has completed that training course is exempt.

(e) The effective date of this section is February 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 October 18, 2013.

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

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CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.28

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §221.28, concerning Advanced Instructor Proficiency. Subsection (a) is amended conform to statutory agency name change amendment. Subsection (b) is updated to reflect effective date.

This amendment is necessary to conform to statutory agency name change 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 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 ensures statutory compliance.

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 this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority.

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

§221.28. Advanced Instructor Proficiency.

(a) To qualify for an advanced instructor proficiency certificate, an applicant must meet all proficiency requirements including:

(1) holding a TCOLE [~~TCLEOSE~~] Instructor license/certificate for at least three years; and

(2) successful completion of the commission's advanced instructor course.

(b) The effective date of this section is February 1, 2014 [~~July 14, 2011~~].

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 October 18, 2013.

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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

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CHAPTER 223. ENFORCEMENT

37 TAC §223.2

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §223.2, concerning Administrative Penalties. Subsection (a) is amended to include a school district in administrative penalty. Subsection (c)(1) is amended to list monetary penalty for appointing or employing an unlicensed telecommunicator. Subsection (c)(2) is added to list monetary penalty for appointing or employing an unlicensed or ineligible person as a school marshal. Subsection (c)(2) - (5) are re-numbered. Subsection (c)(7) is added to list monetary penalty for failing to timely report school marshal appointment. Subsection (c)(6) - (13) are re-numbered. Subsection (j) is updated to reflect effective date of the changes.

This amendment is necessary to conform with school marshal and telecommunicator statutory amendments. The amendment subjects appointing entities, including school districts, to administrative penalties for appointing or employing an ineligible person or failing to timely submit required documentation. The penalty amounts are determined by severity of the violation.

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 conforming with school marshal and telecommunicator statutory amendments to ensure qualified 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 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 this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.507, Administrative Penalties.

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

§223.2. Administrative Penalties.

(a) In addition to any other action or penalty authorized by law, the commission may impose an administrative penalty against a law enforcement agency or governmental entity, including a school district, for violations of commission statutes or rules.

(b) In determining total penalty amounts, the commission shall consider:

(1) the seriousness of the violation;

(2) the respondent's history of violations;

(3) the amount necessary to deter future violations;

(4) efforts made by the respondent to correct the violation; and

(5) any other matter that justice may require.

(c) The following is a nonexclusive list of the per day per violation base penalty amounts for:

(1) Appointing an unlicensed person as a peace officer, [~~or~~] jailer, or telecommunicator, $1,000;

(2) Appointing or employing an unlicensed or ineligible person as a school marshal, $1,000;

(3) [~~(2)~~] Appointing as a peace officer or jailer a person disqualified because of criminal history, $1,000;

(4) [~~(3)~~] Appointing a person who does not meet minimum licensing or appointment standards as a peace officer or jailer, $750;

(5) [~~(4)~~] Appointing or continued appointment of a person as a peace officer or jailer with a revoked, suspended, or cancelled license or who is otherwise ineligible for appointment or licensure, $1,000;

(6) [~~(5)~~] Failing to timely submit any required appointment documents, $350;

(7) Failing to timely submit any required appointment, notice, or separation documents related to school marshals, $1000;

(8) [~~(6)~~] Failing to timely submit or deliver an F-5 Report of Separation, $350;

(9) [~~(7)~~] Failing to timely submit racial profiling data to the commission, $1,000;

(10) [~~(8)~~] Failing to timely report to the commission the reason(s) a license holder(s) appointed by the law enforcement agency or governmental entity are not in compliance with continuing education standards, $250;

(11) [~~(9)~~] Failing to timely comply with substantive provisions of any order(s) issued under commission statutes or rules, $750;

(12) [~~(10)~~] Failing to timely comply with technical provisions of any order(s) issued under commission statutes or rules, $350;

(13) [~~(11)~~] Failing to timely comply with required audit procedures, $350;

(14) [~~(12)~~] Failing to timely submit or maintain any document(s) as required by commission statutes or rules, $250;

(15) [~~(13)~~] Other noncompliance with commission statutes or rules not involving fraud, deceit, misrepresentation, intentional disregard of governing law, or actual or potential harm to the public or integrity of the regulated community as a whole, $200.

(d) In determining the total penalty amount, the commission may consider the following aggravating factors:

(1) the severity and frequency of violations;

(2) multiple or previous violations;

(3) actual or potential harm to public safety;

(4) whether the violation could constitute criminal activity;

(5) evidence of an intent to defraud, deceive, or misrepresent; and

(6) any other aggravating factors existing in a particular case.

(e) In determining the total penalty amount, the commission may consider the following mitigating factors:

(1) immediacy and degree of corrective action; and

(2) any other matter that justice may require.

(f) The presence of mitigating factors does not constitute a requirement of dismissal of a violation of commission statutes or rules.

(g) Subject to final approval of the commission, the executive director has the discretion to enter into an agreed order. In return for compromise and settlement, the total penalty amount in an agreed order may be calculated using a base amount below those listed in this rule.

(h) The commission will provide written notice to a law enforcement agency or governmental entity of any alleged violations.

(i) By written answer, a law enforcement agency or governmental entity may request a hearing challenging the allegations set forth in the notice letter. Failure to file an answer within twenty days after being provided written notice may result in the entry of a default order. The default order may include additional penalties for failing to respond to the notice letter or failing to correct any alleged violations.

(j) The effective date of this section is February 1, 2014 [~~May 2, 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 October 18, 2013.

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

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37 TAC §223.13

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §223.13, concerning Surrender of License. Subsection (d) is amended to surrender all Commission-issued licenses upon surrender of one license. Subsection (f) is updated to reflect effective date of the change.

This amendment is necessary to clarify a surrender of one license surrenders all Commission-issued licenses.

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 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 a surrendered license includes all licenses issued.

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 this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.501, Disciplinary Action.

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

§223.13. Surrender of License.

(a) A licensee may surrender a license:

(1) as part of an employee termination agreement;

(2) as part of a plea bargain to a criminal charge;

(3) as part of an agreed settlement to commission action; or

(4) for any other reason.

(b) A license may be surrendered either permanently or for a stated term.

(c) Effective dates:

(1) the beginning date for any surrender shall be the date stated in the request or, if none, the date it was received by the commission;

(2) a term surrender shall have its ending date stated in the request; and

(3) any request without a stated ending date shall be construed as a permanent surrender.

(d) A licensee may surrender any license by sending, or causing to be sent, a signed, notarized, written request to the executive director, who may accept or reject the request. The signed written request shall indicate that the licensee understands and has knowledge of the consequences of the document being signed. The executive director may accept requests for surrender submitted to the commission in any other form that indicates the licensee intends to surrender the license to the commission. The executive director may liberally construe the intent of any request [~~and may, specifically, construe the surrender of any single commission license to be a surrender of all other licenses held unless the request expressly states otherwise~~]. The surrender of one commission-issued license operates as a surrender of all commission-issued licenses. The surrender should include a summary of the reason for the surrender.

(e) If accepted, the licensee is no longer licensed:

(1) effective on the beginning date of the surrender; and

(2) except for permanent surrenders, until such person applies for and meets the requirements of a new license.

(f) The effective date of this section is February 1, 2014 [~~July 12, 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 October 18, 2013.

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

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37 TAC §223.15

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §223.15, concerning Suspension of License. Subsection (f) is amended to list circumstances to determine seriousness of a crime to determine appropriate suspension. Subsection (i)(4) is deleted to remove the bodily injury and coercion component. Subsection (i)(5) and (6) are re-numbered. Subsection (r) is updated to reflect effective date of the changes.

This 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.

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 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 the rule regarding suspension of a license.

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 this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.1524, Rules Relating to Consequences of Criminal Conviction or Deferred Adjudication; and §1701.501, Disciplinary Actions.

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

§223.15. Suspension of License.

(a) Unless revocation is explicitly authorized by law, the commission may suspend any license issued by the commission if the licensee:

(1) violates any provision of these sections;

(2) violates any provision of the Texas Occupations Code, Chapter 1701;

(3) is convicted of or placed on court ordered community supervision resulting from deferred adjudication for any offense above the grade of Class C misdemeanor;

(4) is placed on deferred adjudication for an offense involving family violence; or

(5) has previously received two written reprimands from the commission.

(b) If a licensee is charged with the commission of a felony, adjudication is deferred, and the licensee is placed on community supervision, the commission shall immediately suspend any license held for a period of 30 years. The suspension of any license under this subsection is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee via certified mail that any license held is suspended.

(c) If convicted or if adjudication is deferred and the licensee is placed on court ordered community supervision for any misdemeanor offense above the grade of Class C misdemeanor, the term of suspension may be for a period not to exceed 10 years.

(d) If a licensee is charged with the commission of a misdemeanor offense involving family violence and an adjudication of guilt is deferred, the term of suspension may be for a period not to exceed 10 years.

(e) If a license can be suspended under subsection (c) or (d) of this section for a Class A misdemeanor, the minimum term of suspension shall be 120 days. If a license can be suspended under subsection (c) or (d) of this section for a Class B or C misdemeanor, the minimum term of suspension shall be 30 days.

(f) If a license can be suspended for a misdemeanor conviction or deferred adjudication, the commissioners may, in their discretion and upon proof of mitigating factors as defined in subsection (i) of this section, probate all or part of a suspension term after the mandatory minimum suspension. Factors the commission may consider in determining a term of suspension include:

(1) the seriousness of the conduct resulting in the arrest;

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

(3) 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;

(4) the licensee's previous violations of commission statutes or rules;

(5) actual or potential harm to public safety, including personal injury and property damage, resulting from the conduct resulting in the arrest;

(6) aggravating evidence existing in a particular case; and

(7) evidence used in rebuttal to mitigating factors.

(g) If a license can be suspended for violation of legislatively required continuing education for licensees as defined in §217.11 of this title and if mitigating circumstances as defined in §218.7 [~~§217.15~~] of this title do not apply, the commission may:

(1) for first time offenders suspend a license(s) for up to 90 days;

(2) for second time offenders suspend a license(s) for up to 180 days; and

(3) for third time offenders suspend a license(s) for up to one (1) year.

(h) If a license can be suspended for any other reason, the commission, through its executive director may, in its discretion and upon

proof of the mitigating factors as defined in subsection (i) of this section, either:

(1) probate all or part of the suspension term; or

(2) issue a written reprimand in lieu of suspension.

(i) Mitigating factors include:

(1) the licensee's history of compliance with the terms of court-ordered community supervision;

(2) the licensee's post-arrest continuing rehabilitative efforts not required by the terms of community supervision;

(3) the licensee's post-arrest 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;~~]

(4) [~~(5)~~] the type and amount of any post-arrest, non-court ordered restitution made by the licensee; and

(5) [~~(6)~~] any non-contested disciplinary action, either completed or ongoing, imposed by the appointing agency.

(j) A suspension or probation may be ordered to run concurrently or consecutively with any other suspension or probation. The beginning date of a probated suspension shall be:

(1) any date agreed to by both parties, which is no earlier than the date of the rule violation;

(2) the date the licensee notifies the commission in writing of the rule violation if the commission later receives a signed waiver of suspension from the licensee that was postmarked within 30 days of its receipt; or

(3) the date the commission final order is entered in a contested case or the date it becomes effective, if that order is appealed.

(k) The executive director shall inform the commissioners of any reprimand no later than at their next regular meeting.

(l) The commission may impose reasonable terms of probation, such as:

(1) continued employment requirements;

(2) special reporting conditions;

(3) special document submission conditions;

(4) voluntary duty requirements;

(5) no further rule or law violations; or

(6) any other reasonable term of probation.

(m) A probated license remains probated until:

(1) the term of suspension has expired;

(2) all other terms of probation have been fulfilled; and

(3) a written request for reinstatement has been received and accepted by the commission from the licensee unless the probation has been revoked by the commission for violation of probation; or

(4) revoked.

(n) Twelve months may be added to the term of a new suspension for each separate previous violation that has resulted in either a license suspension, a probated suspension, or a written reprimand before the beginning date of the new suspension.

(o) Before reinstatement, the probation of a suspended license may be revoked before the expiration date of the probation upon violation of the terms of probation. Upon revocation, the full term of suspension shall be imposed with credit for any time already served on that suspension.

(p) Once a license has been suspended, the suspension probated, the probation revoked, or the licensee reprimanded, the commission shall send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.

(q) A suspended license remains suspended until:

(1) the term of suspension has expired and the term of court-ordered community supervision has been completed; and

(2) a written request for reinstatement has been received from the licensee and accepted by the commission; or

(3) the remainder of the suspension is probated and the license is reinstated.

(r) The effective date of this section is February 1, 2014 [~~January 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 October 18, 2013.

TRD-201304699
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
For further information, please call: (512) 936-7713

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37 TAC §223.16

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §223.16, concerning Suspension of License for Constitutionally Elected Officials. Subsection (f) is amended to determine seriousness of a crime to determine appropriate suspension. Subsection (i)(4) is deleted to remove the bodily injury and coercion component. Subsection (i)(5) and (6) are re-numbered. Subsection (r) is updated to reflect effective date of the changes.

This 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.

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 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 the rule regarding suspension of a license for constitutionally elected officials.

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 this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.302, Certain Elected Law Enforcement Officer, License Required; and §1701.501, Disciplinary Actions.

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

§223.16. Suspension of License for Constitutionally Elected Officials.

(a) Unless revocation is explicitly authorized by law, the commission may suspend any license issued by the commission if the licensee:

(1) violates any provision of these sections;

(2) violates any provision of the Texas Occupations Code, Chapter 1701;

(3) is convicted of or placed on court ordered community supervision resulting from deferred adjudication for any offense above the grade of Class C misdemeanor;

(4) is placed on deferred adjudication for an offense involving family violence; or

(5) has previously received two written reprimands from the commission.

(b) If a licensee is charged with the commission of a felony, adjudication is deferred, and the licensee is placed on community supervision, the commission shall immediately suspend any license held for a period of 20 years. The suspension of any license under this subsection is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee via certified mail that any license held is suspended.

(c) If convicted or if adjudication is deferred and the licensee is placed on court ordered community supervision for any misdemeanor offense above the grade of Class C misdemeanor, the term of suspension may be for a period not to exceed 10 years.

(d) If a licensee is charged with the commission of a misdemeanor offense involving family violence and an adjudication of guilt is deferred, the term of suspension may be for a period not to exceed 10 years.

(e) If a license can be suspended under subsection (c) or (d) of this section for a Class A misdemeanor, the minimum term of suspension shall be 120 days. If a license can be suspended under subsection (c) or (d) of this section for a Class B or C misdemeanor, the minimum term of suspension shall be 30 days.

(f) If a license can be suspended for a misdemeanor conviction or deferred adjudication, the commissioners may consider the suspension circumstances set forth in this chapter in determining a term of suspension [~~in their discretion~~] and upon proof of mitigating factors [~~as defined in subsection (i) of this section~~], probate all or part of a suspension term after the mandatory minimum suspension.

(g) If a license can be suspended for violation of legislatively required continuing education for licensees as defined in §217.11 of this title and if mitigating circumstances as defined in §218.7 [~~§217.15~~] of this title do not apply, the commission may:

(1) for first time offenders suspend a license(s) for up to 90 days;

(2) for second time offenders suspend a license(s) for up to 180 days; and

(3) for third time offenders suspend a license(s) for up to one (1) year.

(h) If a license can be suspended for any other reason, the commission, through its executive director may, in its discretion and upon proof of the same mitigating factors, either:

(1) probate all or part of the suspension term during a probation term of up to twice the maximum suspension term; or

(2) issue a written reprimand in lieu of suspension.

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

(1) the licensee's history of compliance with the terms of court-ordered community supervision;

(2) the licensee's post-arrest continuing rehabilitative efforts not required by the terms of community supervision;

(3) the licensee's post-arrest 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;~~]

(4) [~~(5)~~] the type and amount of any post-arrest, non-court ordered restitution made by the licensee; and

(5) [~~(6)~~] any non-contested disciplinary action, either completed or ongoing, imposed by the appointing agency.

(j) A suspension or probation may be ordered to run concurrently or consecutively with any other suspension or probation. The beginning date of a probated suspension shall be:

(1) any date agreed to by both parties, which is no earlier than the date of the rule violation;

(2) the date the licensee notifies the commission in writing of the rule violation if the commission later receives a signed waiver of suspension from the licensee that was postmarked within 30 days of its receipt; or

(3) the date the commission final order is entered in a contested case or the date it becomes effective, if that order is appealed.

(k) The executive director shall inform the commissioners of any reprimand no later than at their next regular meeting.

(l) The commission may impose reasonable terms of probation, such as:

(1) continued employment requirements;

(2) special reporting conditions;

(3) special document submission conditions;

(4) voluntary duty requirements;

(5) no further rule or law violations; or

(6) any other reasonable term of probation.

(m) A probated license remains probated until:

(1) the term of suspension has expired;

(2) all other terms of probation have been fulfilled; and

(3) a written request for reinstatement has been received and accepted by the commission from the licensee unless the probation has been revoked by the commission for violation of probation; or

(4) until revoked.

(n) Twelve months may be added to the term of a new suspension for each separate previous violation that has resulted in either a license suspension, a probated suspension, or a written reprimand before the beginning date of the new suspension.

(o) Before reinstatement, the probation of a suspended license may be revoked upon a showing that any of its terms have been violated before the expiration date of the probation regardless of when the petition is filed. Upon revocation, the full term of suspension shall be imposed with credit for any time already served on that suspension.

(p) Once a license has been suspended, the suspension probated, the probation revoked, or the licensee reprimanded, the commission shall send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.

(q) A suspended license remains suspended until:

(1) the term of suspension has expired and the term of court-ordered community supervision has been completed; and

(2) a written request for reinstatement has been received from the licensee and accepted by the commission; or

(3) the remainder of the suspension is probated and the license is reinstated.

(r) The effective date of this section is February 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 October 18, 2013.

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

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37 TAC §223.19

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §223.19, concerning Revocation of License. Subsection (e)(1) is amended to clarify and reflect longstanding interpretation of previous rules related to disqualifying military discharges involving bad conduct. Subsection (e)(4) is amended to conform disqualifying family violence language with current enrollment and licensing rules. Subsection (m) is updated to reflect effective date of the changes.

This 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 with current suspension and revocation rules.

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 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 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 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 this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.502, Felony Conviction or Placement on Community Supervision.

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

§223.19. Revocation of License.

(a) The commission shall immediately revoke any license issued by the commission if the licensee is or has been convicted of a felony offense as provided in subsections (b), (c) and (d) of this section. The revocation of any license held is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee that any license held is revoked. Notice of revocation shall be sent via certified U.S. Mail to the address shown on the Texas driver's license record of the licensee and to the address of the agency showing the licensee under current or last appointment.

(b) A person is convicted of a felony when an adjudication of guilt on a felony offense is entered against that person by a court of competent jurisdiction whether or not:

(1) the sentence is subsequently probated and the person is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(3) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(c) The commission will construe any disposition for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another provision of the Texas law; or

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

(d) The commission may revoke the license of a person who is either convicted of a misdemeanor offense or placed on deferred adjudication community supervision for a misdemeanor or felony offense, if the offense directly relates to the duties and responsibilities of any related office held by that person. In determining whether a criminal offense directly relates to such office, the commission shall, under this subsection, consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purpose for requiring a license for such office;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.

(e) The commission shall revoke any license issued by the commission if the licensee:

(1) has received a dishonorable or other discharge based on misconduct which bars future military service [~~bad conduct discharge~~];

(2) has made, submitted, caused to be submitted, or filed a false or untruthful report to the commission;

(3) has been found to be in unauthorized possession of any commission licensing examination or portion of a commission licensing examination, or a reasonable facsimile thereof;

(4) is convicted in any court of an offense involving family violence [~~that has, as an element of the offense, family violence,~~] as defined under Chapter 71, Texas Family Code;

(5) is a fourth time offender in failing to obtain legislatively required continuing education as described in §217.11 of this title; or

(6) violates any section where revocation is the penalty noted.

(f) Revocation of a license shall permanently disqualify a person from licensing and a license may not be reinstated except when the licensee proves the facts supporting the revocation have been negated, such as:

(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;

(2) the dishonorable or bad conduct discharge has been upgraded to above dishonorable or bad conduct conditions;

(3) the report alleged to be false or untruthful was found to be truthful; or

(4) the section was not violated.

(g) During the direct appeal of any appropriate conviction, a license may be revoked pending resolution of the mandatory direct appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.

(h) The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the licensee that the facts supporting the revocation have been negated.

(i) If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting.

(j) If denied, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.

(k) Once a license has been revoked, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.

(l) The date of revocation will be the earliest date that:

(1) a waiver was signed by the holder; or

(2) a final order of revocation was signed by the commissioners.

(m) The effective date of this section is February 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 October 18, 2013.

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

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CHAPTER 227. SCHOOL MARSHALS

37 TAC §227.1

The Texas Commission on Law Enforcement (Commission) proposes new §227.1, concerning School District Responsibilities.

This new rule is necessary to conform with the statutory school marshal amendment by setting forth a school district's requirements in order to appoint a school marshal.

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

The Commission has determined that for each year of the first five years the new rule as proposed will be in effect, there will be a positive benefit to the public by ensuring qualified licensee appointments are reported to the Commission.

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.260.

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

§227.1. School District Responsibilities.

(a) A school district shall:

(1) submit and receive approval for an application to appoint a person as a school marshal;

(2) upon authorization, notify the commission using approved format prior to appointment;

(3) report to the commission, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the school district;

(4) report to the commission, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the school district, commission standards, another state agency, or under other law; and

(5) immediately report to the commission a school marshal's violation of any commission standard, including the discharge of a firearm carried under the authorization of this chapter outside of a training environment.

(b) A school district shall not appoint or employ an ineligible person as a school marshal.

(c) For five years, the school district must retain documentation that the district and person has met all requirements under law in a format readily accessible to the commission. This requirement does not relieve a school district from retaining all other relevant records not otherwise listed.

(d) The effective date of this section is February 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.

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TRD-201304703
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
For further information, please call: (512) 936-7713

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37 TAC §227.3

The Texas Commission on Law Enforcement (Commission) proposes new §227.3, concerning School Marshal Licensing and Reporting Requirements.

This new rule is necessary to conform with the statutory school marshal amendment by setting forth an applicant's requirements in order to be eligible for appointment as a school marshal.

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

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

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.260.

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

§227.3. School Marshal Licensing and Reporting Requirements.

(a) To be eligible for appointment as a school marshal, an applicant shall:

(1) successfully complete all prerequisite commission training;

(2) pass the state licensing exam;

(3) be employed and appointed by an authorized school district; and

(4) meet all statutory requirements, including psychological fitness.

(b) Once appointed, a school marshal shall:

(1) immediately report to the commission and school district any circumstance which would render them unauthorized to act as a school marshal by virtue of their employment with the school district, failure to meet the standards of the commission, another state agency, or under law;

(2) immediately report to the commission any violation of applicable commission standards, including any discharge of a firearm carried under the authorization of this chapter outside of training environment; and

(3) comply with all requirements under law, including Texas Education Code, §37.0811.

(c) The effective date of this section is February 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 October 18, 2013.

TRD-201304704

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

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37 TAC §227.5

The Texas Commission on Law Enforcement (Commission) proposes new §227.5, concerning School Marshal Training Entities.

This new rule is necessary to conform with the statutory school marshal amendment by setting forth the training program requirements for school marshals.

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

The Commission has determined that for each year of the first five years the new rule as proposed will be in effect, there will be a positive benefit to the public by ensuring highly trained school marshal licensees.

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.260.

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

§227.5. School Marshal Training Entities.

(a) A school marshal training program is open to any employee of a school district or open-enrollment charter school who holds a license to carry a concealed handgun issued under Texas Government Code, Chapter 411, Subchapter H.

(b) The training program must be preapproved and conducted by commission staff or approved provider. The training program shall include 80 hours of instruction designed to:

(1) emphasize strategies for preventing school shootings and for securing the safety of potential victims of school shootings;

(2) educate a trainee about legal issues relating to the duties of peace officers and the use of force or deadly force in the protection of others;

(3) introduce the trainee to effective law enforcement strategies and techniques;

(4) improve the trainee's proficiency with a handgun; and

(5) enable the trainee to respond to an emergency situation requiring deadly force, such as a situation involving an active shooter.

(c) The effective date of this section is February 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.

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

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37 TAC §227.7

The Texas Commission on Law Enforcement (Commission) proposes new §227.7, concerning School Marshal Renewals.

This new rule is necessary to conform with the statutory school marshal amendment by setting forth the license renewal requirements for school marshals.

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

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

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.260.

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

§227.7. School Marshal Renewals.

(a) A school marshal license expires on the person's birth date following the second anniversary of initial licensure or renewal.

(b) The commission may renew the license of a person who has:

(1) successfully completed a renewal course designed and administered by the commission which will not exceed a combined 16 hours of classroom and simulation training;

(2) passed a commission exam;

(3) demonstrated handgun proficiency as required by the commission; and

(4) demonstrated psychological fitness.

(c) The effective date of this section is February 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 October 18, 2013.

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

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37 TAC §227.9

The Texas Commission on Law Enforcement (Commission) proposes new §227.9, concerning License Action.

This new rule is necessary to conform with the statutory school marshal amendment by setting forth the license revocation and suspension procedures for school marshal licenses. Due to the obvious nature and potential harm on an ineligible person retaining a school marshal license, public policy weighs heavily in favor of immediate revocation or suspension action.

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

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

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.260.

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

§227.9. License Action.

(a) The commission shall immediately revoke a school marshal license if the license holder's ability to carry a concealed handgun has been suspended or revoked by the Texas Department of Public Safety.

(b) A person whose school marshal license is revoked may obtain recertification by:

(1) furnishing proof to the commission that the person's concealed handgun license has been reinstated; and

(2) completing initial training to the satisfaction of the commission staff, paying the fee for the training, and demonstrating psychological fitness on the psychological examination.

(c) If a school marshal license holder violates any commission standard, the commission shall immediately suspend the license for ten years. Mitigating factors are inapplicable to a suspension action under this chapter.

(d) The effective date of this section is February 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 October 18, 2013.

TRD-201304707
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
For further information, please call: (512) 936-7713

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37 TAC §227.11

The Texas Commission on Law Enforcement (Commission) proposes new §227.11, concerning Confidentiality of Information.

This new rule is necessary to conform with the statutory school marshal amendment by setting forth the confidentiality of information received in relation to school marshals.

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

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

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

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 this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.260.

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

§227.11. Confidentiality of Information.

(a) Except as provided by law, identifying information about a person collected or submitted under Texas Occupations Code, §1701.260 is confidential.

(b) The effective date of this section is February 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 October 18, 2013.

TRD-201304708
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
For further information, please call: (512) 936-7713

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CHAPTER 229. TEXAS PEACE OFFICERS' MEMORIAL MONUMENT

37 TAC §229.1

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §229.1, concerning Eligibility for Memorial. The title is amended to clarify type of memorial. Subsection (b) is amended to reflect the effective date of the change.

This amendment is necessary to conform with statutory amendment by adding "monument" to caption of Peace Officer Memorial provisions.

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 conforming Commission rules to statutory amendments.

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 cost to small businesses, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to

public.comment@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 this chapter.

The rule amendment as proposed is in compliance with Texas Government Code, Chapter 3105, §3105.003, Eligibility for Memorial.

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

§229.1. Eligibility for Memorial Monument.

(a) A person is eligible to have the person's name on the memorial if the person was killed in the line of duty and was:

(1) a law enforcement officer or peace officer for this state or a political subdivision of this state under Article 2.12, Code of Criminal Procedure, or other law;

(2) a federal law enforcement officer or special agent performing duties in this state, including those officers under Article 2.122, Code of Criminal Procedure;

(3) a corrections or detention officer or county or municipal jailer employed or appointed by a municipal, county, or state penal institution in this state; or

(4) a Texas peace officer who, in historical perspective, would be eligible under any of the preceding criteria.

(b) The effective date of this section is February 1, 2014 [~~May 1, 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 October 17, 2013.

TRD-201304639
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
For further information, please call: (512) 936-7713

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37 TAC §229.3

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §229.3, concerning Specific Eligibility of Memorial. The title is amended to clarify type of memorial. Subsection (b) is amended to reflect the effective date of the change.

This amendment is necessary to conform with statutory amendment by adding "monument" to caption of Peace Officer Memorial provisions.

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 conforming Commission rules to statutory amendments.

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 cost to small businesses, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to public.comment@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 this chapter.

The rule amendment as proposed is in compliance with Texas Government Code, Chapter 3105, §3105.003, Eligibility for Memorial.

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

§229.3. Specific Eligibility of Memorial Monument.

(a) An officer identified in §229.1 of this chapter is eligible for inclusion on the memorial if the fatal incident:

(1) was a direct result of a line of duty, on or off duty incident;

(2) was an indirect result but directly attributed to a line of duty, on or off duty incident; or

(3) was a direct result of a felonious assault on the officer, perpetrated because of the officer's status, regardless of duty status.

(b) The effective date of this section is February 1, 2014 [~~July 6, 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 October 17, 2013.

TRD-201304640
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: February 1, 2014
For further information, please call: (512) 936-7713

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 16. PILOT PROGRAM TO INCREASE THE USE OF ADVANCE DIRECTIVES IN NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR PERSONS WITH AN INTELLECTUAL DISABILITY

40 TAC §§16.1 - 16.4

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

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Chapter 16, §§16.1 - 16.4, concerning the Pilot Program to Increase the Use of Advanced Directives in Nursing Facilities and Intermediate Care Facilities for Persons with an Intellectual Disability.

BACKGROUND AND PURPOSE

The purpose of the repeal is to delete rules in Chapter 16 regarding a pilot program to increase the use of advance directives. Senate Bill (SB) 27, 80th Legislature, Regular Session, 2007, required the development and implementation of a pilot program to increase the use of advance directives by residents in nursing facilities and intermediate care facilities for individuals with an intellectual disability or related conditions by educating the residents and families of residents about advance care planning.

SB 27 also required DADS to evaluate the pilot program and submit a report on the program's effectiveness that would include a recommendation to continue, expand, or eliminate the program. After analysis of the findings, DADS recommended that the program be eliminated.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §16.1 deletes rules regarding the purpose of the advance directives pilot program.

The proposed repeal of §16.2 deletes definitions of terms used in Chapter 16.

The proposed repeal of §16.3 deletes rules regarding the pilot program location and the period of time the program was active.

The proposed repeal of §16.4 deletes rules regarding the description of the pilot program.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses, because the repeal relates to a pilot program that was terminated in 2010.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the repeal is in effect, the public benefit expected as a result of repealing the chapter is to delete rules that are no longer relevant from the DADS rule base.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Corliss Powell at (512) 438-2430 in DADS Policy Development and Oversight Unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-

13R10, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R10" in the subject line.

The repeal is proposed 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; 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 repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§16.1. Purpose.

§16.2. Definitions.

§16.3. Pilot Location and Time Frame.

§16.4. Description of the Pilot 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.

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

TRD-201304779
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 438-3734

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §57.56

The Automobile Burglary and Theft Prevention Authority (Authority) proposes an amendment to §57.56, concerning General Requirements for Advisory Committees. The proposed amendment changes the date on which the Authority's advisory committees will be abolished in §57.56(6). The Texas Government Code, §2110.008, requires the Authority to approve the continuation of its advisory committees and reset the date of their abolishment, or the committees will be abolished by operation of law. The proposed amendment to §57.56 changes the date to August 31, 2018. Adoption of this proposal will act as the Authority's approval of the continuation of these committees.

Charles Caldwell, Director of the Authority, has determined that for the first five-year period the amendment is in effect, there will be no additional fiscal implications for state and local governments as a result of enforcing or administering the proposed amendment.

Mr. Caldwell has also determined that, for each year of the first five years the proposed amendment will be in effect, the public benefit anticipated will be better notice to the public as to the continuation of its advisory committees, which assist the Authority in its mission to prevent and reduce auto theft and burglary. There is no effect on a local economy. There is no anticipated adverse economic effect on micro or small businesses as a result of the proposed amendment. There are no persons required to comply with this amendment, and, thus, there is no anticipated economic cost relating to compliance.

Comments on the proposed amendment may be submitted to Charles Caldwell, Director, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731 for a period of 30 days from the date that the proposed amendment is published in the *Texas Register.*

The amendment is proposed under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties, and Texas Government Code, §2110.008, which the Authority interprets as requiring it to set a date of abolishment for its advisory committees or face automatic abolishment of them.

The following are the statutes, articles, or codes affected by the amendment: Texas Civil Statutes, Article 4413(37), §6(a) and Texas Government Code, §2110.008.

§57.56. General Requirements for Advisory Committees.

The border solutions advisory committee, the grantee advisory committee and the insurance fraud advisory committees are subject to the following provisions:

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

(6) Committee's term. Each committee is abolished on August 31, 2018 [~~August 31, 2014~~], unless the ABTPA amends this paragraph to establish a different date.

(7) (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 October 21, 2013.

TRD-201304736
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Earliest possible date of adoption: December 1, 2013
For further information, please call: (512) 465-4011

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WITHDRAWN RULES

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

TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.30

The Texas State Board of Examiners of Psychologists withdraws the proposed amendment to §463.30 which appeared in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6158).

Filed with the Office of the Secretary of State on October 17, 2013.

TRD-201304641
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: October 17, 2013
For further information, please call: (512) 305-7706

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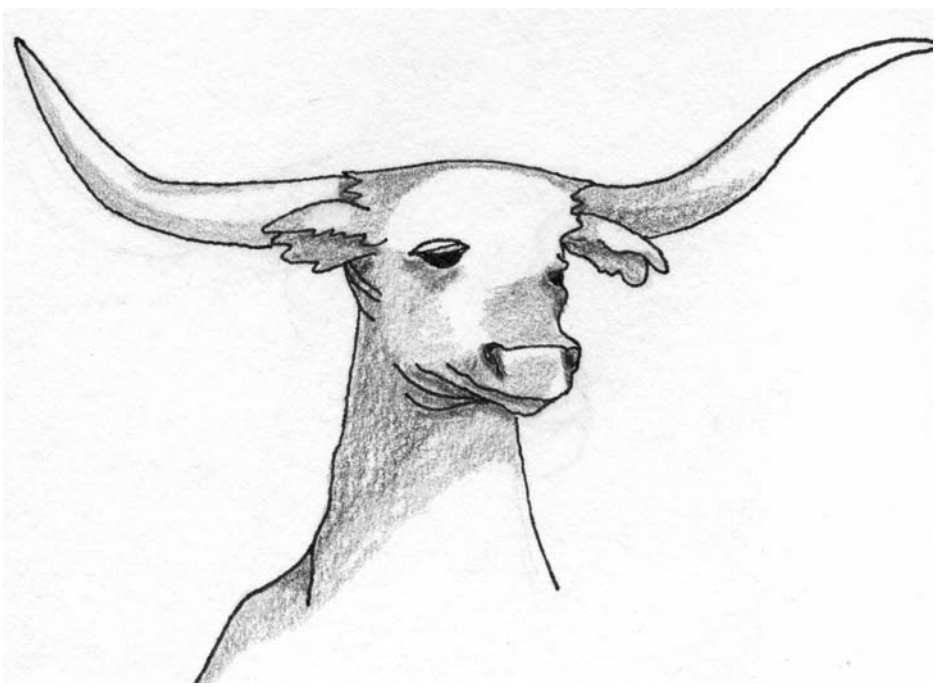

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 27. WOMEN'S HEALTH PROGRAM

1 TAC §§354.1361 - 354.1364

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Division 27, consisting of §§354.1361 - 354.1364, concerning the Medicaid Women's Health Program. The repeal is adopted without changes to the proposal as published in the August 2, 2013, issue of the *Texas Register* (38 TexReg 4836) and will not be republished.

Background and Purpose

The repealed rules governed the Medicaid Women's Health Program (WHP), which ceased operations on December 31, 2012. On January 1, 2013, the Department of State Health Services (DSHS) implemented a similar program, the Texas WHP, which is governed by rules codified in the Texas Administrative Code, Title 25, Part 1, Chapter 39, Subchapter B. The repealed rules do not apply to the Texas WHP.

Accordingly, the adoption repeals obsolete material in the Texas Administrative Code and mitigates possible consumer and provider confusion over the applicability of the obsolete rules to the Texas WHP.

Comments

During the 30-day comment period, which ended September 1, 2013, staff received no comments concerning the proposed repeal.

Statutory Authority

The repeal is adopted under the 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 October 21, 2013.

TRD-201304734
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 10, 2013
Proposal publication date: August 2, 2013
For further information, please call: (512) 424-6900

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS APPLYING FOR LICENSURE WITH THE OFFICE OF CONSUMER CREDIT COMMISSIONER UNDER THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §§2.101 - 2.105 and new §2.201 and §2.202, concerning residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC) under the Secure and Fair Enforcement for Mortgage Licensing Act.

The commission adopts the amendments to §2.104 and new §2.201 with changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5611). The commission adopts the amendments to §§2.101 - 2.103 and §2.105; and new §2.202 without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5611).

In general, the purpose of the adopted amendments and new rules is to provide clarification regarding license status, as well as operational requirements related to renewal and background checks. The amendments and new rules place into regulation existing agency policy and do not impose new requirements on licensees.

The amendments outline when an application may be withdrawn, and when licenses may be issued in an inactive or conditional status. The new rules concern requirements for renewal, including additional background checks, and a licensee's

duty to maintain current information with NMLS. The following paragraphs outline the purposes of each rule amendment and both new rules.

The amendments to §2.101 serve to update and streamline the definitions. In paragraph (1), the amendments revise the acronym for the Nationwide Mortgage Licensing System and Registry to be "NMLS," which has become most widely used. In paragraph (3), there are two changes in the definition of "RMLO": the word "registered" has been replaced with "residential," and the phrase "licensed with the OCCC" has been added. Additionally, unnecessary language has been deleted from paragraph (3).

In §2.102, concerning registration with NMLS, parallel amendments have been made using the updated acronym as revised in §2.101. This section also includes the addition of three new subsections. Subsection (c) relates to the withdrawal of an application if it has not been completed 30 days after notice of deficiency. Subsection (d) outlines how a license may be issued in an inactive status, and how that status may be changed to active upon verification of a registered or licensed employer. Subsection (e) provides that licenses may be issued on a conditional basis.

Technical corrections have been made to the following sections: §2.103, Fingerprint Submissions; §2.104, Application and Renewal Fees; and §2.105, Recovery Fund Fees. Amendments using the updated NMLS acronym are adopted in both §2.103 and §2.104 to provide consistency throughout the rules. In §2.105, the phrase "or renewal" is being added for clarity, and a technical correction is being made by removing an unnecessary hyphen from the term "nonrefundable."

Section 2.104 relating to fees contains two clarifications. The amendments to §2.104(a) clarify that, in addition to all fees being nonrefundable, these fees are also "nontransferable." This proposed change to subsection (a) has been maintained for this adoption.

Since the proposal, a second fee clarification has been added to §2.104. In the first sentence of subsection (c) after "application fee," the phrase "an amount not to exceed" has been inserted before "$300." Thus, for this adoption, §2.104(c) begins as follows: "The Finance Commission of Texas sets the RMLO application fee at an amount not to exceed $300 . . . ." This language provides the OCCC the option to discount RMLO application fees when appropriate.

Adopted new Subchapter B contains two new rules outlining operational requirements for OCCC licensees.

New §2.201 provides the requirements and procedures related to license renewal. Subsection (a) lists the requirements for renewal, including a completed renewal application through NMLS, receipt of payment, continued compliance with the minimum requirements for license issuance, and completion of continuing education. Subsection (b) specifies that renewal of a license may be rejected for the reasons contained in Texas Finance Code, §180.201. Under subsections (c) and (d), the OCCC may require additional information as well as any necessary criminal and credit background checks in order to determine continued compliance with the law.

Since the proposal, changes have been made to the terminology used in subsection (b) to provide consistency with NMLS terms. In particular, "Denial" and "denied" have been replaced with appropriate versions of the verb "reject." Accordingly, for this adoption, §2.201(b) reads as follows: "Rejection of renewal. Renewal of a license may be rejected for reasons provided in Texas Finance Code, §180.201."

New §2.202 delineates the information that a residential mortgage loan originator (RMLO) must keep current through NMLS. The RMLO must notify the OCCC of any change in address, name, or employer.

The commission received no written comments on the proposal.

SUBCHAPTER A. APPLICATION PROCEDURES FOR OFFICE OF CONSUMER CREDIT COMMISSIONER APPLICANTS

7 TAC §§2.101 - 2.105

These amendments are adopted under Texas Finance Code, §180.004, which authorizes the commission to implement rules necessary to comply with Chapter 180 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289). Additionally, the amendments are also adopted under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements for conducting background checks and other activities necessary for participation in NMLS.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009, and Texas Finance Code, Chapters 342, 347, 348, and 351.

§2.104. Application and Renewal Fees.

(a) Required submission to NMLS. To become an RMLO, an OCCC applicant must submit the required fees to NMLS. A fee is required to be submitted at the time of application and at the time of renewal. All fees are nonrefundable and nontransferable.

(b) Fingerprint processing fees. Fingerprint processing fees must also be paid in the amount necessary to recover the costs of investigating the OCCC applicant's fingerprint record (amount required by third party).

(c) OCCC application and renewal fees. The Finance Commission of Texas sets the RMLO application fee at an amount not to exceed $300 and the RMLO annual renewal fee not to exceed $300 for applications filed with the OCCC. Annual renewal fees are due to NMLS by December 31 of each year. A third party operates NMLS and that third-party operator sets the amount of the required system fees. Applicants and RMLOs must pay all required application and renewal fees, fingerprint processing fees, and any additional amounts required by the third-party operator.

(d) OCCC reinstatement period and fee. The Finance Commission of Texas sets the RMLO reinstatement fee at $50 for applications filed with the OCCC. The reinstatement period for OCCC applicants runs from January 1 through the last day of February each 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.

Filed with the Office of the Secretary of State on October 18, 2013.

TRD-201304714

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: November 7, 2013
Proposal publication date: August 30, 2013
For further information, please call: (512) 936-7621

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SUBCHAPTER B. OPERATIONAL REQUIREMENTS FOR OFFICE OF CONSUMER CREDIT COMMISSIONER LICENSEES

7 TAC §2.201, §2.202

These new rules are adopted under Texas Finance Code, §180.004, which authorizes the commission to implement rules necessary to comply with Chapter 180 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289). Additionally, the new rules are also adopted under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements for conducting background checks and other activities necessary for participation in NMLS.

The statutory provisions affected by the adopted new rules are contained in Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009, and Texas Finance Code, Chapters 342, 347, 348, and 351.

§2.201. License Renewal.

(a) Requirements. A license may be renewed if:

(1) the RMLO submits a completed application for renewal through the NMLS together with the payment of the applicable renewal application fee;

(2) the OCCC determines that the RMLO continues to meet the minimum requirements for license issuance, including financial responsibility, character, and general fitness, as provided in Texas Finance Code, §180.055, and subsection (d) of this section; and

(3) the RMLO provides satisfactory evidence that the RMLO has completed the continuing education requirements of Texas Finance Code, §180.060.

(b) Rejection of renewal. Renewal of a license may be rejected for reasons provided in Texas Finance Code, §180.201.

(c) Additional information. The OCCC may require additional, clarifying, or supplemental information from any applicant for the renewal of a license pursuant to Texas Finance Code, Chapter 180 in order to determine compliance with the law.

(d) Additional background checks. After initial issuance of a license, the OCCC may require additional criminal and credit background checks in order to determine an RMLO's continuing compliance with the law.

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 October 18, 2013.

TRD-201304722

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: November 7, 2013
Proposal publication date: August 30, 2013
For further information, please call: (512) 936-7621

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CHAPTER 3. STATE BANK REGULATION
SUBCHAPTER E. BANKING HOUSE AND OTHER FACILITIES

7 TAC §3.91, §3.93

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §3.91, concerning Loan Production Offices (LPOs), and §3.93, concerning Deposit Production Offices (DPOs). Section 3.91 is adopted with changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5613). Section 3.93 is adopted without changes and will not be republished.

The 83rd Texas Legislature recently enacted H.B. 1664, effective June 14, 2013 (Acts 2013, 83rd Leg., R.S., Ch. 940). Among other matters, H.B. 1664 amended Finance Code, §31.002(a)(8) and §32.204, to conform Texas law regarding state bank LPOs and DPOs to current federal law applicable to national banks. As amended, Finance Code, §32.204(a), authorizes a state bank to establish one or more DPOs or LPOs for the purpose of soliciting deposit accounts, applications for loans, or equivalent transactions, performing ministerial duties related to such solicitations, and conducting other activities permitted by rule. Under Finance Code, §31.002(a)(8), such an office is not a branch, and any combination of permissible non-branch functions or facilities at one location does not create a branch.

The commission originally adopted §3.91 to implement the process of required notice to the banking commissioner regarding establishment of an LPO pursuant to Finance Code, §32.204. The commission originally adopted §3.93 as a parity provision pursuant to Finance Code, §32.009 and §32.010, to enable state banks to establish DPOs. As amended, §3.91 and §3.93 reflect the amended law and the equivalency of these types of facilities.

As proposed, §3.91(a) provided that a loan originated at an LPO must be "approved and made" at the home office or a branch of the bank. Pursuant to 12 C.F.R. §7.1005, a national bank can approve a loan at its LPO provided that money is not deemed to be lent at that location, i.e., the loan is not funded or made at the LPO. As adopted, the words "approved and" are deleted from §3.91(a).

The amended sections also now clearly state that these processes apply only to a Texas state bank and provide cross-references to other law governing similar activities of an out-of-state bank or a foreign bank.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §31.003, which authorizes the commission to adopt rules to accomplish the purpose of Subtitle A, relating to state banks. As required by Finance Code, §31.003(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.

§3.91. Loan Production Offices.

(a) Loan production activities. A Texas state bank may, to the extent authorized by its board of directors, engage in loan production activities at a site other than the home office or a branch of the bank, and may use the services of, and compensate, persons not employed by the bank in its loan production activities. Subject to the requirements of subsection (b) of this section, the bank or its operating subsidiary may establish a loan production office (LPO) at which an employee or agent of the bank or of its operating subsidiary accepts loan applications, provided that the loan is made at the home office or a branch of the bank or at an office of the operating subsidiary located on the premises of, or contiguous to, the home office or branch of the bank. A LPO is not a branch within the meaning of Finance Code, §31.002(a)(8), so long as it does not engage the public in the business of banking as defined by Finance Code, §31.002(a)(4), including making loans, receiving deposits, and paying withdrawals, drafts, or checks. All such deposit or withdrawal activity must be performed by the state bank customer in person at the home office or a branch, or by mail, electronic transfer, or similar transfer method.

(b) Required information. Pursuant to Finance Code, §32.204(b), a Texas state bank shall notify the banking commissioner of its intent to establish a new LPO. The banking commissioner must be notified in writing before the 31st day preceding the date of establishment of the LPO, except that the banking commissioner in the exercise of discretion may waive or shorten the period. The written notification must include the physical address of the planned LPO, a list of the specific activities to be performed at the planned LPO, the anticipated date for the establishment of the LPO, and other information which the banking commissioner may reasonably request.

(c) Relocation or closure of a LPO. A Texas state bank which seeks to relocate or close an established LPO, shall notify the banking commissioner in writing before the fifth day preceding the date of the planned relocation or closure of the LPO. The written notification must include the physical address of the relocated or closed LPO, the anticipated date for the closure or relocation of the LPO, and other information which the banking commissioner may reasonably request.

(d) Exemption: temporary LPO. Subsections (b) and (c) of this section do not apply to a LPO which operates for less than a total of 21 days in any one 12-month period. Instead, state banks shall register the location of a temporary LPO with the banking commissioner no later than the tenth day after such office is opened. As a part of such notice, the bank may indicate the anticipated repeated use of such office through the year. For example, a temporary LPO in a convention or exposition hall used in connection with trade shows may be registered once each year with an estimate of usage throughout the year.

(e) Transactions with management and affiliates. A state bank establishing a LPO involving the purchase or lease of personal or real property from an officer, director, manager, managing participant, or principal shareholder or participant of the bank or an affiliate of the bank, must comply with the provisions of the Finance Code, §33.109, and §3.22 of this title (relating to Sale or Lease Agreements with an Officer, Director, or Principal Shareholder of the Bank or of an Affiliate of the Bank).

(f) Out-of-state banks. A bank not domiciled or primarily located in this state must comply with the provisions of the Finance Code, Chapter 201, Subchapter B (§§201.101 *et seq.),* to establish a LPO in this state.

(g) Foreign bank corporations. A banking corporation or association incorporated or organized under the laws of a jurisdiction other than the United States or a state, territory, commonwealth, or other political subdivision of the United States, must comply with the provisions of the Finance Code, Chapter 201, Subchapter B (§§201.101 *et seq.),* to establish a representative office 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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SUBCHAPTER F. ACCESS TO INFORMATION

7 TAC §3.111

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §3.111, concerning confidential information, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5615).

The laws regarding business organizations were significantly modernized and integrated into a cohesive regulatory structure through enactment of the Business Organizations Code several years ago. The need for uniform and comprehensive terminology that would apply to every type of business organization, including corporations, limited liability companies, limited partnerships, and others, led to the introduction of a number of new terms.

The 83rd Legislature recently enacted Senate Bill 804, effective June 14, 2013, which amended the Finance Code to update and conform language in certain provisions to synonymous terminology and phrasing used in the Business Organizations Code.

The amendments to 7 TAC §3.111 conform the terminology used in the rule to that used in the Finance Code and the Business Organizations Code. References to "articles of merger," "articles of conversion," and "articles of amendment" have been changed to "certificate of merger," "certificate of conversion," and "certificate of amendment."

In addition, a citation to the title of 7 TAC §9.22 and a reference to Finance Code, Chapter 31 were corrected.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §31.003, which authorizes the Finance Commission to adopt rules to accomplish the purposes of Subtitle A regarding banks,

Finance Code, §201.002, which authorizes the Finance Commission to adopt rules to accomplish the purposes of Subtitle G regarding bank holding companies and interstate bank operations, and Finance Code, §181.003, which authorizes the Finance Commission to adopt rules to accomplish the purposes of Subtitle F regarding trust companies.

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 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 12. LOANS AND INVESTMENTS

SUBCHAPTER A. LENDING LIMITS

7 TAC §§12.2, 12.3, 12.10, 12.12

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §§12.2, 12.3, 12.10, and 12.12, concerning the application of lending limits to credit exposure under derivative transactions and securities financing transactions, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5616). The text will not be republished.

Last year, the commission adopted several new and amended sections in Chapter 12, Subchapter A, to comply with new federal law regarding application of the lending limit of Finance Code, §34.201, to such credit exposures, as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10195) (the original adoption). The adopted provisions were modeled on the interim final rule of the Office of the Comptroller of the Currency (OCC) on the same subject, published in the June 21, 2012, edition of the *Federal Register* (77 Fed. Reg. 37265), for the reasons stated in the original adoption.

In general, a model based on the OCC approach takes advantage of the deeper capital markets expertise of the OCC. Further, state requirements similar to those imposed by the OCC on national banks tend to minimize the potential for regulatory arbitrage (converting from national bank to state bank) based on a perception of weaker state regulation. In anticipation that the OCC would ultimately revise its interim final rule, the commission indicated in its original adoption that further amendments would likely be proposed once the final disposition of the OCC rulemaking was known.

On June 19, 2013, the OCC released its final rule regarding procedures and methodologies for calculating the credit exposure under a derivative transaction or a securities financing transaction. Published in the June 25, 2013, edition of the *Federal Register* (78 Fed. Reg. 37930), the final rule had a number of changes made in response to comments. The amendments adopted today make similar changes. The explanations below are based in part on the OCC analysis and discussion at 78 Fed. Reg. 37930-37946 (June 25, 2013).

DISCUSSION OF ADOPTION

Amendments to §12.2

Amended §12.2(6) defines an "effective margining arrangement" as a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds $25 million created by the derivative transactions covered by the agreement. This threshold amount was formerly set at $1 million, which failed to address existing agreements with collateralization thresholds above the $1 million level. To help ensure that this increase in threshold amount does not raise new safety and soundness concerns, amended §12.12(b)(2)(A) requires the amount of the threshold under an effective margining arrangement to be added to the amount of counterparty exposure calculated under the model method, thereby subjecting the amount of the threshold to the legal lending limit.

The amended definition of "eligible credit derivative," at §12.2(7)(C)(ii), specifically includes a restructuring for obligors not subject to bankruptcy or insolvency as a credit event for a credit default swap. The prior definition inadvertently excluded such restructurings by referring only to bankruptcy or insolvency as a credit event for a credit default swap. Bankruptcy and insolvency regimes generally do not exist for sovereign or municipality reference obligors, and standard credit default swap contracts on sovereign and municipal reference exposures cover the buyer of protection for restructurings that, while not conducted by a bankruptcy court or receiver, nonetheless bind the holders of the sovereign or municipal debt to changes in principal, interest, or similar economic terms of the debt.

Amended §12.2(9) corrects an erroneous cross-reference.

Amendment to §12.3

Because the purchase of credit protection is a well-accepted risk management technique for managing credit concentration risk, amended §12.3(b) includes a new paragraph (8) to exclude from the application of the lending limits that part of a loan or extension of credit for which a bank has purchased protection if that protection is by way of a single-name credit derivative that meets the requirements for an eligible credit derivative contained in §12.2(7), but only if the reference obligor is the same legal entity as the borrower in the loan or extension of credit and the maturity of the protection purchased equals or exceeds the maturity of the loan or extension of credit. However, the total amount of such exclusion may not exceed 15% of the bank's Tier 1 capital.

Amendment to §12.10

Amended §12.10(b)(5) clarifies that banks choosing a non-model method for measuring credit exposure under derivatives transactions will be cited for nonconformance with respect to credit exposure under existing transactions that were within the lending limits when originated but later exceed the limit solely due to subsequent increases in credit exposure, and will have the opportunity to correct the nonconformance before it is

deemed a violation. This amendment corrects an unintended result under the rule as originally adopted.

Amendments to §12.12

As amended, §12.12(b)(1)(A) and (c)(1)(A) are captioned as the "model method" to address possible confusion with the "Internal Models Approach" included in the federal capital adequacy guidelines for calculating the risk-weighted asset amount for equity exposures.

Amended §12.12(b)(1)(A)(iii) corrects an erroneous cross-reference to the federal capital adequacy guidelines, as does amended §12.12(c)(1)(A) to §32(d) of the federal capital adequacy guidelines.

Amended §12.12(b)(1)(A)(iii) and (c)(1)(A) now provide additional guidance regarding approval of alternate models or modifications to a previously approved model. Because the department does not possess adequate expertise to evaluate the adequacy of computer simulations that comprise a model, the views of the bank's primary federal banking regulatory agency will be a key element in any request for approval of an internal model.

Under the conversion factor matrix method set forth in §12.12(b)(1)(B), the credit exposure is equal to the potential future exposure as determined at execution of the transaction by reference to a simple look-up table (Table 1). Amendments to §12.12(b)(1)(B) are technical in nature and clarify this unchanged calculation.

Amendments to §12.12(b)(1)(C) substitute the "current exposure method," calculated in the manner provided by §32(c)(5), (6) and (7) of the federal capital adequacy guidelines, in lieu of the remaining maturity method as an option for measuring credit exposure of derivative transactions. The current exposure method is used under the federal banking agencies' current regulatory capital rules, both Basel I and II capital regimes, and would be retained under the Basel III-related proposals released by the OCC and the other federal banking agencies. Under the current exposure method, a bank calculates the credit exposure for derivative transactions by adding the current exposure (the greater of zero or the mark-to-market value) and the potential future exposure (calculated by multiplying the notional amount by a specified conversion factor which varies based on the type and remaining maturity of the contract) of the derivative transactions. The current exposure method incorporates additional calculations for netting arrangements and collateral and uses multipliers that are more tailored to computing the potential future exposure of derivative transactions. Because this provides a more refined analysis of credit exposure than the remaining maturity method, the remaining maturity method will no longer be available for use in connection with calculation of lending limits.

As described in connection with amended §12.2(6), amended §12.12(b)(2)(A) requires the amount of the threshold under an effective margining arrangement to be added to the amount of counterparty exposure calculated under the model method, in order to subject the amount of the threshold to the legal lending limit.

As amended, §12.12(b)(3) clarifies that calculated measure of exposure to a central counterparty must include an additional amount comprised of the initial margin posted plus any contributions to a guaranty fund at the time such contribution is made, if not already reflected in the calculation.

Amended §12.12(c)(1)(C) permits the credit exposure under securities financing transactions to be calculated by applying the standard supervisory haircuts for such transactions using the current federal risk-based capital standards or the proposed Basel III capital adequacy guidelines, once finalized (collectively, the Basel collateral haircut method), as an additional non-model approach. The caption of §12.12(c)(1)(B) was amended to make a conforming change.

Amended §12.12(b)(4) and (c)(2) provide that the commissioner in the exercise of discretion may permit a state bank to use a specific method to calculate credit exposure, and that this method may apply to all or specific transactions if the commissioner finds that such method is consistent with the safety and soundness of the bank. A state bank should not be able to exercise unlimited discretion to pick and choose among the calculation methods for different derivative or securities financing transactions, but there may be circumstances in which the use of only one calculation method for all transactions may present safety and soundness concerns or may not be practically feasible.

Explanatory Table

The OCC provided an explanatory table to aid in understanding its final rule, published with the final rule in the June 25, 2013, edition of the *Federal Register* (78 Fed. Reg. 37930, at 37939-37942). The department has prepared a similar explanatory table that lists each transaction subject to §12.12. The explanatory table is intended to aid in understanding the effect of the rule and can be viewed at www.dob.texas.gov/legal/1212_table.pdf. Upon request, a copy of the table can be obtained by email, fax or U.S. mail. The table is not a substitute for reviewing the rule directly.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §34.201(b), which authorizes the commission to adopt rules to administer the lending limit, including rules to: (1) define or further define terms used by §34.201, and (2) establish limits, requirements, or exemptions other than those specified by §34.201 for particular classes or categories of loans or extensions of credit. In addition, Finance Code, §31.003, authorizes the commission to adopt rules to accomplish the purpose of Subtitle A, relating to state banks. As required by Finance Code, §31.003(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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SUBCHAPTER D. INVESTMENTS

7 TAC §12.91

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §12.91, concerning other real estate owned, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5621). The text will not be republished.

Notwithstanding the general prohibition on real estate investment, a state bank is permitted to own its bank facilities as well as real estate acquired for future use as a bank facility, because such ownership is incidental to engaging in the business of banking. Once property is no longer used as a bank facility, or a bank no longer intends to use real estate it originally acquired for future expansion as a bank facility, the property is classified as "Other Real Estate" or "Other Real Estate Owned" (shortened to ORE or OREO), and the bank must dispose of the real estate just as it would if it had acquired the property through foreclosure.

In general, Finance Code, §34.003(c), requires a state bank to dispose of OREO within five years of the date it becomes OREO, although the banking commissioner may grant one or more extensions of time if more rapid disposal is not feasible despite the bank's good faith efforts, or if immediate disposal would otherwise be detrimental to the bank. However, with respect to OREO that once was property held for future use as a banking facility, Finance Code, §34.003(c), formerly required a state bank to dispose of such property within two years instead of five years. A similarly situated national bank has five years to dispose of property it once held for future expansion, measured from the date the bank decided it no longer intended to use the property as a banking facility.

The 83rd Texas Legislature recently enacted H.B. 1664, effective June 14, 2013 (Acts 2013, 83rd Leg., R.S., Ch. 940). Among other matters, H.B. 1664 amended Finance Code, §34.003(c), to lengthen the time period from two years to five years for disposal of real estate once held for future expansion but that the bank no longer proposes to use as a bank facility. As amended, §12.91(f) conforms to the recently amended statute.

Finance Code, §34.004, permits the reclassification of a nonparticipating royalty interest from a real estate classification to a personal property classification by the banking commissioner upon application. A bank must then apply to the Federal Deposit Insurance Corporation for permission to retain ownership of the reclassified interest by the bank. The original language of this section used terminology that is not consistent with Texas oil and gas law and led to considerable confusion in the industry regarding the type of interest that can qualify for this exception. H.B. 1664 amended Finance Code, §34.004, to revise the terminology regarding qualifying royalty interests. As amended, §12.91(a)(10) conforms to the new terminology.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §34.003(a)(1), which authorizes the commission to adopt rules regarding acquisition and retention of real estate. Additional authority is provided by Finance Code, §31.003, which authorizes the commission to adopt rules to accomplish the purpose of Subtitle A, relating to state banks. As required by Finance Code, §31.003(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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CHAPTER 15. CORPORATE ACTIVITIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §15.9, concerning corporate filings, with changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5622). Section 15.41, concerning written notice or application for change of home office; §15.104, concerning application for merger or share exchange; §15.108, concerning conversion of a financial institution into a state bank; and §15.122, concerning amendment of articles to effect a reverse stock split, are adopted without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5622).

Changes made to the proposed rules were made to correct inadvertent errors in new terms in §15.9(a)(2) and (4). The new term in §15.9(a)(2) is "certificate of amendment" rather than "certificate of formation." Likewise, the new term in §15.9(a)(4) is "certificate of merger" rather than "certificate of formation."

The laws regarding business organizations were significantly modernized and integrated into a cohesive regulatory structure through enactment of the Business Organizations Code several years ago. The need for uniform and comprehensive terminology that would apply to every type of business organization, including corporations, limited liability companies, limited partnerships, and others, led to the introduction of a number of new terms.

The 83rd Legislature recently enacted Senate Bill 804, effective June 14, 2013, which amended the Finance Code to update and conform language in certain provisions to synonymous terminology and phrasing used in the Business Organizations Code.

The amendments to 7 TAC Chapter 15 conform the terminology used in the rules to that used in the Finance Code and the Business Organizations Code. References to "articles of association" and "articles of incorporation" changed to "certificate of formation." Similarly, references to "articles of merger" changed to "certificate of merger," and "articles of amendment" changed to "certificate of amendment."

In addition, references to repealed §32.101(d) of the Finance Code are corrected to reference §32.101(c).

The Department received no comments regarding the proposed amendments.

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §15.9

The amendments are adopted pursuant to Finance Code, §31.003, which authorizes the Finance Commission to adopt rules to accomplish the purposes of Subtitle A regarding banks.

§15.9. Corporate Filings.

(a) In accordance with the applicable provisions of the Finance Code, Title 3, Subtitle A or G, the following corporate forms regarding a state bank, along with the applicable filing fees, must be filed with the banking commissioner:

(1) a certificate of correction as authorized by Texas Business Organizations Code (TBOC), §4.101;

(2) certificate of amendment under the Finance Code, §32.101;

(3) restated, or, amended and restated, certificate of formation under the Finance Code, §32.101, and TBOC, §3.059 and §21.052;

(4) certificate of merger under the Finance Code, §32.301 et seq, as supplemented by the TBOC, §10.151;

(5) certificate of exchange under TBOC, §10.151;

(6) statement of event or fact pursuant to TBOC, §4.055;

(7) establishment of a series of shares by the board of directors under the Finance Code, §32.102, as supplemented by TBOC, §21.155 and §21.156;

(8) statement regarding a restriction on the transfer of shares under TBOC, §21.212; and

(9) abandonment of a merger or interest exchange prior to its effective date under TBOC, §4.057.

(b) For purposes of corporate filings with the banking commissioner under subsection (a) of this section, state banks may utilize a modified version of forms promulgated by the secretary of state if the banking commissioner or the finance commission has not promulgated an appropriate corporate form; however, the banking commissioner may require the submission of additional information. The modified corporate forms must:

(1) specifically reference the applicable provisions of the Finance Code;

(2) change references from "corporation" to "association"; and

(3) change the references to "stated capital" and similar terms defined in the TBOC to an appropriate reference to terms defined in the Finance Code.

(c) In accordance with the applicable provisions of the Finance Code and the TBOC, a state bank may file the following corporate forms with the secretary of state as instructed in the Finance Code or the TBOC:

(1) name registrations under TBOC, §§5.151 - 5.155;

(2) assumed name certificates under TBOC, §5.051;

(3) a statement appointing an agent authorized to receive service of process under Finance Code, §201.103;

(4) an amendment to a statement appointing an agent to receive service of process under Finance Code, §201.103; and

(5) a cancellation of the appointment of an agent to receive service of process under Finance Code, §201.103.

(d) The following corporate forms are inapplicable to state banks and are not required to be filed by a state bank with either the secretary of state or the banking commissioner:

(1) changes of registered office or agent under TBOC, §5.202 or §5.203;

(2) name reservations under TBOC, §5.101;

(3) certificate of termination under TBOC, §11.101; and

(4) certificate of reinstatement under TBOC, §11.202.

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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SUBCHAPTER C. BANK OFFICES

7 TAC §15.41

The amendments are adopted pursuant to Finance Code, §31.003, which authorizes the Finance Commission to adopt rules to accomplish the purposes of Subtitle A regarding banks.

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. APPLICATIONS FOR MERGER, CONVERSION, AND PURCHASE OR SALE OF ASSETS

7 TAC §15.104, §15.108

The amendments are adopted pursuant to Finance Code, §31.003, which authorizes the Finance Commission to adopt rules to accomplish the purposes of Subtitle A regarding banks.

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. CHARTER AMENDMENTS AND CERTAIN CHANGES IN OUTSTANDING STOCK

7 TAC §15.122

The amendments are adopted pursuant to Finance Code, §31.003, which authorizes the Finance Commission to adopt rules to accomplish the purposes of Subtitle A regarding banks.

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 17. TRUST COMPANY REGULATION

SUBCHAPTER B. EXAMINATION AND CALL REPORTS

7 TAC §17.21

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §17.21, concerning physical location of books and records, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5625).

The laws regarding business organizations were significantly modernized and integrated into a cohesive regulatory structure through enactment of the Business Organizations Code several years ago. The need for uniform and comprehensive terminology that would apply to every type of business organization, including corporations, limited liability companies, limited partnerships, and others, led to the introduction of a number of new terms.

The 83rd Legislature recently enacted Senate Bill 804, effective June 14, 2013, which amended the Finance Code to update and conform language in certain provisions to synonymous terminology and phrasing used in the Business Organizations Code.

The amendment to 7 TAC §17.21 conforms the terminology used in this rule to that used in the Finance Code and the Business Organizations Code. The reference to "articles of association" changed to "certificate of formation."

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of Subtitle F and Finance Code §182.009, which authorizes the commission to adopt rules to alter or supplement the procedures and requirements of those laws applicable to actions taken under Chapter 182.

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 19. TRUST COMPANY LOANS AND INVESTMENTS

SUBCHAPTER C. REAL ESTATE

7 TAC §19.51

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §19.51, concerning other real estate owned, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5626). The text will not be republished.

Section 19.51 provides detailed guidance to trust companies regarding investment in real estate other than for use in its own

business. "Other real estate owned", commonly referred to as "OREO," is generally defined in §19.51(a)(10) as real property interests not used or intended to be used as trust company facilities.

In general, §19.51(g) and Finance Code, §184.003(c), require a state trust company to dispose of OREO within five years of the date it becomes OREO, although the banking commissioner may grant one or more extensions of time if the property remains unsold, despite the trust company's good faith efforts to market the property, or if immediate disposal would otherwise be detrimental to the trust company. However, with respect to OREO that once was property held for future use as a trust company facility, the Finance Code formerly required a state trust company to dispose of such property within two years instead of five.

The 83rd Texas Legislature recently enacted H.B. 1664, effective June 14, 2013 (Acts 2013, 83rd Leg., R.S., Ch. 940). Among other matters, H.B. 1664 was intended to lengthen the time period from two years to five years for disposal of OREO that once was property held for future use as a trust company facility, but that is no longer eligible to be held in that capacity. H.B. 1664 accomplished this goal but imperfectly, in that Finance Code, §184.002(c) and §184.003(c), now specify conflicting disposal periods. As amended, §19.51(g) implements the intent of the recently amended statutes by specifying a five-year period for disposing of OREO that is no longer held for future use as a trust company facility. The department will seek statutory amendments to eliminate the statutory conflict in a future legislative session.

H.B. 1664 also inadvertently deleted a requirement to account for investment in trust company facilities using regulatory accounting principles. As amended, §19.51(j) requires compliance with regulatory accounting principles for investment in trust company facilities in addition to accounting for OREO.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §184.003, which authorizes the commission to adopt rules regarding acquisition and retention of real estate. Additional authority is provided by Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purpose of Subtitle F, relating to state trust companies.

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 October 18, 2013.

TRD-201304688
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 7, 2013
Proposal publication date: August 30, 2013
For further information, please call: (512) 475-1300

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CHAPTER 21. TRUST COMPANY CORPORATE ACTIVITIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §21.9, concerning corporate filings; §21.24, concerning exemptions for trust companies administering family trusts; §21.41, concerning written notice and application for change of home office; §21.61, concerning definitions; §21.64, concerning application for merger or share exchange; §21.69, concerning rights of dissenting shareholders; and §21.92, concerning amendment of articles to effect a reverse stock split, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5627). The rules will not be republished.

The laws regarding business organizations were significantly modernized and integrated into a cohesive regulatory structure through enactment of the Business Organizations Code several years ago. The need for uniform and comprehensive terminology that would apply to every type of business organization, including corporations, limited liability companies, limited partnerships, and others, led to the introduction of a number of new terms.

The 83rd Legislature recently enacted Senate Bill 804, effective June 14, 2013, which amended the Finance Code to update and conform language in certain provisions to synonymous terminology and phrasing used in the Business Organizations Code.

The amendments to 7 TAC Chapter 21 conform the terminology used in the rules to that used in the Finance Code and the Business Organizations Code. References to "articles of association" and "articles of incorporation" changed to "certificate of formation." Similarly, references to "articles of merger" and "articles of amendment" changed to "certificate of merger" and "certificate of amendment."

In addition, citation to the titles of §21.2 and §21.42 are corrected.

The Department received no comments regarding the proposed amendments.

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §21.9

The amendments are adopted pursuant to Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of Subtitle F and Finance Code, §182.009, which authorizes the commission to alter or supplement the procedures and requirements of those laws applicable to actions taken under Chapter 182.

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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SUBCHAPTER B. TRUST COMPANY CHARTERING AND POWERS

7 TAC §21.24

The amendments are adopted pursuant to Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of Subtitle F and Finance Code, §182.009, which authorizes the commission to adopt rules to alter or supplement the procedures and requirements of those laws applicable to actions taken under Chapter 182.

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. TRUST COMPANY OFFICES

7 TAC §21.41

The amendments are adopted pursuant to Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of Subtitle F and Finance Code, §182.009, which authorizes the commission to adopt rules to alter or supplement the procedures and requirements of those laws applicable to actions taken under Chapter 182.

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. APPLICATION FOR MERGER, CONVERSION, OR SALE OF ASSETS

7 TAC §§21.61, 21.64, 21.69

The amendments are adopted pursuant to Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of Subtitle F and Finance Code, §182.009, which authorizes the commission to adopt rules to alter or supplement the procedures and requirements of those laws applicable to actions taken under Chapter 182.

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

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SUBCHAPTER G. CHARTER AMENDMENTS AND CERTAIN CHANGES IN OUTSTANDING STOCK

7 TAC §21.92

The amendments are adopted pursuant to Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of Subtitle F and Finance Code, §182.009, which authorizes the commission to adopt rules to alter or supplement the procedures and requirements of those laws applicable to actions taken under Chapter 182.

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 26. PERPETUAL CARE CEMETERIES

7 TAC §26.6

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §26.6, concerning required record for a cremains receptacle, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5630). The rule will not be republished.

The 83rd Legislature recently enacted Senate Bill 661, which amended Health and Safety Code §711.034 to allow perpetual care cemetery organizations to add or alter cremains receptacles containing no more than four niches on a cemetery plot without the necessity of replatting the property, so long as the cemetery maintains records, as required by rules adopted by the commission. Health and Safety Code §711.034 requires that the cemetery records specify the location of the cremains receptacle and the niches in the receptacle.

New §26.6 describes what must be included in a cremains receptacle map that is used to identify the location of the cremains receptacle and requires the identification of each niche in the cremains receptacle. It also requires the original map to be maintained with the cemetery's plat maps and a copy to be maintained in the plot owner's file.

The Department received no comments regarding the proposed new rule.

The new rule is adopted pursuant to Health and Safety Code §711.034(e-1), which authorizes the commission to adopt rules establishing the records that must be maintained to specify the location of a cremains receptacle; and by Health and Safety Code §711.012(a), which states that the commission may adopt rules to enforce and administer §711.034.

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 October 18, 2013.

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A. Kaylene Ray
General Counsel
Texas Department of Banking
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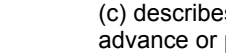

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER A. RULES FOR REGULATED LENDERS

DIVISION 6. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §83.606

The Finance Commission of Texas (commission) adopts new §83.606, concerning Maximum Term and Maximum Installment Account Handling Charge, for regulated lenders. The commission adopts new §83.606 without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5631).

In general, the purpose of adopted new §83.606 is to implement Senate Bill (SB) 1251, by providing guidelines under Texas Finance Code, Chapter 342, Subchapter F, concerning interest-calculation methods for loans using the add-on method, the scheduled installment earnings method, and the true daily earnings method. The new rule also addresses payment allocation and maximum term.

SB 1251, as enacted by the 83rd Texas Legislature, amends several of the interest-calculation provisions in Texas Finance Code, Chapter 342, Subchapter F. There are three general interest-calculation methods in Chapter 342: the add-on method, the scheduled installment earnings method, and the true daily earnings method. SB 1251 provides that a Subchapter F loan contract may use the scheduled installment earnings method or the true daily earnings method (Subchapter F loans using the add-on method were already authorized under existing law). For Subchapter F loan contracts using the scheduled installment earnings method or the true daily earnings method, the bill specifies the amounts that may be included in the principal balance, and provides that payments must be applied in the following order: (1) the straight line allocation of the acquisition charge, (2) a delinquency charge, (3) a return check fee, (4) any other charges authorized under Subchapter F, (5) accrued interest, and (6) principal balance. The bill also makes a clarifying change regarding the maximum term for a Subchapter F loan, in order to specify that the maximum term refers to the original scheduled term of the loan.

As stated earlier, the primary purpose of adopted new §83.606 is to implement SB 1251's new provisions regarding interest calculation, payment allocation, and maximum term. The following paragraphs outline the individual purposes of each subsection contained in the rule.

Subsection (a) describes the scope of the rule, which applies only to Subchapter F loans. Subsection (b) provides definitions for "cash advance," "irregular transaction," "month," "regular transaction," "scheduled installment earnings method," and "true daily earnings method." All of these definitions are incorporated from existing provisions in Chapter 342. Subsection (c) describes the amounts that may not be included in the cash advance or principal balance of a Subchapter F loan.

Subsection (d) provides the maximum term of a Subchapter F loan. The maximum term is based on the amount of the cash advance. If the cash advance is $100 or less, then the maximum term is one month for each $10 of the cash advance, up to six months. If the cash advance is more than $100, then the term is one month for each $20 of the cash advance. The rule specifies that the term should be rounded down to the lower integer.

Subsections (e) and (f) provide the methods for calculating the maximum interest charge for a Subchapter F loan. Subchapter F refers to the interest charge as the "installment account handling charge." Subsection (e) provides the maximum installment account handling charge for a loan contract using the add-on method. This subsection incorporates maximum add-on rates from §342.252 and §342.259 of the Texas Finance Code. These rates vary based on the amount of the loan. In addition, the subsection specifies that an authorized lender may not charge an installment account handling charge for odd days.

Subsection (f) provides the maximum installment account handling charge for a loan contract using the scheduled installment earnings method or the true daily earnings method. Paragraph (1) specifies that either of these methods may be used for a Sub-

chapter F loan, including both regular transactions and irregular transactions. Paragraph (2) specifies how the daily rate is applied to the principal balance under the scheduled installment earnings method, while paragraph (3) describes how the daily rate is applied under the true daily earnings method. Paragraph (4) contains an accompanying figure providing the maximum effective rates for a Subchapter F loan using the scheduled installment earnings method or true daily earnings method. The maximum effective rate is based on the term of the loan. Paragraph (5) describes how to calculate the maximum daily rate, based on the maximum effective rate in Figure: 7 TAC §83.606(f)(4). Paragraph (6) describes how to determine the effective rate for a regular transaction, as well as the effective rate for an irregular transaction. In particular, this paragraph specifies the rounding method used to determine the closest monthly period for an irregular transaction.

Subsection (g) specifies that prepaid interest in the form of points is not permitted for a Subchapter F loan contract. Subsection (h) specifies that both the acquisition charge and the installment account handling charge should be included in the finance charge for purposes of disclosures required under the federal Truth in Lending Act.

Subsection (i) describes how payments must be allocated for Subchapter F loan contracts using the scheduled installment earnings method or true daily earnings method. This subsection incorporates SB 1251's payment-allocation provision. The subsection also specifies how to calculate the straight line allocation of the acquisition charge, including allocations where the borrower makes a partial payment or prepays the loan in full.

The commission received no written comments on the proposal.

The new rule is adopted under Texas Finance Code, §342.007, which authorizes the commission to adopt rules necessary to implement and enforce Texas Finance Code, Chapter 342.

The statutory provisions affected by the adopted new rule are contained in Texas Finance Code, Chapter 342.

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-201304723
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) adopts amendments to §89.207, concerning Files and Records Required, and adopts new Subchapter H, §§89.801 - 89.804, concerning Payoff Statements, with regard to property tax lenders.

The commission adopts the amendments to §89.207 and new §§89.801 - 89.804 with changes to the proposed text as published in the July 5, 2013, issue of the *Texas Register* (38 TexReg 4267).

The commission received two official, written comments on the proposal from the Texas Property Tax Lienholders Association (TPTLA) and from Protect My Texas Property (PMTP). Both commenters offer certain suggestions intended to improve the clarity and effectiveness of the rules. TPTLA's comment includes four issues: (1) clarifying payoff statement purposes, (2) verifying requestor's right to financial information, (3) providing greater flexibility in forms, and (4) ensuring informational payoff statements do not restrict additional authorized charges. While the comment submitted by PMTP echoes the first two TPTLA issues, PTMP also seeks clarification concerning limiting the number of payoff statements provided under the new rules. The commission will address each issue in turn after the purpose of the particular provision commented upon.

In general, the purpose of the adopted rule changes is to implement Senate Bill (SB) 247, as enacted by the 83rd Texas Legislature and signed by the governor. The new rules outline provisions concerning payoff statements. Amendments to the recordkeeping rule add provisions related to the maintenance of advertising and payoff statement information. Additionally, two new forms are adopted in compliance with SB 247: a request for payoff statement form and a payoff statement form.

The agency distributed a proposed rule draft to stakeholders for specific early or precomment prior to the presentation of the rules to the commission. After the proposal, the agency held a stakeholders meeting to obtain further clarification from stakeholders prior to this adoption. The agency believes that this participation of stakeholders in the rulemaking process has greatly benefited this adoption. The following paragraphs outline the purposes of each rule amendment and new rule.

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

In paragraph (3), subparagraphs (C) - (E) have been amended to require property tax lenders to keep copies of requests for payoff statements that they receive, copies of payoff statements that they send, and copies of notifications that requests are deficient or that payoff statements were returned undeliverable.

In response to informal comments received, this adoption allows the model request and payoff statement forms in §89.803 to be used for other purposes outside of Texas Tax Code, §32.06(a-6), as long as the use of the forms does not violate other law. Consequently, the recordkeeping provisions in §89.207 have been revised to include the maintenance of all requests received and all payoff statements issued by a licensee or its agent. For this adoption, the following language has been added to §89.207(3)(C): "copies of any requests for payoff statements received by the licensee or its agent under Texas Tax Code, §32.06(f), (f-1), or §32.065(b-1); and copies of any other requests for payoff statements received by the licensee or its agent." Similarly, the following language has been added to §89.207(3)(D) for this adoption: "and copies of any other payoff statements issued by the licensee or its agent."

Since the proposal, §89.207(3)(E) has been revised to reflect updated references to relettered provisions in §89.802. The

changes to §89.802 will be discussed following the purpose paragraph for that section.

Adopted paragraph (3)(L) (former paragraph (3)(J)) has been revised to conform to SB 247's amendments that repealed provisions authorizing nonjudicial foreclosures. In particular, adopted §89.207(3)(L) has been amended to strike references to Texas Tax Code, §32.06(c-1), which was repealed by SB 247.

In addition, the provision in §89.207(3)(L)(ii), which describes documents related to nonjudicial foreclosure, has been amended to clarify that it applies only to transactions closed before May 29, 2013 (i.e., the effective date of SB 247).

In response to an informal precomment, the adopted version of §89.207(3)(L)(ii) provides a more precise citation than the proposed version. For this adoption, clause (ii) specifies that it applies to foreclosures performed under the 1995 law that originally authorized nonjudicial foreclosures for tax lien transfers, as amended by the 2007 law that specified that these nonjudicial foreclosures must comply with Rule 736 of the Texas Rules of Civil Procedure. SB 1520, the bill containing the 2007 nonjudicial foreclosure amendments, went into effect on September 1, 2007. This date was also the date that House Bill 2138, the bill setting out the agency's authority regarding property tax lenders, went into effect, and was six months before March 1, 2008, the date on which property tax lenders were required to be licensed with the agency. Based on these effective dates, all authorized nonjudicial foreclosures that are subject to the agency's examination review are also subject to the 2007 nonjudicial foreclosure amendments. This is why the rule cites the 1995 law as amended by the 2007 law. This citation replaces the current rule's citation to Texas Tax Code, §32.06(c)(2), which was repealed by SB 247.

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

It appears that the legislature intended these provisions to be informational in nature. The provisions do not create a new situation in which a lienholder is entitled to pay off a property tax loan. Unlike Texas Tax Code, §32.06(f) and (f-1), the new provisions do not specify that the lienholder "is entitled . . . to obtain a release of the transferred tax lien." Nor do they specify that the lienholder "may obtain a release of the transferred tax lien," as provided in §32.065(b-1). Rather, the new provisions state that a lienholder may request a payoff statement, and that a property tax lender must respond by providing a payoff statement. The fact that a property tax lender provides this statement does not create a right for the lienholder to pay off the property tax loan.

On August 28, 2013, the agency received a letter from Senator John Carona, the author of SB 247, regarding the purpose of the payoff statements described in the bill. In that letter, Senator Carona states: "None of the provisions in SB 247 were intended to change the circumstances or conditions under which a first lien holder is entitled to obtain a release of a transferred tax lien by paying the amount owed to the tax lien transferee. . . . [New Subsection 32.06(a-6)] is intended to provide the first lien holder information regarding the amount owed but does not alter the statutory and contractual conditions that must be met in order to have the right to pay the account and obtain a release of the transferred tax lien."

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

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

In response to informal comments received since the proposal, two required elements have been added to §89.801, Requests for Payoff Statements. In new §89.801(b)(10), the purpose of the payoff statement being requested will be clarified by a selecting one or more of the acknowledging statements accompanying checkboxes added to Figure: 7 TAC §89.803(a). The following is a summary of these purposes contained in subparagraphs (A) - (D): (A) for informational purposes under Texas Tax Code, §32.06(a-6); (B) because of a right to pay off the property tax loan under Texas Tax Code, §32.06(f); (C) because of a right to pay off the property tax loan under Texas Tax Code, §32.06(f-1); (D) because of a right to pay off the property tax loan under Texas Tax Code, §32.065(b-1). In response to an informal comment, the statement contained in subparagraph (D) now specifies that the property owner defaulted on the property tax loan and received a notice of acceleration. Additionally, §89.801(b)(11) has been added requiring the signature of the lienholder or the lienholder's representative to attest to the statements in subsection (b)(10).

Proposed §89.801(b)(9) contained a statement regarding the timing of delivery of the payoff statement provided under Texas Tax Code, §32.06(a-6). The language from proposed subsection (b)(9) has been relocated to §89.801(b)(10)(A) for this adoption. Thus, the element outlining valid delivery methods has been renumbered in the adoption as §89.801(b)(9).

The PMTP comment requests "that the proposed regulations make clear that lienholders may only receive one payoff statement." The commenter suggests an amendment to §89.801 "to provide clearer guidance to lienholders on this point." Without an amendment, the commenter believes that "lienholders could submit hundreds of free requests on a single property, which could subject property owners to enhanced harassment" and that "[l]ienholders should not be afforded multiple payoff statements on a single property."

The commission declines to implement a limitation on the number of informational payoff statements that may be received un-

der the rules at this time. The agency will closely monitor this issue, and should abuses be discovered, the agency will work with stakeholders to return to the commission with a proposal regarding the number of informational payoff statements that may be received for a single property.

Adopted §89.802 contains the requirements for the property tax lender's payoff statement. Subsection (a) describes the scope of the rule, which applies only to payoff statements that a property tax lender provides in response to a request described by §89.801(a). Subsection (b) contains definitions, including the term "balance date," which refers to the date used to calculate the total payoff amount.

The property tax lender may use the form to respond to other requests, such as requests from the borrower, if doing so does not violate any other law. To further incorporate this concept into the rules, the word "only" has been removed from the scope provisions contained in §89.801(a) and §89.802(a). (For more on permissible uses of the forms, please refer to the discussion provided under §89.803.)

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

Since the proposal, in §89.802(c)(9)(C) the words "a specific" have been inserted before "description of each fee" to provide clarification.

In response to informal comments received, two required elements have been added to §89.802, Payoff Statements. These are companion changes to the two elements added to the request form in §89.801. In new §89.802(c)(12), the purpose of the payoff statement being issued will be clarified by selecting one of the statements accompanying checkboxes added to Figure: 7 TAC §89.803(b). The following is a summary of these purposes contained in subparagraphs (A) - (C): (A) for informational purposes under Texas Tax Code, §32.06(a-6); (B) because of a statutory right to pay off the property tax loan under Texas Tax Code, §32.06(f), (f-1), or §32.065(b-1); (C) for another purpose. In addition, §89.802(c)(13) has been added requiring the signature of the property tax lender.

The TPTLA comment discusses "various types of payoff statements called for in the Texas Tax Code" that "contain detailed language setting forth how and when another lender may pay off the [tax lien transfer] and obtain a release" after delinquency. The commenter continues by stating that "new section 32.06(a-6), on the other hand, allows a lienholder, the requesting party, to merely obtain information about the tax lien balance, but that subsection creates no right of payoff." The commenter believes that in order to prevent confusion, the transferee should be required to add a header to Figure: 7 TAC §89.803(b) noting that the statement is being provided under Texas Tax Code §32.06(a-6) and that it does not create a right to pay off the tax lien. The PMTP comment echoes this concern, supporting the principle that "when a property tax lender provides a payoff statement [under §32.06(a-6)] it does not create a right for the lienholder to pay off the property tax loan."

The commission recognizes the possibility of confusion regarding the different statutory payoff provisions included in the Texas Tax Code. Thus, for informational statements provided under §32.06(a-6), §89.802(c)(12)(A) includes the following statement for this adoption: "This information does not create a right to pay off the property tax loan."

In §89.802(d), the permissible elements for the payoff statement are outlined, such as additional contact information for the property tax lender and the name of a co-borrower.

Subsection (e) of §89.802 specifies the method by which the property tax lender must calculate the total payoff amount if the next payment date precedes the balance date.

The TPTLA comment states that the informational payoff statement under Texas Tax Code, §32.06(a-6) "is intended to act as a snapshot of the amount due" and "should not bar the regular servicing of the account." The commenter suggests an amendment to §89.802(e)(2) allowing the transferee flexibility to include any additional fees that may be incurred after an informational payoff amount is provided.

The commission agrees that the payoff statement described by §32.06(a-6) does not restrict additional amounts from being incurred on the account. The payoff statement as proposed did not restrict these additional amounts. Because the loan has not been paid off, the transferee may incur reasonable post-closing expenses, and may charge a property owner the appropriate and legal amounts relating to such expenses. For example, assume a transferee issues an informational payoff statement and then the property owner's check for the next payment comes back showing nonsufficient funds (NSF). Section 89.802(e) as proposed would not prohibit the transferee from charging the borrower for the NSF fee, nor from reamortizing the loan due to a late payment.

In order to better outline these calculation principles, subsection (e) of §89.802 has been revised and reorganized to read as follows for this adoption: "(e) Calculation of total payoff amount. (1) For amounts other than the unpaid principal balance and the accrued interest as of the balance date, the total payoff amount may only include amounts charged on or before the date of the payoff statement. This paragraph does not prohibit a property tax lender from imposing lawful additional charges after the date of the payoff statement and before the balance date, if the property tax lender provides the notification and an amended payoff statement described by subsection (f)(3) or (4) of this section. (2) If the due date of the next payment is before the balance date, then the property tax lender must calculate the total payoff amount as if the borrower will not make the next payment."

To provide greater transparency, a statement may be added to the payoff statement form regarding this issue. Accordingly, for this adoption, §89.802(d)(3) has been added to allow transferees the option of including a statement that clarifies the possibility of additional authorized charges that may be added after the statement has been provided. The optional statement reads as follows: "Certain additional charges may be added to the property tax loan after the date of this statement, to the extent authorized by law." This optional statement has also been added to the model payoff statement form as contained in Figure: 7 TAC §89.803(b).

Regarding subsection (e), the TPTLA comment states: "Proposed rules §89.802(e)(1) and (e)(2) appear to contradict each other. If it is to be assumed that a property owner will not make his next payment, then it is entirely possible that in addition to accrued interest, a fee would be added to the account for a payment that is made late or drawn on insufficient funds."

The commission disagrees with the commenter's contention that subsection (e)(1) and (2) contradict each other. The purpose of both subsections is to ensure that when the property tax lender calculates the total payoff amount, it will not assume events that have not yet occurred. These assumptions are only for the purpose of calculating the total payoff amount to be disclosed, and do not prohibit the property tax lender from charging additional fees authorized by law. Furthermore, the commenter's concern is partly addressed in the optional provision added by adopted §89.802(d)(3) that allows property tax lenders to include in the payoff statement: "Certain additional charges may be added to the property tax loan after the date of this statement, to the extent authorized by law."

In response to informal comments received, subsection (f) regarding accuracy and updated payoff statements has been added to §89.802 for this adoption. New §89.802(f)(1) provides that a property tax lender must ensure that all information is accurate on the payoff statement. Under subsection (f)(2), if the property tax lender learns that the payoff statement was inaccurate as of the payoff statement date, the property tax lender is required to immediately notify the requestor of the inaccuracy and send an amended, accurate payoff statement.

Section 89.802(f)(3) and (4) describe the requirements for providing an amended payoff statement when the property tax lender imposes additional charges between the payoff statement date and the balance date. An informal comment from TPTLA stated that the requirement to send an amended payoff statement each time the property tax lender imposes an additional charge "places an undue burden on transferees: the obligation to either halt collection efforts on accounts for which statements have been issued or monitor those accounts and issue further statements if the transferee chooses to continue collection."

In response to this comment, paragraphs (3) and (4) of new §89.802(f) differentiate between one-time charges that the property tax lender does not anticipate (e.g., nonsufficient funds fees) and recurring charges that the property tax lender anticipates (e.g., attorney's fees in foreclosure). For one-time charges, subsection (f)(3) requires the property tax lender to send an amended payoff statement immediately after it imposes the charge. The amended statement must include the additional charge in the total payoff amount. For recurring charges, subsection (f)(4) requires the property tax lender to notify the requestor in writing of the types of recurring charges that the property tax lender anticipates. If the property tax lender knows about the recurring charges before it sends the payoff statement, then it must provide this notification on the same date it provides the payoff statement. If the property tax lender learns about the recurring charges after sending the payoff statement, then it must provide this notification immediately after learning that the recurring charges are likely to be imposed. On the balance date, the property tax lender must send an amended payoff statement to the requestor, including the additional recurring charges as of the balance date in the total payoff amount.

The provisions in §89.802(f)(3) and (4) address only additional charges that are imposed between the payoff statement date and the balance date. The rule does not address additional charges imposed after the balance date.

Subsection (f)(5) specifies that if any information other than the information described in the rule changes between the payoff statement date and the balance date (e.g., the property tax lender's address), the property tax lender must immediately notify the requestor of the change.

With the addition of subsection (f), the remaining subsections of §89.802 have been relettered accordingly.

Subsection (g) provides that if the property tax lender holds more than one property tax loan on the same property, then the property tax lender must, at a minimum, provide a payoff statement for each property tax loan.

The next three subsections of new §89.802 relate to the method, timing, and verification of delivery for payoff statements under the rule. Subsection (h) describes the methods by which the payoff statement may be delivered, and it mirrors the methods for delivery of the request. Subsection (i) provides that the payoff statement must be delivered within seven business days after the date on which the property tax lender receives the request. Subsection (j) describes best practices for the property tax lender to verify delivery of the payoff statement.

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

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

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

The TPTLA comment requests adoption of "a 'recommended form' and a rule that allows transferees to use their own forms, as long as they contain the elements required by the statute and rule." The commenter believes that this flexibility would reduce cost considerations of necessary updates to loan servicing software.

The commission recognizes the cost concerns outlined by the commenter and agrees to incorporate more flexibility regarding the forms. However, any form used by a requestor or transferee must not be inconsistent with the rule or statute, and may not be misleading. Therefore, as opposed to the proposed required forms, the commission adopts model forms, and has revised §89.803 and §89.804 to include this flexibility. In §89.803, both forms are now referenced as "model" forms.

If a requestor or transferee uses a form that is substantially similar to the model forms adopted in §89.803, the user will be considered in compliance with the statute.

In response to informal comments received, this adoption allows the model forms to be used for other purposes outside of Texas Tax Code, §32.06(a-6), as long as the use of the forms does not violate other law. Use of the model request form for other purposes is outlined by new §89.803(c), and use of the model payoff statement for other purposes is outlined in new §89.803(d). If a property tax lender is providing a payoff statement for other purposes (i.e., by selecting the checkbox in Figure: 7 TAC §89.803(b) that corresponds to §89.802(c)(12)(C)), the property tax lender should consider including a written statement explaining the purpose or context of the payoff statement.

To further integrate the use of the request form for other purposes, the phrase "must be" has been removed before "7 - 30 days from request date" under "Requested balance date." As a result, the form provides for balance dates allowed by other law.

The changes to the model request form contained in Figure: 7 TAC §89.803(a) incorporate the required elements added by §89.801(b)(10) and (11). The majority of the second page of the model request form includes the language added for this adoption (i.e., purpose checkboxes and signature block). Please refer to the discussion under §89.801 for more information on these revisions.

Similarly, the changes to the model payoff statement contained in Figure: 7 TAC §89.803(b) incorporate the required elements added by §89.802(c)(12) and (13). The second page of the model payoff statement includes the language added for this adoption (i.e., purpose checkboxes and signature block). Please refer to the discussion under §89.802 for more information on these revisions.

Additionally, since the proposal the optional provision regarding additional charges has been added to the model payoff statement form contained in §89.803(b) in response to the comments received. Please refer to the discussion under §89.802 for the purpose of this optional statement.

Both commenters request amendments to the rules requiring that the person requesting a payoff statement either list a document recording number or attach evidence of the person's lien. The commenters believe that this information is necessary to verify "that the transferee is releasing confidential financial information to only the parties entitled to receive it" (quoting TPTLA comment).

The commission disagrees with the commenters on this issue. For liens that are already recorded (which, in the agency's experience, constitute the vast majority of instances), the transferee should already have this information under Texas Tax Code, §32.06(b-1). Any requirement to provide a recording number does not necessarily verify that a person requesting a payoff is a lienholder on the subject property. Ultimately, the property tax lender has some responsibility to verify that information provided by the requestor is accurate.

Even if a party submits a fraudulent request and the property tax lender responds with a payoff statement, the property tax lender could make certain legal arguments to mitigate damages in a lawsuit brought by the borrower. First, the borrower would be unable to seek damages for a violation of the federal Gramm-Leach-Bliley Act's privacy provisions, 15 U.S.C. §§6801 - 6827, because those provisions do not create a private right of action. This means that the borrower would presumably have to proceed in a cause of action under state law. Second, it is unclear what damages the borrower would suffer, because the amounts owed by the consumer and the next payment due date are the only personal financial information contained on the payoff statement that are not already included in the request. Third, even if the borrower could prove damages, the property tax lender should be able to implead the fraudulent party or designate the fraudulent party as a responsible party under Texas Civil Practice and Remedies Code, §33.004. For these reasons, the change is unnecessary, and the commission declines to revise the adoption on this issue.

Adopted §89.804 describes the permissible changes that may be made to the forms. For example, certain fields in the forms are optional and may be deleted. Also, subsection (b) allows a property tax lender to amend the additional fee descriptions as needed to provide a complete itemization of the total payoff amount.

The TPTLA comment requests that greater flexibility be allowed regarding the forms. Consistent with the changes to §89.803 previously discussed, §89.804 has also been revised to provide additional flexibility. The changes to §89.804 incorporate the phrase "must use a form substantially similar to the model form" into the introductory language of subsections (a) and (b), along with appropriate technical corrections. In addition, in response to an informal comment, subsections (a)(10) and (b)(8) now specify that the phrase "other side" may be replaced with "next page" in both forms. This change is intended to clarify that both the request and the payoff statement may be provided either as a single sheet with text on the front and the back, or as two attached sheets.

SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §89.207

The amendments to §89.207 are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06.

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

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual

recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

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

(A) A loan register, containing the date of the property tax loan, the last name of the borrower, the "total tax lien payment amount" as defined in §89.601 of this title (relating to Fees for Closing Costs), and the loan number;

(B) General business and accounting records, including receipts, documents, canceled checks, or other records for each disbursement made at the borrower's direction or request, or made on his behalf or for his benefit, including foreclosure or legal fees applied to the borrower's account;

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

(D) Adverse action records regarding all applications relating to Texas Finance Code, Chapter 351 property tax loans maintained for 25 months for consumer credit and 12 months for business credit; and

(E) An official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC, and examination reports issued by the OCCC.

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

(A) Loan number as recorded on loan register;

(B) Loan schedule and terms itemized to show:

(i) date of loan;

(ii) number of installments;

(iii) due date of installments;

(iv) amount of each installment; and

(v) maturity date;

(C) Name, address, and telephone number of borrower;

(D) Names and addresses of co-borrowers, if any;

(E) Legal description of real property;

(F) Principal amount;

(G) Total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(H) Amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(I) Individual payment entries itemized to show:

(i) date payment received (dual postings are acceptable if date of posting is other than date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(J) Any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to borrowers, with refund amounts itemized to show interest charges refunded, including the refund of any unearned points;

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

(L) Transfer, assignment, or sale records.

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) all lien transfer and security documents signed by the borrowers, including any promissory note, loan agreement, deed of trust, contract, security deed, other security instrument, or other lien transfer document, executed in accordance with or under Texas Tax Code, §32.06 or §32.065, or Texas Finance Code, §351.002(2)(C);

(ii) the application for credit or transfer of the lien and any other written or recorded information used in evaluating the application;

(iii) the disclosure statement to property owner as required by Texas Tax Code, §32.06(a-4)(1) and §89.504 of this title (relating to Requirements for Disclosure Statement to Property Owner) and §89.506 of this title (relating to Disclosures), including verification of delivery of the statement;

(iv) the sworn document authorizing transfer of tax lien as required by Texas Tax Code, §32.06(a-1) and §89.701 of this title (relating to Sworn Document Authorizing Transfer of Tax Lien), including written documentation to support that the sworn document was sent by certified mail to any mortgage servicer and to each holder of a recorded first lien encumbering the property;

(v) the certified statement of transfer of tax lien as required by Texas Tax Code, §32.06(b) and §89.702 of this title (relating to Certified Statement of Transfer of Tax Lien), including information verifying the date that the certified statement was received by the licensee from the tax assessor-collector;

(vi) a final itemization of the actual fees, points, interest, costs, and charges that were charged at closing and to whom the charges were paid as specified by Texas Tax Code, §32.06(e);

(vii) if available, any tax certificate or other similar record used to determine the status of a tax account for the property subject to the tax lien as required by Texas Tax Code, §32.06(a-2) or authorization by property owner to pay the taxes;

(viii) copies of any other agreements or disclosures signed by the borrower applicable to the property tax loan;

(B) If the property is residential property owned and used by the property owner for personal, family, or household use, the right of rescission as specified by Texas Tax Code, §32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §1026.23;

(C) Copies of any requests for payoff statements received by the licensee or its agent under Texas Tax Code, §32.06(a-6) and §89.801 of this title (relating to Requests for Payoff Statements); copies of any requests for payoff statements received by the licensee or its agent under Texas Tax Code, §32.06(f), (f-1), or §32.065(b-1); and copies of any other requests for payoff statements received by the licensee or its agent;

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

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

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

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

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

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

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

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

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

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

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

(i) For transactions involving judicial foreclosures under Texas Tax Code, §32.06(c):

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

(II) if sent by a non-salaried attorney of the licensee, any notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) if sent by a non-salaried attorney of the licensee, any notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, including verification of delivery of the notice;

(IV) if sent by a non-salaried attorney of the licensee, any notice of acceleration sent to the property owner and each holder of a recorded first lien on the property;

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

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

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

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

(ii) For transactions closed before May 29, 2013, involving nonjudicial foreclosures under Act of May 7, 1995, 74th Leg., R.S., ch. 131, §1, sec. 32.06(c)(2), 1995 Tex. Gen. Laws 957, as amended by Act of May 25, 2007, 80th Leg., R.S., ch. 1329, §1, sec. 32.06(c)(2), 2007 Tex. Gen. Laws 4484, 4485 (repealed 2013) (previously codified at Texas Tax Code, §32.06(c)(2)):

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

(II) the notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, including verification of delivery of the notice;

(III) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property;

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

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

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

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

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

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

(X) the notice provided to the recorded preexisting lienholder, at least, 60 days before the date of the proposed foreclosure;

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

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

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

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

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

(4) Corrective entries to the borrower's account record, if justified, including the reason and supporting documentation for each corrective entry and any supporting documentation justifying the corrective entry, maintained under the following documentation guidelines:

(A) Dual recording in collection contact history permissible. The reason for the corrective entry may also be recorded in the collection contact history of the borrower's account record.

(B) Supporting documentation. The supporting documentation justifying the corrective entry may be maintained in the individual borrower's account file or properly stored and indexed in a licensee's optically imaged recordkeeping system.

(C) Manual recordkeeping systems. If a licensee manually maintains the borrower's account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual borrower's account record.

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

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

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

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

(6) Record of loans in litigation and foreclosure.

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

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

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

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

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 L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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SUBCHAPTER H. PAYOFF STATEMENTS

7 TAC §§89.801 - 89.804

New §§89.801 - 89.804 are adopted under Texas Tax Code, §32.06(a-4)(4) and (a-6), as added by SB 247, 83rd Leg., R.S. (2013), which requires the commission by rule to prescribe the form and content of a request for a payoff statement and the transferee's response to the request (i.e., the payoff statement). Further, Texas Tax Code, §32.06(a-6) requires the commission by rule to require a transferee who receives a request for a payoff statement to deliver the requested payoff statement on the prescribed form within a time period set by the rule.

Additionally, new §§89.801 - 89.804 are adopted under Texas Finance Code, §351.007, which authorizes the commission to

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

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

§89.801. Requests for Payoff Statements.

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

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

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

(3) is sent by:

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

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

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

(1) the date of the request;

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

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

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

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

(4) the name of the property tax lender;

(5) the name of the borrower;

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

(7) one of the following:

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

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

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

(8) a statement substantially similar to the following: "We (the lienholder) request a statement of the total amount due under the property tax loan on the property listed above, as of the requested balance date. We hold an existing recorded lien on the property.";

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

(A) a mailing address;

(B) a fax number; or

(C) an e-mail address;

(10) a statement certifying the purpose for which the lienholder is requesting the payoff statement, substantially similar to one of the following:

(A) "We are requesting a payoff statement for informational purposes under Section 32.06(a-6) of the Texas Tax Code. The payoff statement should be delivered to us within 7 business days of when you receive this request, unless Title 7, Section 89.802 of the Texas Administrative Code provides otherwise.";

(B) "We are requesting a payoff statement because we have the right to pay off the property tax loan under Section 32.06(f) of the Texas Tax Code. Within the last six months, we received notice that the property tax loan was delinquent for at least 90 consecutive days.";

(C) "We are requesting a payoff statement because we have the right to pay off the property tax loan under Section 32.06(f-1) of the Texas Tax Code. We are the holder of a preexisting first lien on the property that was delinquent for at least 90 consecutive days and referred to a collection specialist. Within the last six months, we notified the property tax lender of the delinquency in compliance with the Texas Tax Code."; or

(D) "We are requesting a payoff statement because we have the right to pay off the property tax loan under Section 32.065(b-1) of the Texas Tax Code. The property owner defaulted on the property tax loan and received a notice of acceleration."; and

(11) the signature of the lienholder or the lienholder's representative.

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

(1) additional contact information for the requesting lienholder;

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

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

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

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

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

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

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

(3) a commercial delivery service with tracking abilities;

(4) a courier service;

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

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

§89.802. Payoff Statements.

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

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

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

quested balance date, then the balance date must be as close as possible to the requested balance date.

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

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

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

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

(1) the date of the payoff statement;

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

(3) the name of the borrower;

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

(5) one of the following:

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

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

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

(6) the total payoff amount;

(7) the balance date;

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

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

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

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

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

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

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

(12) a statement indicating the purpose of the payoff statement, substantially similar to one of the following:

(A) "We are providing this payoff statement for informational purposes under Texas Tax Code, §32.06(a-6). This information does not create a right to pay off the property tax loan.";

(B) "We are providing this payoff statement because of a statutory right to pay off the property tax loan under Texas Tax Code, §32.06(f), (f-1) or §32.065(b-1).."; or

(C) "We are providing this payoff statement for another purpose."; and

(13) the signature of the property tax lender.

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

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

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

(3) a statement substantially similar to the following: "Certain additional charges may be added to the property tax loan after the date of this statement, to the extent authorized by law."

(e) Calculation of total payoff amount.

(1) For amounts other than the unpaid principal balance and the accrued interest as of the balance date, the total payoff amount may only include amounts charged on or before the date of the payoff statement. This paragraph does not prohibit a property tax lender from imposing lawful additional charges after the date of the payoff statement and before the balance date, if the property tax lender provides the notification and an amended payoff statement described by subsection (f)(3) or (4) of this section.

(2) If the due date of the next payment is before the balance date, then the property tax lender must calculate the total payoff amount as if the borrower will not make the next payment.

(f) Ensuring accuracy and providing updated payoff statement.

(1) A property tax lender must ensure that all information is accurate in a payoff statement under this section.

(2) After the date of the payoff statement and before the balance date, if the property tax lender learns that any of the information was inaccurate as of the date of the payoff statement, then the property tax lender must immediately:

(A) notify the requestor of the inaccuracy; and

(B) send an amended, accurate payoff statement to the requestor in the same manner the payoff statement was sent.

(3) After the date of the payoff statement and before the balance date, if the property tax lender imposes a one-time lawful additional charge that it did not reasonably anticipate on the date of the payoff statement (e.g., a nonsufficient funds fee), then the property tax lender must immediately send an amended, accurate payoff statement to the requestor in the same manner the payoff statement was sent. The amended payoff statement must include the additional charge in the total payoff amount.

(4) If the property tax lender reasonably anticipates that it will impose recurring, lawful additional charges after the date of the payoff statement and before the balance date (e.g., attorney's fees for services performed during a foreclosure), then the property tax lender must notify the requestor in writing of the types of recurring charges that the property tax lender anticipates. The property tax lender must send this notification either on the same date that it sends the payoff statement, or immediately after it learns that the additional charges are likely to be imposed. If the property tax lender imposes additional charges described by this paragraph, then on the balance date, it must send an amended, accurate payoff statement to the requestor in the same manner the payoff statement was sent. The amended payoff statement's total payoff amount must include all additional charges as of the balance date.

(5) After the date of the payoff statement and before the balance date, if any information on the payoff statement changes other than the information described by this subsection (e.g., the property tax lender's address), then the property tax lender must immediately notify the requestor of the change.

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

(h) Method of delivery. The payoff statement must be delivered by the method specified in the request, if the request includes a valid delivery method as provided by §89.801(b)(9) of this title. Delivery to a mailing address must be made by one or more of the following methods:

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

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

(3) a commercial delivery service with tracking abilities; or

(4) a courier service.

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

(j) Verification of delivery. Verifying delivery of the payoff statement is a best practice for a property tax lender. A property tax lender may rely on an established system of verifiable procedures to verify delivery of a payoff statement under this section. A property tax lender may use any of the following verification methods:

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

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

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

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

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

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

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

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

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

§89.803. Model Forms.

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

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

(c) Use of model request for other purposes. A lienholder may use the model request described in subsection (a) of this section for a purpose other than making a request under Texas Tax Code, §32.06(a-6), if the lienholder's use of the request does not violate any other law.

(d) Use of model payoff statement for other purposes. A property tax lender may use the model payoff statement described in subsection (b) of this section for a purpose other than responding to a request under Texas Tax Code, §32.06(a-6), if the property tax lender's use of the statement does not violate any other law.

§89.804. Permissible Changes.

(a) Requests for payoff statements. A person who submits a request under Texas Tax Code, §32.06(a-6) and §89.801 of this title (relating to Requests for Payoff Statements), must use a form substantially similar to the model form prescribed by Figure: 7 TAC §89.803(a) of this title. The person submitting the request may consider making one or more of the following types of changes:

(1) deleting fields labeled "Optional";

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

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

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

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

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

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

(8) replacing "other side" with "next page"; or

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

(b) Payoff statements. A property tax lender who sends a payoff statement under Texas Tax Code, §32.06(a-6) and §89.802 of this title (relating to Payoff Statements), must use must use a form substantially similar to the model prescribed by Figure: 7 TAC §89.803(b) of

this title. The property tax lender may consider making one or more of the following types of changes:

(1) deleting fields labeled "Optional";

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

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

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

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

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

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

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

(9) adding fields to describe additional fees; or

(10) replacing "other side" with "next page."

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 October 18, 2013.

TRD-201304725
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.115

The Credit Union Commission (Commission) adopts amendments to §91.115, concerning Safety at Unmanned Teller Machines, with non-substantive changes to the proposed text as published in the July 5, 2013, issue of the *Texas Register* (38 TexReg 4276). As published, the amendments proposed methods for credit unions providing ongoing safety notice. As adopted, those ongoing notice requirements have been withdrawn, reverting to the existing rule requirements. The amendments, including some of the non-substantive changes, also correct an erroneous citation and edit the rule for clarity and consistency.

The amendments are adopted as a result of the Credit Union Department's general rule review, which was conducted in accordance with Government Code, §2001.039.

The Commission received two written comments on the proposed rule amendments. Both commenters were concerned about the potential economic impact of the ongoing notice requirements. The commenters believed that the requirement to maintain an unmanned teller machine safety notice on a credit union website, include the notice annually in a credit union newsletter, or include the notice annually with other required notices, would incur undue financial burdens to state chartered credit unions. As noted above, the ongoing notice provisions have been withdrawn to allow for further study of other formats that might make the notice more useful to members and the resulting costs to credit unions.

Both commenters also raised concerns that deletion of the definition of "member" could cause confusion. The commenters suggested that removing the definition of member ("an individual to whom an access device is issued...") could be construed as requiring credit unions to provide the unmanned teller machine safety notice to every member of the credit union, not just those members to whom an access device has been issued. However, the Commission disagrees with this construction and notes that the words "Access devices," in addition to the plain language of §91.115(d)(1) clearly indicate that the notice must be provided to holders of access devices, not to every member of the credit union. Therefore Commission declined to withdraw its deletion of the definition of "member" in the amendments to this rule.

One commenter noted an error in the citations in the preamble for the proposed amendments published in the July 5, 2013, issue of the *Texas Register* (38 TexReg 4276). This error has been corrected in the adopted preamble.

The amendments are adopted under Finance Code, §59.310, which instructs the Commission to adopt rules to implement Subchapter D of the Finance Code.

The specific sections affected by the amendments are Finance Code, §59.301 and §59.309.

§91.115. Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code, §59.307, have the same meanings as defined in the Finance Code.

(b) Measurement of candle foot power. For the purposes of measuring compliance with the Finance Code, §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand, or dust storm, or other similar condition.

(c) Safety evaluations.

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

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

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

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

(1) Access devices. The notice shall be delivered personally or mailed to each member, whose mailing address is in this state, when an access device is issued, renewed or replaced.

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

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

(B) protection of code or personal identification numbers;

(C) procedures for lost or stolen access devices;

(D) reaction to suspicious circumstances;

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

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

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

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

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

(e) Leased premises.

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

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

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

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 October 21, 2013.

TRD-201304739
Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER C. EMERGENCY SHELTER GRANTS PROGRAM (ESGP)

10 TAC §§5.301 - 5.311

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 5, Subchapter C, §§5.301 - 5.311, concerning Emergency Shelter Grants Program (ESGP), without changes to the proposal as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5153). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds that rules previously adopted for ESGP are no longer necessary due to the federal elimination of the program. Accordingly, the repeal effectively closes out the ESGP and eliminates rules that are no longer necessary.

The Department accepted public comments between August 16, 2013, and September 16, 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 October 10, 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 October 18, 2013.

TRD-201304715

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 7, 2013
Proposal publication date: August 16, 2013
For further information, please call: (512) 475-3974

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SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

10 TAC §§5.403, 5.407, 5.423, 5.424

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter D, §§5.403, 5.407, 5.423 and 5.424, concerning the Comprehensive Energy Assistance Program, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5153). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds that language in the Comprehensive Energy Assistance Program rules needed clarification on the redistribution of program funds, determining client eligibility and benefits received, and client file documentation. Accordingly, the amendments will ensure full utilization of Comprehensive Energy Assistance Program funds and allow greater flexibility for Subrecipients within program rules.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from August 16, 2013, through September 16, 2013, with comments received from Stella Rodriguez of the Texas Association of Community Action Agencies (TACAA).

§5.423(b). Household Crisis Component.

COMMENT SUMMARY: Commenter suggested adding the option for documented verbal confirmation from a utility vendor regarding utility disconnection, with the rationale that oftentimes, a client does not have a disconnection notice, the client's bill does not specifically state "disconnection," or the client receives a "second notice" to the original bill as opposed to a "disconnection notice," all of which prompts a Subrecipient to contact the utility vendor for clarification. As a result of the phone communication a "disconnection" may be discovered. The communication with the utility vendor will be documented and maintained in the client's file.

STAFF RESPONSE: Staff understands the concern expressed by the Commenter, but at this time does not think that verbal confirmation of a utility disconnection notice is adequate documentation in client file records as required by Uniform Grant Management Standards, Attachment A, C.(1)(i). While not applicable to 100% of utility vendors, most electric and gas service providers are required to provide written disconnect notices to clients as outlined in 16 TAC Chapter 25, Subchapter B and 16 TAC Chapter 7, Subchapters B and D, as applicable. Subrecipients should document any specific instance where a utility provider refuses to provide written documentation of disconnect notice, and the Department may open this section up for further rulemaking. At this time, Staff recommends no change.

BOARD RESPONSE: The Board accepted Staff's recommendation and adopted the amendments on October 10, 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.

Filed with the Office of the Secretary of State on October 18, 2013.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3974

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SUBCHAPTER E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL

10 TAC §§5.502, 5.503, 5.507, 5.524

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter E, §5.507, concerning Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria, and §5.524, concerning Lead Safe Practices, with changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5156). Section 5.502, concerning Purpose and Goals, and §5.503, concerning Distribution of WAP Funds, are adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that language in the Weatherization Assistance Program General rules need clarification on client eligibility, weatherization work practices, and the leveraging and redistribution of program funds. Accordingly, the amended rules will promote effective leveraging by Subrecipients; move eligibility requirements to Subchapter A, General Provisions; provide for the addressing of lead safe work requirements; and ensure full utilization of Weatherization Assistance Program funds.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from August 16, 2013, through September 16, 2013, with comments received from Stella Rodriguez of the Texas Association of Community Action Agencies (TACAA).

§5.507(c). Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

COMMENT SUMMARY: Commenter suggested deleting §5.507(c) to make consistent with amended rules under Subchapter A, §5.20(a) and Subchapter D, §5.407(c).

STAFF RESPONSE: Staff agrees with commenter.

BOARD RESPONSE: The Board directed Staff to modify this section by deleting §5.507(c) and adding reference to Subchapter A, §5.20.

§5.524(a). Lead Safe Practices.

COMMENT SUMMARY: Commenter requested clarification on why the phrase "and Response to Children with Environmental Intervention Blood Levels" was included in the last sentence. Commenter states that it does not appear to be in the EPA rule, 40 CFR Part 745, and if it is a federal or state regulation, reference to the specific regulation should be included and the Department may need to provide training to the Subrecipients.

STAFF RESPONSE: The Response to Children with Environmental Intervention Blood Levels is part of the U.S. Department of Housing and Urban Development "HUD" Lead Safe Rule, 24 CFR Part 35. The rule may apply when agencies are performing work on pre-1978 HUD assisted housing. More information and training may be found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/enforcement/lshr.

BOARD RESPONSE: The Board directs staff to provide a clearer citation of the rule.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

§5.507. Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

(a) Subrecipients shall establish eligibility and priorities criteria to increase the energy efficiency of dwellings owned or occupied by Low Income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

(b) Subrecipients shall follow the Department rules and established state and federal guidelines for determining eligibility for Multifamily Dwelling Units as referenced in §5.525 of this chapter (relating to Eligibility for Multifamily Dwelling Units).

(c) Subrecipient shall determine applicant income and eligibility in compliance with §5.19 and §5.20 of this chapter (relating to Client Income Guidelines and Determining Income Eligibility).

(d) Social Security numbers are not required for applicants.

§5.524. Lead Safe Practices.

(a) Subrecipients are required to document that its weatherization staff as well as Subcontractors follow the Environmental Protection Agency's Renovation, Repair and Painting Program (RRP) Final Rule, 40 CFR Part 745 and HUD's Lead Based Housing Rule, 24 CFR Part 35, as applicable.

(b) Subrecipients are required to document that its weatherization staff, as well as Subcontractors have received Lead Safe Weatherization (LSW) training, an LSW Manual, and an LSW Jobsite Handbook prior to commencement of weatherization work. Subrecipients must obtain a signed Worker Verification of LSW Training form from the Subcontractor indicating that the Subcontractor received the LSW training, manual, and jobsite handbook. Subcontractors must follow LSW Work Practices as outlined by the U.S. Department of Energy.

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

Effective date: November 7, 2013

Proposal publication date: August 16, 2013

For further information, please call: (512) 475-3974

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SUBCHAPTER F. WEATHERIZATION ASSISTANCE PROGRAM DEPARTMENT OF ENERGY

10 TAC §5.602, §5.603

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter F, §5.602 and §5.603, concerning Weatherization Assistance Program Department of Energy, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5158). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds that language in the amended sections contained an incorrect reference to the Open Meetings Act and needed clarification on allowable expenditures per dwelling unit. Accordingly, the amended rules remove references to the Open Meetings Act and clarify allowable expenditures per dwelling unit.

The Department accepted public comment between August 16, 2013, and September 16, 2013. Comments regarding the amendments were accepted in writing and by fax. No comments were received concerning the amendments.

The Board approved the final order adopting the amendments on October 10, 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.

Filed with the Office of the Secretary of State on October 18, 2013.

TRD-201304718

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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SUBCHAPTER G. WEATHERIZATION ASSISTANCE PROGRAM LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

10 TAC §5.701

The Texas Department of Housing and Community Affairs (the "Department") adopts an amendment to 10 TAC Chapter 5, Subchapter G, §5.701, concerning Allowable Expenditure per Dwelling Unit, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5159). The rule will not be republished.

REASONED JUSTIFICATION. The Department finds that language in the Allowable Expenditure per Dwelling Unit rule cited a specific dollar amount that may change from year to year, causing the Department to amend the rule from year to year. Accordingly, the amended rule removes a specific dollar amount and adds reference to the current program year contract.

The Department accepted public comments between August 16, 2013, and September 16, 2013. Comments regarding the amendments were accepted in writing and by fax. No comments were received concerning the amendment.

The Board approved the final order adopting the amendments on October 10, 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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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency (TEA) adopts new §61.1011, concerning school finance. The new section is adopted without changes to the proposed text as published in the August 2, 2013, issue of the *Texas Register* (38 TexReg 4845) and will not be republished. The adopted new section establishes in rule the definitions, assumptions, and calculations used in determining a district's Additional State Aid for Tax Reduction (ASATR).

House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2005, added the Texas Education Code (TEC), §42.2516. The section provided for state aid known as ASATR to be delivered to certain school districts to compensate them for lowering, or compressing, their maintenance and operations (M&O) tax rates. The section also allowed the commissioner of education to adopt rules to administer the section's provisions. HB 1922, 80th Texas Legislature, 2007, amended the TEC, §42.2516, to provide for the adjustment of a district's ASATR based on its New Instructional Facility Allotment funding. HB 828, 80th Texas Legislature, 2007, amended the TEC, §42.2516, to provide for the adjustment of a district's ASATR based on its transportation allotment funding and its Additional State Aid for Ad Valorem Tax Credits Under the Texas Economic Development Act. That bill also provided for the adjustment of the tax collections used to calculate a district's ASATR based on whether the district adopted or eliminated an additional residence homestead exemption, whether the district granted an exemption under a tax abatement agreement, and whether the district deposited taxes into a tax increment fund and provided for a corresponding adjustment in the district's ASATR. In addition, HB 828 required that any rules adopted by the commissioner to administer the bill's provisions reflect the bill's requirements. HB 3646, 81st Texas Legislature, 2009, amended the TEC, §42.2516, to add minimum and maximum revenue thresholds to the ASATR calculation. Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, amended the TEC, §42.2516, to gradually reduce the amount of ASATR a district is entitled to over time until ASATR is finally eliminated altogether in 2017.

The commissioner has not previously adopted rules under the TEC, §42.2516. Adopted new 19 TAC §61.1011 establishes in rule the definitions, assumptions, and calculations currently used in determining a district's ASATR under the TEC, §42.2516. It also adopts changes in the current calculation of ASATR to incorporate transportation allotment adjustments for districts subject to the TEC, Chapter 41.

The adopted new section has no procedural or reporting implications. The adopted new section has no locally maintained paperwork requirements.

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 August 2, 2013, and ended September 3, 2013. Following is a summary of the public comments received and the corresponding agency responses regarding proposed new 19 TAC Chapter 61, School Districts, Subchapter AA, Commissioner's Rules on School Finance, §61.1011, Additional State Aid for Tax Reduction (ASATR).

Comment: Officials with Austin Independent School District (ISD), Clear Creek ISD, Comal ISD, Lake Travis ISD, and Leander ISD commented that they support changes to the calculation of ASATR to include adjustments related to the calculated transportation allotment for districts that are subject to the TEC, Chapter 41. The officials commented that they would like the proposed rule to be revised so that districts subject to Chapter 41 would receive the transportation adjustment not only in 2013-2014 and subsequent years, as provided for in the proposed rule, but also in the years 2010-2011, 2011-2012, and 2012-2013.

The officials with Austin ISD, Clear Creek ISD, Comal ISD, and Leander ISD further commented that denying the adjustment for those three years is "arbitrary" and without basis in statute or rule. Those officials stated that if the agency found that the negative impact to certain districts of applying the adjustment in those three years was a "barrier to retroactive implementa-

tion" of the adjustment, the officials hoped that the agency would consider applying the transportation adjustment in the calculation of ASATR for those three years for only those districts that would be positively affected. Additionally, the officials stated that while they understood that applying the adjustment as requested would have a cost for the state, this cost would represent a fraction of the total FSP budget for the next biennium.

Agency Response: The agency disagrees that the proposed rule should be changed to apply the transportation adjustment in the calculation of ASATR for districts subject to Chapter 41 retroactively for the three school years preceding the current school year. If the agency were to change the rule in this way, the adjustment would have to be applied for all districts subject to Chapter 41, including those that would be negatively impacted financially, as there is no provision in statute for applying the adjustment for only those districts that would have their aid increased as a result of it. The agency cannot make such a substantive change to the rule at the rule's adoption, as the districts that would be negatively impacted by this change would have had no notice of the change and no opportunity to comment on it.

Comment: The superintendent of Round Rock ISD commented that his district supports changes to the calculation of ASATR to include application of the transportation adjustment for districts subject to Chapter 41 beginning with the 2013-2014 school year. The superintendent commented that the district would like the rule to be changed so that the adjustment is applied in the calculation of ASATR retroactively going back to the 2010-2011 school year. The superintendent further commented that the agency reclaims funds from school districts for prior years and that disbursement of revenue to districts should work the same way.

Agency Response: The agency disagrees that the proposed rule should be changed to apply the transportation adjustment in the calculation of ASATR for districts subject to Chapter 41 retroactively for the three school years preceding the current school year. If the agency were to change the rule in this way, the adjustment would have to be applied to all districts subject to Chapter 41, including those that would be negatively impacted financially, as there is no provision in statute for applying the adjustment for only those districts that would have their aid increased as a result of it. The agency cannot make such a substantive change to the rule at its adoption, as the districts that would be negatively impacted by this change would have had no notice of the change and no opportunity to comment on it.

Comment: The superintendent of Plano ISD commented that the district disagrees with the proposed rule's application of the transportation adjustment in the calculation of ASATR for 2010-2011, 2011-2012, and 2012-2013, namely with the rule's denial of the adjustment to districts subject to Chapter 41 for those years. The commenter stated that the statutory provision authorizing the adjustment has not changed since 2009 and that if a reinterpretation of the provision now requires the adjustment to be applied in the calculation of ASATR for districts subject to Chapter 41, the agency is obligated to apply the adjustment retroactively, especially since the agency concluded that it had incorrectly interpreted the adjustment's authorizing provision while the 2012-2013 biennium was in progress.

Agency Response: The agency disagrees that the proposed rule should be changed to apply the transportation adjustment in the calculation of ASATR for districts subject to Chapter 41 retroactively for the three school years preceding the current school year. If the agency were to change the rule in this way, the adjustment would have to be applied to all districts subject to Chapter 41, including those that would be negatively impacted financially, as there is no provision in statute for applying the adjustment for only those districts that would have their aid increased as a result of it. The agency cannot make such a substantive change to the rule at its adoption, as the districts that would be negatively impacted by this change would have had no notice of the change and no opportunity to comment on it.

Comment: The associate superintendent of business and facility services for Plano ISD commented that the district applauded the agency's efforts to codify the calculation of ASATR and that the district feels that the rule correctly implements the intent of the legislature. The associate superintendent went on to state, "Unfortunately, for Plano ISD and many other districts subject to Chapter 41, the proposed rule's prospective treatment of the transportation adjustment will have no impact, as we will no longer be an ASATR recipient beginning with the 2013-14 school year." The associate superintendent stated that if the rule's current-year calculation of ASATR for districts subject to Chapter 41 represents the correct interpretation of statute, then that calculation should be applied retroactively for the three preceding years. The commenter stated that the district would support adding a hold-harmless provision to the rule to prevent any Chapter 41 district from being negatively affected by retroactive application of the transportation adjustment in the calculation of ASATR.

Agency Response: The agency agrees that codifying the calculation of ASATR is worthwhile. The agency disagrees that the proposed rule should be changed to apply the transportation adjustment in the calculation of ASATR for districts subject to Chapter 41 retroactively for the three school years preceding the current school year. If the agency were to change the rule in this way, the adjustment would have to be applied to all districts subject to Chapter 41, including those that would be negatively impacted financially, as there is no provision in statute for applying the adjustment for only those districts that would have their aid increased as a result of it. The agency cannot make such a substantive change to the rule at its adoption, as the districts that would be negatively impacted by this change would have had no notice of the change and no opportunity to comment on it.

Comment: The assistant superintendent for business services with Eanes ISD commented that it was his understanding that the change in the calculation of ASATR that was reflected in the proposed rule was "a recent reinterpretation" of the statute authorizing ASATR and was to be effective beginning with the 2013-2014 school year. The assistant superintendent also commented that it was his understanding that there was some question about whether the change should be retroactively applied to the three years before 2013-2014. The commenter stated that if the recent reinterpretation of the authorizing statute is correct, the change should be applied to those three years.

Agency Response: The agency agrees with the commenter's understanding of the proposed rule. The agency disagrees that the proposed rule should be changed to apply the transportation adjustment in the calculation of ASATR for districts subject to Chapter 41 retroactively for the three school years preceding the current school year. If the agency were to change the rule in this way, the adjustment would have to be applied to all districts subject to Chapter 41, including those that would be negatively impacted financially, as there is no provision in statute for applying the adjustment for only those districts that would have their aid increased as a result of it. The agency cannot make such a substantive change to the rule at its adoption, as the districts that

would be negatively impacted by this change would have had no notice of the change and no opportunity to comment on it.

Comment: The superintendent of Georgetown ISD commented that changing the calculation of ASATR to incorporate a transportation adjustment for districts subject to Chapter 41 "has been a matter of discussion with TEA staff and school districts at least since November 2011." He commented that June 2012 statements from agency officials indicated that the agency was planning to propose rules that would apply the transportation adjustment in the calculation of ASATR for districts subject to Chapter 41 beginning with the 2012-2013 school year. The superintendent commented that although his district appreciates that the agency has proposed rules to address the transportation adjustment issue, the district disagrees with applying the adjustment in the calculation of ASATR only beginning with the 2013-2014 school year. The superintendent commented that the rule should be changed to apply the adjustment in the calculation of ASATR for districts subject to Chapter 41 for the 2010-2011, 2011-2012, and 2012-2013 school years as well. The superintendent stated that, intentionally or not, the agency did apply the transportation adjustment in the calculation of ASATR for districts subject to Chapter 41 for the 2009-2010 school year and that that fact supported the district's argument that the adjustment should be applied for each following school year.

Agency Response: The agency disagrees that the proposed rule should be changed to apply the transportation adjustment in the calculation of ASATR for districts subject to Chapter 41 retroactively for the three school years preceding the current school year. If the agency were to change the rule in this way, the adjustment would have to be applied to all districts subject to Chapter 41, including those that would be negatively impacted financially, as there is no provision in statute for applying the adjustment for only those districts that would have their aid increased as a result of it. The agency cannot make such a substantive change to the rule at its adoption, as the districts that would be negatively impacted by this change would have had no notice of the change and no opportunity to comment on it.

Comment: State Representative Scott Hochberg commented that he had heard that the agency proposed rules regarding the statute that authorizes ASATR and that the agency is considering changes to its current practices under the provision in the statute that authorizes the transportation adjustment. Representative Hochberg commented that the purpose of that provision was to ensure that funding formula items that did not contribute to counts of students in weighted average daily attendance (WADA) would continue to have the same effect after implementation of ASATR that those items had had before implementation. Representative Hochberg stated that the provision's purpose "was never to create a new entitlement or a new reduction that had not existed prior to the existence of ASATR, but rather to continue to recognize changes that had been recognized prior to ASATR." Representative Hochberg commented that it is his understanding that the agency has followed policies consistent with the provision's purpose since the provision was adopted and that he is not aware of a need for a change in agency policies.

Agency Response: The agency wishes to clarify that, before proposal of the rule, its policy with regard to applying the transportation adjustment in the calculation of ASATR had been to apply the adjustment only for districts that were not subject to Chapter 41. The proposed rule reflected a change in this policy, made in response to petitions by two school districts, to apply the adjustment in the calculation of ASATR for districts subject to Chapter 41 in the same way that this adjustment is applied for districts that are not subject to Chapter 41, beginning with the 2013-2014 school year.

Comment: The chief financial officer (CFO) for Comal ISD asked whether a model showing the districts that stood to gain revenue and those that stood to lose revenue as a result of this rule action existed. The CFO also asked for verification that no pending or approved rule changes would impact Comal ISD with regard to the district's optional homestead exemption.

Agency Response: The agency responded to the CFO to state that such a model did exist and to provide the link to the agency web page on which the model was available. With regard to the comment about Comal ISD's homestead exemption, the agency responded that the rule does include some language discussing how certain components of ASATR are adjusted for districts that implement a new homestead exemption or eliminate a homestead exemption. The agency stated that this adjustment is necessary to ensure that districts that eliminate an exemption and so increase taxes do not have all those taxes consumed by reduced ASATR.

Comment: The CFO for Eagle Mountain-Saginaw ISD commented that, when the Texas Legislature passed the statute authorizing ASATR, it also made changes to the underlying formula used to calculate state aid. The CFO commented that these changes to the underlying formula had a negative impact on his district and other districts with compressed maintenance and operations tax rates below $1.00. The CFO stated that the hold harmless provision of ASATR protects the district from the full effect of the formula change but that ASATR will no longer exist after 2016. With regard to the proposed rule, the CFO stated that the agency has administered ASATR consistently since the target revenue system was created and that the rule, for the most part, reflects that. The CFO asked that no substantial changes be made to the rule as proposed. The CFO also asked that the agency consider the issue of fractional funding as the agency provides advice and testimony to the next legislature "in an effort to correct the formula and restore funding to the Fractionally Funded Districts prior to the elimination of ASATR." The CFO provided a document showing changes to the TEC, §42.101, that Eagle Mountain-Saginaw ISD would like the legislature to make in the next legislative session.

Agency Response: The CFO's comments regarding legislative changes to the underlying formula used to calculate state aid are outside the scope of the rule action. The agency agrees that no substantial changes should be made to the rule as proposed.

The new section is adopted under the Texas Education Code, §42.2516, which authorizes the commissioner of education to adopt rules necessary to implement additional state aid for tax reduction.

The new section implements the Texas Education Code, §42.2516.

Filed with the Office of the Secretary of State on October 17, 2013.

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Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 193. STANDING DELEGATION ORDERS

The Texas Medical Board (Board) adopts the repeal of §§193.1 - 193.10 and 193.12 and new §§193.1 - 193.20, concerning Standing Delegation Orders. The repeal of §§193.1 - 193.10 and 193.12 and new §§193.3 - 193.7, 193.9, 193.11, 193.12 and 193.14 - 193.20 are adopted without changes to the proposed text as published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 5985) and will not be republished. New §§193.1, 193.2, 193.8, 193.10 and 193.13 are adopted with changes to the proposed text as published in the September 13, 2013, issue of the *Texas Register.* The text of the rules will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE REPEAL

The current sections are repealed because new §§193.1 - 193.20 are adopted contemporaneously in this issue of the *Texas Register.* The Board has determined that due to the extensive reorganization of Chapter 193, repeal of the entire chapter and replacement with new sections is more efficient than proposing multiple amendments to make the required changes. The new sections of Chapter 193 are adopted to make Chapter 193 consistent with changes made to the Texas Occupations Code Annotated Chapter 157, Subchapter B, concerning delegation to advanced practice registered nurses and physician assistants, by Senate Bill 406, 83rd Legislature, Regular Session (2013). The Board is mandated under the terms of Senate Bill 406 to adopt rules implementing the changes in the Occupations Code Chapter 157. The Board's purpose in adopting the new provisions in Chapter 193 is to encourage the more effective utilization of the skills of physicians by establishing guidelines for the delegation of health care tasks to qualified non-physicians providing services under reasonable physician control and supervision where such delegation and supervision is consistent with the patient's health and welfare; and to provide guidelines for physicians so that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services.

SECTION-BY-SECTION SUMMARY

New §193.1, concerning Purpose, describes the intended purpose of Chapter 193 and sets forth its statutory basis.

New §193.2, concerning Definitions, provides definitions for important terms and phrases used in Chapter 193. New terms and phrases defined include: prescriptive authority agreement, device, facility-based practice site, health professional shortage areas (HSPA), hospital, medication order, nonprescription drug, physician group practice, practice serving a medically underserved area, prescribe or order a drug or device, and prescription drug.

New §193.3, concerning Exclusion from the Provisions of this Chapter, sets forth certain limited exclusions to the operation of the Chapter 193.

New §193.4, concerning Scope of Standing Delegation Orders, describes the scope of standing delegation orders and incorporates new terms and definitions consistent with the changes to Chapter 157 of the Occupations Code.

New §193.5, concerning Physician Liability for Delegated Acts and Enforcement, sets forth the applicable limitation on the liability of physicians based solely on signing a prescriptive authority agreement or delegation order. This section further states that delegating physicians remain responsible to the Board and their patients for acts performed under the physicians' delegated authority.

New §193.6, concerning Delegation of Prescribing and Ordering Drugs and Devices, sets forth the general requirements and limitations related to the delegation and prescribing and ordering of drugs or devices. This section prohibits the delegation of the prescriptive authority for Schedule II drugs, except in facility-based practices under §157.054 of the Occupations Code. Prescribing under prescriptive authority agreements eliminates former requirements for site-based supervision.

New §193.7, concerning Prescriptive Authority Agreements Generally, provides that physicians may delegate to advanced practice registered nurses and physician assistants the act of prescribing or ordering a drug or device through a prescriptive authority agreement and limits the combined number of advanced practice registered nurses and physician assistants with whom a physician may enter into a prescriptive authority agreement to seven. The section sets forth an exclusion to the limit of seven prescriptive authority agreements when exercised in facility-based practices in hospitals or long-term care facilities, subject to certain limitations, and in practices serving medically underserved populations. Prescribing under prescriptive authority agreements pursuant to this section eliminates former requirements for site-based supervision.

New §193.8, concerning Prescriptive Authority Agreements: Minimum Requirements, sets forth minimum requirements for valid prescriptive authority agreements, including requirements for periodic face-to-face meetings with the supervising physicians to discuss patient care and improvement of patient care.

New §193.9, concerning Delegation of Prescriptive Authority at Facility-Based Practice Sites, describes the requirements for delegating the prescribing or ordering of a drug or device at a facility-based practice site. This section states that the limitations on the number of advanced practice registered nurses and physician assistants delegated to under prescriptive authority agreements do not apply to a physician whose practice is facility-based under Chapter 193, subject to certain limitations. This section also addresses requirements for physician supervision and states that the constant physical presence of a physician is not required. This section also addresses requirements for physician supervision and states that the constant physical presence of a physician is not required.

New §193.10, concerning Registration of Delegation and Prescriptive Authority Agreements, describes the requirements for physicians to register information with the Board regarding prescriptive authority agreements entered into with advanced prac-

tice registered nurses and physician assistants. This section also states that the Board shall maintain and exchange information with the Texas Board of Nursing and Physician Assistant Board as well as creating and making available to the public an online list of physicians, advanced practice registered nurses, and physician assistants who have entered into prescriptive authority agreements.

New §193.11, concerning Prescription Forms, provides that prescription forms shall comply with applicable rules adopted by the Texas Board of Pharmacy.

New §193.12, concerning Prescriptive Authority Agreements, provides the Board authority to enter, with reasonable notice, a site where a party to a prescriptive authority agreement is practicing, to inspect and audit records or activities related to the implementation and operation of the agreement.

New §193.13, concerning Delegation to Certified Registered Nurse Anesthetists, authorizes the delegation of the ordering of drugs and devices to a certified nurse anesthetist in a licensed hospital or ambulatory surgical center, for the purpose of the nurse anesthetist administering an anesthetic or anesthesia-related service ordered by a physician.

New §193.14, concerning Delegation Related to Obstetrical Services, describes the authority, requirements, and limitations, related to delegating to physician assistants offering obstetrical services and advanced practice registered nurses recognized by the Texas Board of Nursing as nurse midwifes, the act or acts of administering controlled substances related to intra-partum and post-partum care.

New §193.15, concerning Delegated Drug Therapy Management, describes the authorization for, requirements, and limitations related to the delegation by physicians to pharmacists of drug therapy management.

New §193.16, concerning Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol, describes the authorization for, requirements, and limitations related to the delegation of the administration of immunizations and vaccinations to a pharmacist.

New §193.17, concerning Nonsurgical Medical Cosmetic Procedures, describes the duties and responsibilities of a physician who performs or who delegates the performance of a nonsurgical medical cosmetic procedure.

New §193.18, concerning Pronouncement of Death, authorizes physicians to receive information from Texas licensed vocational nurses through electronic communication for the purposes of making a pronouncement of death.

New §193.19, concerning Collaborative Management of Glaucoma, sets forth the minimum standards for the collaborative treatment of glaucoma.

New §193.20, concerning Immunization of Persons Over 65 by Physicians' Offices, sets forth requirements that physicians providing ongoing primary or principal care to persons over 65 (elderly persons) offer, to the extent possible, pneumococcal and influenza vaccines to each elderly person receiving care at the office.

Comments:

The Board received comments on the proposed rules from the Texas Medical Association (TMA) and the Texas Academy of Family Physicians (TAFP) (submitted jointly), the Texas Society of Anesthesiologists (TSA), the Texas Academy of Physician Assistants (TAPA), the Texas Nurses Association (TNA), the Coalition for Nurses in Advanced Practice (CNAP), the Texas Association of Community Health Centers (TACH), the Texas Association of Nurse Anesthetists (TANA), the Texas Association of Aesthetic Nurses (TAAN), and approximately 106 individuals, including an Austin-based health law attorney.

Section 193.1. Purpose

Commenter: TMA and TAFP (submitted jointly)

The Board received comments regarding §193.1 submitted jointly by TMA and the TAFP.

1. TMA and TAFP do not oppose the changes made to §193.1, which they characterize as "minor".

2. TMA and TAFP support the purpose for Chapter 193 as set forth in the proposed rule and state "the purpose is clear, and underscores the fact that delegation must be made under reasonable physician control and supervision, and must be consistent with the patient's health and welfare."

Section 193.2. Definitions

Commenter: TMA and TAFP (submitted jointly)

TMA and TAFP support all definitions as written.

Section 193.2(2)

Commenter: CNAP

1. Under §193.2(2), the definition of "authorizing physician" does not include a physician's or physicians' use of protocols as a mechanism for delegating prescriptive authority as allowed in §193.9(c)(1). CNAP proposed the following language: "(2) Authorizing physician--A physician or physicians licensed by the board who execute a standing delegation order, protocol or prescriptive authority agreement."

2. CNAP comments that the Board does not use the term authorizing physician consistently throughout the proposed rules, and that it would be more consistent if the term "delegating physician" was changed to "authorizing physician" in §§193.5(b), 193.6(b)(3) and (4), and 193.11.

Response to Comments on §193.2(2)

The use of protocols as an authorized delegating mechanism for physicians is clearly and unequivocally authorized by the terms of §193.9(c)(1), which do not use the term "authorizing physician." Therefore, the Board believes that it is not necessary to add the term "protocols" to the definition §193.2(2). The Board's use of the term "delegating physician" was consistent with the terms use in SB 406. Accordingly, the Board declines to amend the language of §§193.2(2), 193.5(b), 193.6(b)(3) and (4), and 193.11.

Section 193.2(6)

Commenter: CNAP

CNAP comments that the proposed §193.2(6) be amended to refer to the Texas Medical Practice Act rather than "the Act."

Response to Comments on §193.2(6)

The Board agrees with CNAP's comments and has defined the Texas Medical Practice Act as "the Act" at the beginning of Chapter 193 to address this issue, specifically in §193.1. Accordingly, the reference to "the Act" in §193.2(6) will be left in place.

The definition of the Texas Medical Practice Act as "the Act" in §193.2(17) has been deleted and replaced with "the Act."

Section 193.2(8)

Commenter: Individual

An Austin-based health law attorney comments that the definition of "hospital" in §193.2(8) is confusing because it references numerous definitions contained in other statutes. This attorney suggests that all of the definitions be set out and included in the definition for facility based practice site at §193.2(6).

Response to Comments on §193.2(8)

The language in the §193.2(8) accurately tracks the language in SB 406 and clearly implements the legislature's intent. The Board declines to amend the language in §193.2(8)

Section 193.2(12)

Commenter: TNA

1. The references in proposed rule §193.2(12) to "§162.1(b) of this title" and "Chapter 162 of this title" are incorrect references to sections of Board rules in the Texas Administrative Code. Chapter 162 of the Board rules relates to the supervision of medical students and not to physician group practices. The definition of "physician group practice" in SB 406 does reference Chapter 162, but it is a reference to Chapter 162 of the Texas Occupations Code, not the Administrative Code. It also refers to §162.001(b) and not §162.1 as the proposed rule.

2. The references in proposed Rule §193.2(12) need to be changed so that they also refer to the Occupations Code. TNA believes the incorrect references are likely a clerical error.

Commenter: CNAP and TACH (presented separately)

Both CNAP and TACH point out that the citation in §193.2(12) to §162.01 of the Act is incorrect and should instead cite to §162.001(b) of the Medical Practice Act.

Response to Comments on §193.2(12)

The Board agrees with the comments from the TNA, CNAP, and TACH that the definition of "Physician Group Practice" in proposed rule §193.2(12) contains an incorrect reference to the Medical Practice Act. The current language of §193.2(12) references "§162.1(b) of this title (relating to Supervision of Medical Students) that complies with the requirements of Chapter 162 of this title." The correct reference in the definition, which accurately reflects the language in SB 406, should read "§162.001(b) of the Act (relating to Regulation by Board of Certain Nonprofit Health Corporations), that complies with the requirements of Chapter 162 of the Act."

Accordingly, the Board modified and adopted the following nonsubstantive language at its October 18, 2013 meeting:

(12) Physician group practice--An entity through which two or more physicians deliver health care to the public through the practice of medicine on a regular basis and that is:

(A) owned and operated by two or more physicians; or

(B) a freestanding clinic, center, or office of a nonprofit health organization certified by the board under §162.001(b) of the Act (relating to Regulation by Board of Certain Nonprofit Health Corporations), that complies with the requirements of Chapter 162 of the Act.

Section 193.2(17)

Commenter: TNA

1. TNA suggests that proposed rule §193.2(17) be modified with the following language: "with the exception of: (a) a facility-based practice pursuant to §157.054 of the Medical Practice Act ("the Act"), Texas Occupations Code Annotated, §§157.051 - 157.060 and this title; or (b) the delegation of ordering of drugs and devices necessary for a nurse anesthetist to administer an anesthetic or an anesthesia-related service pursuant to §157.058 of the Act."

2. The rationale for the above changes is that §157.058 is a separate source of authority for physicians to delegate to CRNAs the ordering of drugs and devices necessary for a CRNA to administer anesthetics or anesthesia-related services. The delegation under §157.058 may be through delegation mechanisms other than prescriptive authority agreements (PAAs) under §157.0512 or protocols under §157.054.

3. TNA additionally suggests moving the portion of §193.2(17) beginning with the phrase "prescriptive authority agreements are required for," including the new subsections (a) and (b) described above, to a new location, specifically, the beginning of §193.7, Prescriptive Authority Agreements Generally.

4. The rationale for moving this section is that this language relating to when a PAA must be used is a substantive provision which TNA believes would be better placed in the substantive sections of the rules rather than included as part of a definition.

Commenter: CNAP

1. CNAP comments that the definition of prescriptive authority agreement §193.2(17) makes it clear that a PAA is not required in a facility-based practice, but does not acknowledge that §157.058 of the Medical Practice Act provides CRNAs authority to prescribe without prescriptive authority agreements.

2. CNAP recommends changing the definition of §193.17 to add a subsection (a) referencing prescribing in a facility based practice, and a subsection (b) referring to delegation pursuant to §157.058 of the Act.

3. The suggested language by the CNAP is essentially the same as the suggested language by the TNA, described above.

4. CNAP comments that the language in subsections (a) and (b) be added to §193.7 for clarity.

Commenter: TANA

1. TANA's recommendations for modifying the language of §193.2(17) and moving the modified portions to §193.7 are essentially identical to the suggestion submitted by the TNA and CNAP.

2. The rationale for the change is that §157.058 is a separate source of authority for physicians to delegate to CRNA the ordering of drugs and devices that is separate from delegating through prescriptive authority agreements (pursuant to §157.0512 of the Act) or through protocols (pursuant to §157.054).

3. The rationale for moving the language is that the language relating to the PAA would be better placed in a substantive section of the rules.

Response to Comments on §193.2(17)

The Board notes that the comments submitted by the TMA and the TAFP supported the definition as written, and in particular voiced support for the inclusion of language stating that PAAs are required for the delegation of prescriptive authority in all prac-

tice settings with the exception of facility based practices. This language was inserted by the Board to clarify the role of PAAs under SB 406.

The Board agrees with the TNA and the CNAP that PAAs are not required for the delegation and ordering of drugs and devices necessary for a nurse anesthetist to administer or perform anesthesia-related service pursuant to §157.058 of the Act. However, the Board does not believe that adding language to this effect to the §193.2(17) definition is necessary as the language of §157.058 is clear and stands on its own. The Board also views the language clarifying the scope of prescriptive authority agreements as definitional, rather than substantive, and believes that this language should remain in its present location, rather than be removed to the beginning §193.7. Accordingly the Board declines to amend the rule as suggested.

Section 193.5. Physician Liability for Delegated Acts and Enforcement

Commenter: TMA and TAFP (submitted jointly)

1. The TMA and TAFP strongly support the need for a statement regarding a physician's potential liability with regards to the delegation and supervision of prescriptive authority.

2. TMA and TAFP comment that the proposed language stating that a delegating physician remains "responsible" to the Board and to their patient for acts performed under the physician's act implies ultimate liability for the delegated act, while the issue of liability will actually depend on circumstances.

3. The language in the statute and rule, stating that a physician is not liable for the acts of a PA or APN *solely* on the basis of having signed a delegation order, has caused confusion to physicians when they found themselves liable to the TMB for the acts of PAs and APRNs to whom they have delegated. The addition of language regarding a physician's ultimate liability will help highlight to physicians the gravity of delegating medical acts to mid-level practitioners and the importance of appropriate supervision.

4. The TMA and TAFP are concerned that the language "remains responsible to their patients" might be used in civil litigation or by a court to establish vicarious liability.

5. The issue of whether a physician is liable to the Board for an inappropriate delegation or supervision depends on the circumstances of the delegation or supervision. For example, if a physician delegates acts that are not commensurate with the APRN's or PA's training, education, or experience, and does not appropriately supervise or continues to allow a delegation despite a history of substandard care, then that physician may be liable for a bad act performed by an APRN or PA. However, if a physician delegates to an APRN or PA with a high level of experience, education and training in a certain field, an act consistent with that experience and supervises appropriately, then that physician may not be found liable by the TMB for a negligent act the APRN or PA performs despite the physician's proper supervision.

6. The proposed rule does not make the above distinction clear and leads to confusion and potential misinterpretation.

7. The TMA and TAFP recommend modifying the proposed language of §193.5(b) to read "Notwithstanding subsection (a) of this section, the delegating physicians remain liable for acts performed under the physicians delegated authority if the delegation was not performed in accordance with the standard of care."

8. The rule should not imply that APRNs or PAs are absolved from their own liability and should add a statement that APRNs and PAs remain professionally responsible for acts performed under the scope and authority of their own licenses.

Commenter: TNA

1. TNA recommend amending proposed rule §193.5(b) to read "Notwithstanding subsection (a) of this section, delegating physicians remain responsible to the Board and to their patients for the proper delegation and supervision of acts performed under the physician's delegated authority."

2. TNA is aware that subsection (b) is taken from current TMB Rule §193.6(a). However, TNA believes that the proposed language more accurately reflects what the physician is accountable for and also makes subsections (a) and (b) read more consistently. TNA believes the intent of §157.058 (which subsection (a) tracks) is that a physician should not be liable for the acts of an APRN/PA which the physician has appropriately delegated and supervised. TNA also believes the change is consistent with the discussion of this issue at TMB's August 30th Board meeting.

Commenter: CNAP

1. The CNAP comments that §193.5 could be clarified by amending subsection (b) to more accurately reflect what a physician is accountable for when delegating prescriptive authority. CNAP further recommends "language that currently exists in §193.6, but is being proposed for repeal, be included in these new rules, so APRNs and PAs are clear on their responsibilities."

2. The CNAP recommends amending §193.5(b) as follows: "(b) Notwithstanding subsection (a) of this section, delegating authorizing physicians remain responsible to the Board and to their patients for the proper delegation and supervision of acts performed under the physician's delegated authority; (d) Advanced practice registered nurses and physician assistants remain professionally responsible for acts performed under the scope and authority of their own licenses."

Response to Comments on §193.5

TMA, TAFP, and TNA comments state that there has been confusion regarding physicians' violation of the Act and Board Rules relating to delegation and supervision, and particularly delegation of prescriptive authority. In addressing these concerns, the Board has grouped together provisions related to liability for delegation and supervision into §193.5. These provisions were formerly located at §§193.6(m), 193.6(a), and 193.5.

The Board disagrees that the language in subsection (b) stating that the delegating physician remains responsible to the Board and to their patients for acts performed under the physician's care implies liability for any delegated act. Subsection (a) makes clear that a physician will be liable for improper delegation based solely on signing a delegation order only if the physician had reason to believe that the physician assistant or advanced practice registered nurse lacked competency to perform the delegated acts, at the time the delegation order was signed. Rather, the Board has consistently interpreted the language in subsection (b) (formerly §193.6(a)) as requiring a fact-based inquiry into the specific circumstances of the delegation and supervision by a physician before holding a physician liable for a delegated act by a PA or APRN.

TMA submitted comments concerning the possible use of the language §193.5(b) to establish vicarious liability for a physician in a civil proceeding. Also related to this comment, the TMA submitted suggested language amending §193.5(b). The Board disagrees with the TMA's use of term "standard of care" in their suggested amendment. An analysis of whether a violation occurred is not necessarily based solely on the violation of standard of care by a PA or APRN and may include other issues related to the appropriateness of supervision and acts delegated.

The language suggested by TNA that a "delegating physicians remain responsible to the Board and to their patients for the proper delegation and supervision of acts performed under the physician's delegated authority" is confusing. Physicians are subject to potential disciplinary action by the Board, based on improper delegation and supervision of acts performed under their delegated authority, rather than for proper delegation and supervision.

The Board also disagrees that new language should be added to §193.5 emphasizing that PAs and APRNs remain liable for their acts under delegation under the scope and authority of their own licenses. This language is unnecessary as the licensing and disciplinary statutes and rule governing APRNs and PAs already addresses this issue.

Accordingly, the Board declines to amend the language of §193.5.

Section 193.6. Delegation of Prescribing and Ordering Drugs and Devices

Commenters: TMA and TAFP (submitted jointly)

1. The TMA and TAFP support the proposed changes, and particularly support the addition, in subsection (c), of the term "hospital" to facility based practice, as it was the intent of SB 406 to limit the delegation of Schedule II substances to hospitals and not to facility based practices in general.

2. The legislative intent to limit delegation of Schedule II substances to hospitals is supported by the addition of the definition of "hospital" to Texas Occupations Code, §157.051. This definition defines a hospital narrowly under §241.003 and Chapter 557 of the Texas Health and Safety Code.

3. It is imperative that the limitation on delegation of Schedule II drug to "hospitals" be emphasized. TMA and TAFP recommend adding clarifying language to subsection (c) to explicitly exclude outpatient clinics affiliated with hospitals from Schedule II delegation.

Commenter: TAPA

1. TAPA recommends modifications to §193.6(b)(2) and (3) to address patient safety care issues. TAPA acknowledges these modification are not related to SB 406.

2. The current language of §193.6(b)(2) and (3) suggests only one refill may be prescribed by a PA under delegated prescriptive authority.

3. A single refill causes patient care and safety issues because it encourages 60 day refills.

4. For the treatment of certain patients and conditions, for example pain management, a single 60 day refill may exacerbate the habit inducing effect of certain drugs prescribed in pain management care to the detriment of the patient's safety and wellbeing.

5. TAPA recommends the language of §193.6(b)(2) be modified to read "the prescription including refills of the prescription is not to exceed 90 days".

6. TAPA recommends the language of §193.6(b)(3) be modified to read "with regard to refills of a prescription, the refill is authorized after consultation with the delegating physician and the consultation is noted in the patient's chart; and".

7. The suggested language would ensure that the needs of the patient's care and safety are the only factors being considered when a PA is prescribing a refill, while also staying within the intent of the statute.

Response to Comments on §193.6

The Board agrees with the TMA that the intent of SB 406 delegation of Schedule II drugs is limited to hospital facility based practices and inserted appropriate language to reflect that intent. The Board believes that the language set out in §193.6(c)(1) and (2) makes this limitation clear and that an additional provision specifically excluding outpatient clinics of hospitals from Schedule II delegation is not necessary. The Board additionally notes that the legislature did not include such an exclusion in SB 406. The Board declines to add TMA's suggested language related to outpatient clinics.

TAPA acknowledges that the requested modification of the language of §193.6(b)(2) is not required by the terms of SB 406. The language in the Occupations Code related to refills is unchanged and is reflected by the language of the current proposed Board rule. The Board disagrees that there is a need to change the language, and points out that the legislature had an opportunity to address this issue in SB 406 and chose not to take any action.

Section 193.7. Prescriptive Authority Agreements Generally

Commenters: TMA and TAFP

TMA and TAFP support the proposed rules as written.

Commenter: TNA

1. TNA requests modifying the language of proposed rule §193.7(e)(2) as follows: "(2) a facility-based practice in a hospital under §157.054, subject to the limitations in §157.054(a-1) of the Act and §193.9(c)(4) of this title (relating to Delegation of Prescriptive Authority at a Facility-Based Practice Site)."

2. It is not clear why proposed Rule §193.7(e) references §157.054(b-1) and §193.9(b)(5) on the one hand, and, on the other, proposed Rule §193.9(b) references §193.9(b)(4). Section 157.054(b-1) and §193.9(b)(5) address the number of facilities (one hospital; two LTC facilities) at which a facility-based physician may delegate. Section 193.9(b)(4), on the other hand, addresses the number of FTEs (seven) to whom a physician may delegate in a LTC facility-based practice. TNA believes the appropriate reference in both rules is §157.054(a-1) (relating to FTE limits in facility based practices) and §193.9(c)(4) (relating to FTE limit in LTC).

Response to Comments on §193.7

The Board staff disagrees with the TNA's comments related to §193.7(e). The Rule as drafted is consistent with SB 406 related to the limitations on facility based prescribing and implements the intent of the legislature. The Board declines to amend §193.7(e).

193.8. Prescriptive Authority Agreements: Minimum Requirements

Commenters: TMA and TAFP

The TMA and TAFP support the proposed rules as written.

Commenter: TAPA

1. The language in proposed §193.8(10)(C) is not compatible with SB 406 and the express language of §157.0512(f)(2)(B).

2. The express language of §157.0512(f)(2)(B) does not require that a PA be in the same practice with the same physician in which the PA will be entering into a prescriptive authority agreement.

3. The express language of the statute is to recognize the experience gained by a PA who has been in a practice that included the exercise of prescriptive authority, and "to allow for the face-to-face meeting be conducted monthly for the first year only, rather than 3 years without the five year experience, and move to quarterly face-to-face meetings."

4. Section 193.8(10)(C) does not reflect the express language or intent of SB 406 because it requires the PA's five year experience to be with the physician with whom the PA will be entering into a prescriptive authority agreement.

5. TAPA suggests removing the proposed language of §193.8(10)(C) and replacing it with the language of §157.0512(f)(2)(B) verbatim.

Commenter: TNA

1. TNA submitted comments regarding §193.8(10)(C).

2. TNA requests the deletion of the qualifier "with whom the prescriptive authority agreement is entered," for three reasons.

3. First, adding the qualifier is contrary to the intent of the Legislature in enacting §157.0512(f)(2)(B), and the statutory scheme reflected in SB 406 when §157.0512(f)(2)(B) is read in combination with Section 28 of SB 406.

4. Section 157.0512(f)(2)(B) and Section 28 address two different types of experience. Section 28 addresses specific experience in exercising prescriptive authority under the supervision of the physician signing the PAA, while §157.0512(f)(2)(B) addresses general experience in exercising prescriptive authority under the required supervision of a physician other than the physician signing the PAA.

5. Adding the qualifier, as done in the proposed rule, eliminates any recognition of an APRN's/PA's prior general experience of exercising prescriptive authority under the required supervision of a physician other than the physician signing the PAA.

6. Second, adding the qualifier makes (C) meaningless because Section 28 of SB 406 requires that time spent prior to 11/1/13 under the delegated prescriptive authority of the physician signing the PAA be included when calculating how long the PAA has been in effect. Any APN who has prescribed for five out of the last seven years under the delegated authority of the physician signing the PAA will automatically qualify under §193.8(10)(B)(ii) to begin quarterly meetings.

7. Third, adding the qualifier violates the prohibition in §157.0512(p) that TMB not adopt rules that "would impose requirements in addition to the requirements under this section."

8. TNA requests that the word "supervised" in §193.8(10)(C) be deleted in the phrase "was supervised for." The use of "supervised" in that phrase seems redundant with "required supervision" later in the sentence and deleting "supervised" in the phrase "was supervised for" makes the sentence easier to read. TNA does not believe this a substantive change.

Commenter: CNAP

The CNAP comments that the phrase "by the physician with whom the prescriptive authority agreement is entered" is not included in SB 406 and improperly adds an additional requirement to the elements of a prescriptive authority agreement. CNAP recommends removal of the phrase.

Commenter: TACH

TACH requests that the phrase "by the physician with whom the prescriptive authority agreement is entered," in §193.8(10)(C), be removed because it is contrary to the intent of SB 406 which references the experience of an APRN or PA for at least five years in a practice that included the exercise of prescriptive authority with required physician supervision. TACH adds that SB 406 does not limit that experience to experience with one physician.

Response to Comments on §193.8

After reviewing submitted comments and the language of SB 406, the Board has determined that SB 406 contemplates various standards for periodic face-to-face meetings based on the experience of the parties with delegated prescriptive authority under physician supervision. SB 406 acknowledges that some physician assistants and advanced practice registered nurses have greater experience in practices involving delegated prescriptive authority under physician supervision, and therefore require less frequent face-to-face meetings to ensure patient safety and quality of care. Board staff declines to modify the language of §193.8 dealing with the frequency of periodic face-to-face meetings as suggested by various commenters, but has incorporated portions of the comments as described below. In order to clarify the various levels of experience which determine the frequency of periodic face-to-face meetings, Board staff has revised the rules to require three different standards for periodic face-to-face meetings, based on the parties experience with delegated prescriptive authority under physician supervision. These standards are consistent with the language of SB 406 and implement its intent. These standards reflect that the length of experience with delegated prescriptive authority under physician supervision, combined with a longer relationship between the parties, allows for less intensive monitoring by the delegating physician. The first standard addresses a lower level of experience with delegated prescriptive authority under physician supervision. The second level recognizes parties that have experience with delegated prescriptive authority under physician supervision but are entering into prescriptive authority agreements with new parties, or a physician who has not supervised them for five full years. The section of the rule dealing with the second standard incorporates comments requesting that the qualifying language "with whom the prescriptive authority agreement is being entered" be removed from language related to physician assistants and advanced practice registered nurses with five years of experience in a practice with delegated authority under physician supervision. The third standard recognizes parties with five full years of experience in delegated prescriptive authority under the same supervising physician, who are continuing that pre-existing relationship under a prescriptive authority agreement.

Section 193.10

Commenters: TMA and TAFP

1. The majority of the proposed section is consistent with SB 406.

2. Even though SB 406 is silent as to a requirement for a physician to notify the Board within 30 days of a PAA, the TMA and TAFP do not necessarily oppose the Board proposing a rule requiring notifying the Board when a PAA terminates.

3. However, TMA and TAFP do not agree with the 30 day requirement for notifying the Board of the termination of a PAA set out in §193.10(e).

4. Although notifying the Board within 30 days of entering into a PAA is reasonable because patient safety is at issue as patients will be receiving medical care delegated by a physician. However, when a PAA is terminated, one would assume that patient care would not be at issue.

5. The notification period could be relaxed to a 90 day requirement which would allow physicians more time to comply with the rule.

6. Because some terminations of PAAs might be caused by disruptive event, such as member of staff leaving the practice, 90 would provide a practice focusing on quality of care and continuity of care during the immediate 90 day period following termination of a PAA.

Commenter: TSA

1. SB 406 added §157.0513 to the Medical Practice Act. This section requires the Board, the Texas Board of Nursing, and the Texas Physician Assistant Board to develop a process to exchange information regarding the names and locations of physicians, advanced practice registered nurses, and physician assistants who have entered into prescriptive authority agreements.

2. The statute does not distinguish between the four recognized designations of advanced practice registered nurses (APRNs) who may become parties to prescriptive authority agreements (nurse practitioner, nurse-midwife, nurse anesthetist, and clinical nurse specialist). The statute requires the Board to maintain and make available to the public a searchable online list of physicians, advanced practice registered nurses, and physician assistants who have entered into prescriptive authority agreements.

3. Section 157.0513(b) authorizes the Board to open an investigation of a physician upon notice that it is investigating an APRN who is a party to a prescriptive authority agreement.

4. Certified registered nurse anesthetists are not excluded or excepted from the broad language of §157.0513 and SB 406 will require CRNAs who work in practice settings to become parties to prescriptive authority agreements. These practice settings include pain management clinics, physician offices, subject to statutes and rules regarding office based anesthesia, ambulatory surgical centers, and hospitals that choose to utilize prescriptive authority agreements in lieu of standing delegation orders or protocols.

5. The wording of SB 406 clearly reflects legislative intent to hold all physicians, APRNs, and physician assistants to common policies, procedures and standards.

6. The Board has proposed a rule, §193.10(d), which TSA believes is incompatible with the intent of SB 406 and the express language of the statute.

7. There is nothing in SB 406 or §157.058 of the Occupations Code that exempts or excludes CRNAs or physicians who are parties to prescriptive authority agreements from the statute's registration requirement.

8. Excluding CRNAs from the registration mandate will hamper the Board and the Board of Nursing in their attempts to regulate prescriptive authority agreements and therefore possibly put patients at risk.

9. The Board of Nursing has published proposed rule 22 TAC §222.10 which states the Board of Nursing will immediately notify the Texas Medical Board when an APRN becomes the subject of an investigation involving the delegation and supervision of prescriptive authority.

10. The above rule applies equally to all APRNs, but the Board's approach leaves open the possibility that after the Board receives notice of an investigation from the Nursing Board of an investigation of a CRNA involving delegation of prescriptive authority, the Board will not be able to consider disciplinary action against the physician who delegated prescriptive authority to the CRNA because §196.10(d) exempted the physician from the requirement of registering the CRNA's name. This would undermine the intent of SB 406.

11. TSA recommends that the Board withdraw §193.10(d) from the proposed rules.

Commenter: CNAP

1. Section 193.10(c) should be amended to address physicians who delegate prescriptive authority in facility-based practices and the APRNs and PAs to whom they delegate. When APRNs and PAs apply for a permit so they can prescribe controlled substances, this online list is used by the Department of Public Safety to confirm that they have prescriptive authority. It is important that the list include not only those who use PAAs, but physicians using protocols in facility-based practices.

2. Proposed rule §193.10(d) should also be amended to address physicians who delegate prescriptive authority in facility-based practices and the APRNs and PAs to whom they delegate. To comply with the requirement for registration in §157.0511(b-2), Medical Practice Act, CNAP proposes language similar to what is in the current §193.6(f)(3), to read as follows:

"(d) A physician who delegates the prescribing or ordering of a drug or device in a facility-based practice under §193.9 must register with the board the name and license number of the advanced practice registered nurse or physician assistant to whom the delegation is made."

Responses to Comments on §193.10

The Board staff disagrees that the 90 days advocated by TNA in regard to §193.10(e) is a reasonable amount of time in which to inform the Board that a prescriptive delegation has been terminated, and maintains that 30 days provides a reasonable time period. The registration process will be electronic and informing the Board of a terminated PAA will take only minutes. The Board declines to amend the language of this rule as requested by the TNA.

The Board agrees with the comments submitted by TSA that CRNAs are not exempted from the requirement of registering with the Board prescriptive authority agreements outside of a hospital setting. However, the Board does not agree that §193.10(d) needs to be deleted. Rather, the language in §193.10 would be appropriate if placed under §193.13 related to the delegation to certified registered nurse anesthetists. The Board has accordingly moved the language in §193.10 into §193.13.

In response to CNAP's comments regarding §193.10(c) and (d), the Board believes that physicians who delegate prescriptive authority at a facility through the use of prescriptive authority agreements, rather than through protocols or standing orders, are already required to register the prescriptive authority agreement with the Board. These prescriptive authority agreements would be included in the public online searchable database. Therefore, there is no need to amend the language of §193.10(c). The proposed amendment to §193.10(d) is inconsistent with the intent of SB 406, which requires only that the Board maintain a public searchable online database of physicians, APRNs, and PAs who have entered into prescriptive authority agreements. Accordingly the Board declines to amend §193.10.

Section 193.13. Delegation to Certified Registered Nurse Anesthetists

Commenters: TMA and TAFP

1. TMA and TAFP note that §193.13 essentially restates §157.058 of the Occupations Code and that SB 406 did not amend §157.058.

2. TMA and TAFP do not oppose proposed rule §193.13 as written.

3. Although some members of the community believe CRNAs are authorized to practice without delegation or supervisions, in Texas, CRNAs must act under the delegation and supervision of a physician.

4. TMA and TAFP encourage the Board to consider whether there is a need to create clarifying rules to make clear that CRNAs must act under the delegation and supervision of physicians.

Commenter: TSA

1. TSA agrees with the comments submitted by TMA and TAFP regarding proposed Chapter 193, particularly the comments related to §193.13.

2. There is confusion in the medical community as to whether CRNAs are allowed to practice without delegation and supervision by physicians.

3. TSA believes that Texas law and appropriate standards of care require physician delegation and supervision of CRNAs.

Commenter: TANA

TANA does not object to the provisions of §193.13 which basically restates the provisions of §157.058 of the Texas Occupations Code.

Response to Comments on §193.13

The comments do not oppose adoption of §193.13 as written. The Board staff believes that current Board rules related to the practice of CRNAs are sufficient and make clear that CRNAs must act under the delegation and supervision of a physician.

Section 193.17. Nonsurgical Medical Cosmetic Procedures

Commenter: Texas Association of Aesthetic Nurses

1. TAAN comments that §193.17 is unnecessary and will cause harm to public.

2. Registered nurses have been performing nonsurgical medical procedures under standing delegation orders from physician-medical directors for years.

3. Standing delegation orders provide physicians sufficient control and supervision over procedures being performed by registered nurses. Registered nurses also have access to medical directors through the phone, email, and text messaging.

4. Registered nurses should be allowed to perform procedures without a physician or mid-level being present at the facility.

5. Section (d)(2) creates an unnecessary burden on patients by requiring that a physician or mid-level provider be more involved than is necessary.

6. Section (d)(3) which allows "qualified unlicensed personnel" to perform procedures increases the risk of harm to patients.

7. Nurses have extensive training and are answerable to the Texas Board of Nursing.

8. TAAN believes that §193.17 should be changed to require individuals performing such procedures to be licensed.

9. TAAN asks the Board reconsider the rule, and change it to allow registered nurses to perform procedures without a physician or mid-level being present at the facility, or alternatively, to require individuals performing nonsurgical cosmetic procedures under a physician's supervision to be licensed.

Individual Comments:

The Board received approximately 105 comments from individuals, all opposed to the adoption of proposed rule §193.17. The comments opposing proposed rule §193.17 reflected several common objections, which are set out and summarized below. Several comments did not set forth a basis for opposition but rather simply stated the commenter's opposition to the adoption of §193.17.

1. Increased Cost. Several commenters voiced concerns that the rule would result in increased costs for cosmetic treatment, including botox and fillers. None of the commenters articulated reasons why or how the proposed rule would increase costs, but some seemed to suggest that the proposed rule, being a form of regulation, would automatically increase costs.

2. Infringement on Personal Freedoms. Many commenters stated that they were opposed to the proposed rule because it infringed on their personal freedoms. Several commenters stated that the rule would take away their freedom to see the cosmetic procedure provider of their choice.

3. Unnecessary Regulation by the Government. Several commenters stated they were opposed to the proposed rule because it represented unnecessary regulation by the government and the imposition of more government red tape.

4. RNs are Qualified. Many commenters stated that RNs are qualified to perform injections and the injections do not need to be done by PAs or Physicians. Some commenters stated their opinion that RNs were better at performing cosmetic injections than physicians and that they preferred getting injections from RNs.

5. Rule will Limit Choice of Injectors and Treatment Plans. Several commenters suggested that the result of the proposed rule would be to limit consumers' choice of injectors and treatment plans.

6. Proposed Rule will Interfere with Convenience. Several commenters stated that the current system is convenient for them and expressed their concerns that the rules would interfere with this current convenience and limit their treatment options.

7. Proposed Rule will Force Consumers to go the Black Market. Several comments expressed the opinion that the rules will result in increased costs which will force consumers who need cosmetic treatment to utilize "black market" services staffed by non-medical personnel.

8. Physical Examination is Unnecessary. Several commenters opined that the physical examination required under the proposed rules was not necessary for the purpose of providing cosmetic services. Other commenters suggested that they would not be comfortable undergoing a physical examination.

Response to Comments on §193.17

Nonsurgical medical procedures are the practice of medicine and involve risks of complication. The Board disagrees with TAAN that §193.17 will causes harm to the public. Rather, the rule will enhance public safety by insuring that a physician or mid-level provider will be present at a facility where cosmetic procedures are being performed to personally treat or supervise treatment of any complications arising from the procedure. The Board disagrees with TAAN that standing orders and protocols and the ability to access physicians or mid-level providers via phone or text are sufficient to protect public safety. The personal presence of a physician or mid-level provider at a facility where cosmetic procedures are being performed provides greater safety to patients than mere standing delegation orders and phone consultation.

The comments submitted by individuals involved either issues of economics (i.e., higher costs) or personal freedom. The rule is designed to protect patient health and safety through proper supervision and delegation to mid-level providers. The intent of the rule is to enhance and insure patient safety during nonsurgical cosmetic procedures, which are medical procedures with inherent risks. The Board disagrees with the comments and declines to make any changes to this rule at this time.

22 TAC §§193.1 - 193.10, 193.12

STATUTORY AUTHORITY

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

The 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 October 18, 2013.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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Proposal publication date: September 13, 2013
For further information, please call: (512) 305-7016

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22 TAC §§193.1 - 193.20

STATUTORY AUTHORITY

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

§193.1. Purpose.

(a) The purpose of this chapter is to encourage the more effective utilization of the skills of physicians by establishing guidelines for the delegation of health care tasks to qualified non-physicians providing services under reasonable physician control and supervision where such delegation is consistent with the patient's health and welfare; and to provide guidelines for physicians in order that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services. Texas Occupations Code Annotated, §§164.001, 164.052, and 164.053 empower the Texas Medical Board to cancel, revoke or suspend the license of any practitioner of medicine upon proof that such practitioner is guilty of failing to supervise adequately the activities of persons acting under the physician's supervision, allowing another person to use his license for the purpose of practicing medicine, or of aiding or abetting, directly or indirectly, the practice of medicine by a person or entity not licensed to do so by the board. The board recognizes that the delivery of quality health care requires expertise and assistance of many dedicated individuals in the allied health profession. The provisions of this chapter are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of medical judgment, to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. The board recognizes that statutory law shall prevail over any rules adopted and that the practice of medicine is, under Texas Occupations Code Annotated §151.002(13), defined as follows: A person shall be considered to be practicing medicine within the Medical Practice Act ("the Act"):

(1) who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; or

(2) who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation.

(b) Likewise, nothing in this chapter shall be construed as to prohibit a physician from instructing a technician, assistant, or nurse to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee. Nothing in this chapter should be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of those persons with whom the delegating physician has established a physician-patient relationship. Nothing in this chapter shall enlarge or extend the applicable statutory law relating to the practice of medicine, or other rules and regulations previously promulgated by the board.

§193.2. Definitions.

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

(1) Advanced practice registered nurse--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes an advanced nurse practitioner, a nurse midwife, nurse anesthetist, clinical nurse specialist, and advanced practice nurse, as defined by Texas Occupations Code Annotated, §301.152.

(2) Authorizing physician--A physician or physicians licensed by the board who execute a standing delegation order or prescriptive authority agreement.

(3) Controlled substance--A substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4 as described under the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(4) Dangerous drug--A device or a drug that is unsafe for self medication and that is not included in the Texas Health and Safety Code, Schedules I-V or Penalty Groups I-IV of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription".

(5) Device--Means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner, as defined by §551.003 of the Occupations Code.

(6) Facility based practice site--A hospital, as defined by §157.051(6) of the Act and this chapter, or a licensed long-term care facility. A facility-based practice does not include a freestanding clinic, center or other medical practice associated with or owned or operated by, a hospital or licensed long-term care facility.

(7) Health professional shortage area (HPSA)--

(A) an urban or rural area of this state that:

(i) is not required to conform to the geographic boundaries of a political subdivision but is a rational area for the delivery of health services;

(ii) the secretary of health and human services determines has a health professional shortage; and

(iii) is not reasonably accessible to an adequately served area;

(B) a population group that the secretary of health and human services determines has a health professional shortage; or

(C) a public or nonprofit private medical facility or other facility that the secretary of health and human services determines has a health professional shortage, as described by 42 U.S.C. §254e(a)(1).

(8) Hospital--A facility that:

(A) is:

(i) a general hospital or a special hospital, as those terms are defined by §241.003, Health and Safety Code, including a hospital maintained or operated by the state; or

(ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and

(B) has an organized medical staff.

(9) Medication order--An order from a practitioner or a practitioner's designated agent for administration of a drug or device, as defined by §551.003 of the Occupations Code, or an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital, as defined by Texas Health and Safety Code, §481.002.

(10) Nonprescription drug--A nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with state and Federal Law, as defined by §551.003(25) of the Occupations Code.

(11) Physician Assistant--A person who is licensed as a physician assistant by the Texas Physician Assistant Board.

(12) Physician group practice--An entity through which two or more physicians deliver health care to the public through the practice of medicine on a regular basis and that is:

(A) owned and operated by two or more physicians; or

(B) a freestanding clinic, center, or office of a nonprofit health organization certified by the board under §162.001(b) of the Act (relating to Regulation by Board of Certain Nonprofit Health Corporations), that complies with the requirements of Chapter 162 of the Act.

(13) Physician's orders--The instructions of a physician for the care of an individual patient.

(14) Practice serving a medically underserved population--Refers to the following:

(A) a practice in a health professional shortage area;

(B) a clinic designated as a rural health clinic under 42 U.S.C. §1395x(aa);

(C) a public health clinic or a family planning clinic under contract with the Health and Human Services Commission or the Department of State Health Services;

(D) a clinic designated as a federally qualified health center under 42 U.S.C. §1396d(l)(2)(B);

(E) a county, state, or federal correctional facility;

(F) a practice:

(i) that either:

(I) is located in an area in which the Department of State Health Services determines there is an insufficient number of physicians providing services to eligible clients of federally, state, or locally funded health care programs; or

(II) is a practice that the Department of State Health Services determines serves a disproportionate number of clients eligible to participate in federally, state, or locally funded health care programs; and

(ii) for which the Department of State Health Services publishes notice of the department's determination in the Texas Register and provides an opportunity for public comment in the manner provided for a proposed rule under Chapter 2001, Government Code; or

(G) a practice at which a physician was delegating prescriptive authority to an advanced practice registered nurse or physician assistant on or before March 1, 2013, based on the practice qualifying as a site serving a medically underserved population.

(15) Prescribe or order a drug or device--Prescribing or ordering a drug or device, including the issuing of a prescription drug order or medication order.

(16) Prescription drug--Means:

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(17) Prescriptive authority agreement--An agreement entered into by a physician and an advanced practice registered nurse or physician assistant through which the physician delegates to the advanced practice registered nurse or physician assistant the act of prescribing or ordering a drug or device. Prescriptive authority agreements are required for the delegation of the act of prescribing or ordering a drug or device in all practice settings, with the exception of a facility-based practice, pursuant to §157.054 of the Act.

(18) Protocols--Written authorization delegating authority to initiate medical aspects of patient care, including delegation of the act of prescribing or ordering a drug or device at a facility-based practice. The term protocols is separate and distinct from prescriptive authority agreements as defined under the Act and this chapter. However, prescriptive authority agreements may reference or include the terms of a protocol(s). The protocols must be agreed upon and signed by the physician, the physician assistant and/or advanced practice registered nurse, reviewed and signed at least annually, maintained on site, and must contain a list of the types or categories of dangerous drugs and controlled substances available for prescription, limitations on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring or contain a list of the types or categories of dangerous drugs and controlled substances that may not be prescribed. Protocols shall be defined to promote the exercise of professional judgment by the advanced practice registered nurse and physician assistant commensurate with their education and experience. The protocols used by a reasonable and prudent physician exercising sound medical judgment need not describe the exact steps that an advanced practice registered nurse or a physician assistant must take with respect to each specific condition, disease, or symptom.

(19) Standing delegation order--Written instructions, orders, rules, regulations, or procedures prepared by a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms. Such written instructions, orders, rules, regulations or procedures shall delineate under what set of conditions and circumstances action should be instituted. These instructions, orders, rules, regulations or procedures are to provide authority for and a plan for use with patients presenting themselves prior to being examined or evaluated by a physician to assure that such acts are carried out correctly and are distinct from specific orders written for a particular patient, and shall be limited in scope of authority to be delegated as provided in §193.4 of this title (relating to Scope of Standing Delegation Orders). As used in this chapter, standing delegation orders do not refer to treatment programs ordered by a physician following examination or evaluation by a physician, nor to established procedures for providing of care by personnel under direct, personal supervision of a physician who is directly supervising or overseeing the delivery of medical or health care. As used in this chapter, standing delegation orders are separate and distinct from prescriptive authority agreements as defined in this chapter. Such standing delegation orders should be developed and approved by the physician who is responsible for the delivery of medical care covered by the orders. Such standing delegation orders, at a minimum, should:

(A) include a written description of the method used in developing and approving them and any revision thereof;

(B) be in writing, dated, and signed by the physician;

(C) specify which acts require a particular level of training or licensure and under what circumstances they are to be performed;

(D) state specific requirements which are to be followed by persons acting under same in performing particular functions;

(E) specify any experience, training, and/or education requirements for those persons who shall perform such orders;

(F) establish a method for initial and continuing evaluation of the competence of those authorized to perform same;

(G) provide for a method of maintaining a written record of those persons authorized to perform same;

(H) specify the scope of supervision required for performance of same, for example, immediate supervision of a physician;

(I) set forth any specialized circumstances under which a person performing same is to immediately communicate with the patient's physician concerning the patient's condition;

(J) state limitations on setting, if any, in which the plan is to be performed;

(K) specify patient record-keeping requirements which shall, at a minimum, provide for accurate and detailed information regarding each patient visit; personnel involved in treatment and evaluation on each visit; drugs, or medications administered, prescribed or provided; and such other information which is routinely noted on patient charts and files by physicians in their offices; and

(L) provide for a method of periodic review, which shall be at least annually, of such plan including the effective date of initiation and the date of termination of the plan after which date the physician shall issue a new plan.

(20) Standing medical orders--Orders, rules, regulations or procedures prepared by a physician or approved by a physician or the medical staff of an institution for patients which have been examined or evaluated by a physician and which are used as a guide in preparation for and carrying out medical or surgical procedures or both. These orders, rules, regulations or procedures are authority and direction for the performance for certain prescribed acts for patients by authorized persons as distinguished from specific orders written for a particular patient or delegation pursuant to a prescriptive authority agreement.

(21) Submit--The term used to indicate that a completed item has been actually received and date-stamped by the Board along with all required documentation and fees, if any.

§193.8. Prescriptive Authority Agreements: Minimum Requirements.
Prescriptive authority agreement must, at a minimum:

(1) be in writing and signed and dated by the parties to the agreement;

(2) state the name, address, and all professional license numbers of the parties to the agreement;

(3) state the nature of the practice, practice locations, or practice settings;

(4) identify the types or categories of drugs or devices that may be prescribed or the types or categories of drugs or devices that may not be prescribed;

(5) provide a general plan for addressing consultation and referral;

(6) provide a plan for addressing patient emergencies;

(7) state the general process for communication and the sharing of information between the physician and the advanced practice registered nurse or physician assistant to whom the physician has delegated prescriptive authority related to the care and treatment of patients;

(8) if alternate physician supervision is to be utilized, designate one or more alternate physicians who may:

(A) provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of this subchapter; and

(B) participate in the prescriptive authority quality assurance and improvement plan meetings required under this section; and

(9) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following:

(A) chart review, with the number of charts to be reviewed determined by the physician and advanced practice registered nurse or physician assistant; and

(B) periodic face-to-face meetings between the advanced practice registered nurse or physician assistant and the physician at a location determined by the physician and the advanced practice registered nurse or physician assistant.

(10) The periodic face-to-face meetings described by paragraph (9)(B) of this section must include:

(A) the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals;

(B) discussion of patient care improvement; and

(C) documentation of the periodic face-to-face meetings.

(11) The periodic face-to-face meetings shall occur as follows:

(A) If during the seven years preceding the date the agreement is executed, the advanced practice registered nurse or physician assistant was not in a practice that included the exercise of prescriptive authority with required physician supervision for at least five years:

(i) at least monthly until the third anniversary of the date the agreement is executed; and

(ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or

(B) if during five of the last seven years preceding the date the agreement is executed, the advanced practice registered nurse or physician assistant was in a practice that included the exercise of prescriptive authority with required physician supervision, but the agreement is not being entered into with the same supervising physician who delegated and supervised during the five year period:

(i) at least monthly until the first anniversary of the date the agreement is executed; and

(ii) at least quarterly after the first anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or

(C) if during five of the last seven years preceding the date the agreement is executed, the advanced practice registered nurse or physician assistant was in a practice that included the exercise of prescriptive authority with required physician supervision, and the agreement is being entered into with the same supervising physician who delegated and supervised during the five year period:

(i) at least quarterly; and

(ii) monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet.

(12) The prescriptive authority agreement may include other provisions agreed to by the physician and advanced practice registered nurse or physician assistant.

(13) If the parties to the prescriptive authority agreement practice in a physician group practice, the physician may appoint one or more alternate supervising physicians designated under paragraph (8) of this section, if any, to conduct and document the quality assurance meetings in accordance with the requirements of this chapter.

(14) The prescriptive authority agreement need not describe the exact steps that an advanced practice registered nurse or physician assistant must take with respect to each specific condition, disease, or symptom.

(15) A physician, advanced practice registered nurse, or physician assistant who is a party to a prescriptive authority agreement must retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

(16) A party to a prescriptive authority agreement may not by contract waive, void, or nullify any provision of this section or §157.0513 of the Occupations Code.

(17) In the event that a party to a prescriptive authority agreement is notified that the individual has become the subject of an investigation by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, the individual shall immediately notify the other party to the prescriptive authority agreement.

(18) The prescriptive authority agreement and any amendments must be reviewed at least annually, dated, and signed by the parties to the agreement. The prescriptive authority agreement and any amendments must be made available to the board, the Texas Board of Nursing, or the Texas Physician Assistant Board not later than the third business day after the date of receipt of request, if any.

(19) The prescriptive authority agreement should promote the exercise of professional judgment by the advanced practice registered nurse or physician assistant commensurate with the advanced practice registered nurse's or physician assistant's education and experience and the relationship between the advanced practice registered nurse or physician assistant and the physician.

(20) This section shall be liberally construed to allow the use of prescriptive authority agreements to safely and effectively utilize the skills and services of advanced practice registered nurses and physician assistants.

§193.10. Registration of Delegation and Prescriptive Authority Agreements.

(a) The Board shall maintain and exchange information with the Texas Board of Nursing, and the Texas Physician Assistant Board, regarding the names locations and license numbers, of each physician, advanced practice registered nurse, and physician assistant who has entered into a prescriptive authority agreement.

(1) The Board shall immediately notify the Texas Physician Assistant Board and the Texas Board of Nursing when a license holder of the Board who has registered a prescriptive authority agreement(s) becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation. Such notifications shall be made subject to, and without waiving any confidentiality provisions related to board investigations provided for under the Act and this Title.

(2) The Board shall maintain and share with the other boards a list of board license holders who have been subject to disciplinary action involving the delegation and supervision of prescriptive authority.

(b) Physicians who enter into prescriptive authority agreements with physician assistants or advanced practice registered nurses must register with the Board, within 30 days of signing the prescriptive authority agreement the following information:

(1) The name and license number of the physician assistant or advanced practice registered nurse to whom the delegation has been made;

(2) The date on which the prescriptive authority agreement was executed;

(3) The address(es) at which the advanced nurse practice registered nurse or physician assistant will be prescribing under the prescriptive authority agreement; and

(4) whether the prescriptive authority being exercised under the prescriptive authority agreement is being exercised in a practice servicing a medically underserved population.

(c) The board shall maintain and make available to the public, a searchable online lists of a of physicians, advanced practice registered nurses, and physician assistants who have entered into prescriptive authority agreements, and identify the physician, advanced practice registered nurse, or physician assistant, with whom each physicians, advanced practice registered nurse, or physician assistant has entered into a prescriptive authority agreement.

(d) A physician terminating a prescriptive authority agreement shall notify the board in writing within 30 days of such termination.

§193.13. Delegation to Certified Registered Nurse Anesthetists.

(a) In a licensed hospital or ambulatory surgical center a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for a certified registered nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician. The physician's order for anesthesia or anesthesia-related services does not have to be drug-specific, dose-specific, or administration-technique-specific. Pursuant to the order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the appropriate medical devices necessary to accomplish the order and maintain the patient within a sound physiological status.

(b) A physician who delegates to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the certified registered anesthetist to administer an anesthetic or an anesthesia-related service is not required to register the name and license number of the certified registered nurse anesthetist with the board.

(c) This section shall be liberally construed to permit the full use of safe and effective medication orders to utilize the skills and services of certified registered nurse anesthetists.

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 October 18, 2013.

TRD-201304713
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: November 7, 2013
Proposal publication date: September 13, 2013
For further information, please call: (512) 305-7016

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §371.3

The Texas State Board of Podiatric Medical Examiners adopts the amendments to §371.3, regarding Fees, without changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5413). The text will not be republished.

The amendments to §371.3 are adopted to cover the contingent revenue as stipulated by the 83rd Texas Legislature which required the board to assess or increase fees sufficient to generate during the FY2014-2015 biennium $93,942 in excess of $1,010,000 (Object Code 3562), contained in the Comptroller of Public Accounts' Biennial Revenue Estimate for fiscal years 2014 and 2015. Texas Occupations Code §202.153, Fees, states that the board by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter.

No comments were received in response to the proposed amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendments implement Texas Occupations Code §202.153, 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.

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

TRD-201304573
Hemant Makan
Executive Director
Texas State Board of Podiatric Medical Examiners
Effective date: November 4, 2013
Proposal publication date: August 23, 2013
For further information, please call: (512) 305-7002

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER E. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID) PROGRAM--CONTRACTING

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§9.203, 9.207, 9.208, 9.221, 9.251, 9.252, 9.256, 9.266, and 9.268, concerning definitions, certification and licensure, provider agreement, durable medical equipment, protecting individuals' personal funds, notice regarding personal funds, program provider-managed personal funds, DADS review of state survey agency findings, and termination of provider agreement; new §§9.225, 9.262, 9.263, and 9.270, concerning reporting incidents to DADS, trust fund monitoring and audits, informal review and formal hearing, and suspension of payments; and the repeal of §9.216, concerning renewal of provider agreement, and §9.225, concerning reporting abuse, neglect, and injuries of unknown source, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities. The amendments to §§9.203, 9.251, 9.252, 9.256; and new §9.263 are adopted with changes to the proposed text published in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2489). The amendments to §§9.207, 9.208, 9.221, 9.266, and 9.268; new §§9.225, 9.262, and 9.270; and the repeal of §9.216 and §9.225 are adopted without changes to the proposed text.

The amendment to §9.203 adds definitions, updates definitions, and deletes definitions.

The amendment to §9.207 updates terminology to reflect current usage and corrects a rule citation.

The amendment to §9.208 corrects a rule citation and specifies that a provider agreement remains in effect until it is terminated because provider agreements are no longer limited to a term of twelve months.

The repeal of §9.216 is to delete rules regarding renewal of provider agreements because they remain in effect until terminated.

The amendment to §9.221 describes the process by which a program provider may receive payment for a wheeled mobility system or a major modification to a wheeled mobility system in compliance with Texas Human Resources Code §32.0425.

The repeal of §9.225, which contains requirements for reporting abuse, neglect, and injuries of unknown source, allows for the adoption of new §9.225.

New §9.225 requires certain incidents to be reported to DADS by program providers that are exempt from licensure. Licensed entities must follow licensure rules for reporting incidents.

The amendment to §9.251 requires a program provider to comply with federal regulations if the Social Security Administration (SSA) has appointed the program provider as an individual's representative payee.

The amendment to §9.252 corrects references and requires a program provider to provide written notice to an individual and the individual's legally authorized representative that the program provider must comply with federal regulations if the SSA has appointed the program provider as an individual's representative payee.

The amendment to §9.256 corrects references and specifies that an account used by a program provider to manage an individual's personal funds must be titled to show that a fiduciary relationship exists between the individual and the program provider.

New §9.262 describes trust fund monitoring by DADS and the actions that may result from that monitoring. It also allows a program provider to request an informal review or administrative hearing, after the conclusion of a monitoring, to dispute the report of findings.

New §9.263 describes requirements for conducting an informal review and administrative hearing to dispute the report of findings made under §9.262.

The amendment to §9.266 clarifies that DADS may impose a directed plan of correction or vendor hold as a result of an inspection or survey and describes the circumstances under which that action will be taken.

The amendment to §9.268 corrects references and describes the process by which a program provider may request an informal reconsideration and an administrative hearing if DADS proposes to terminate a provider agreement.

New §9.270 provides that DADS suspends payments owed to a program provider if DADS is notified by the Texas Health and Human Services Commission's Office of the Inspector General of receipt of reliable evidence that the program provider is involved in fraud or willful misrepresentation under the Medicaid program.

In §9.203(90), a reference to the Texas Government Code was changed from §662.021 to §662.003(a) or (b) because it lists national holidays and state holidays that are not included in §662.021.

The agency recognized the need to include the word "Part" in §9.251(b)(3) and §9.252(4) and (5), to correct the citations to the Code of Federal Regulations.

The agency identified in §9.252(a)(7) that it is not necessary to include the phrase "with no intention of returning" regarding an individual discharged from the facility; therefore, the phrase has been deleted.

The agency recognized that §9.252(b) does not pertain to a program provider providing notice regarding personal funds and repeats the requirement to comply with certain federal regulations in §9.251(b)(3); therefore, the agency deleted §9.252(b) and reformatted the section.

The agency recognized the need to make changes in §9.256(c)(1)(B), regarding the title of pooled accounts. The agency deleted the word "Trustee," which does not need to appear in the title of a pooled account. The agency added "(Name of Facility)," because the name of the facility should be included in the title of a pooled account. Finally, the agency replaced "Individual" with "Resident," to identify it as a "Resident Trust Fund" to avoid confusion with an individual's separate account.

In §9.263, the agency clarified that the referenced notice is regarding a "failure to correct" not "correction failure."

DADS received written comments from the Texas Occupational Therapy Association, the Texas Coalition for Nurses in Advanced Practice, and one individual. A summary of the comments and the responses follows.

Comment: A commenter recommended that Advanced Practice Registered Nurses (APRNs) and Physician Assistants (PAs) be added in: 1) §9.203(46)(D) and (47)(D), as providers who may verify that an individual has a major dental or medical condition requiring treatment; and 2) §9.221(b)(3)(A), as providers who may prescribe a wheeled mobility system. The commenter also recommended adding definitions for an APRN and PA in §9.203.

Response: The agency declined to add an APRN or PA to the definition for "major dental treatment" or "major medical treatment" because the definition for "major medical and dental treatment" in the Texas Health and Safety Code, §597.001(6) expressly requires the opinion of a physician. Furthermore, to maintain consistency with the Health and Human Services Commission's rule in Title 1, Texas Administrative Code (TAC), §354.1040(e) the agency has not added an APRN or PA in §9.221(b)(3)(A) as providers who may prescribe a wheeled mobility system. 1 TAC §354.1040(e) requires a signed and dated physician's prescription to obtain prior authorization for a wheeled mobility system. Because the agency did not make the suggested changes, the agency did not add a definition for APRN or PA in §9.203.

Comment: A commenter expressed concern about §9.252(a)(7). The commenter stated that the rule conflicts with Social Security regulations regarding a program provider appointed as a representative payee. The rule also seems to allow an individual or LAR to request to withdraw all funds at any time for any reason, or at discharge from the facility when the individual has no intention of returning, even if the individual has been deemed incapable of managing the individual's funds or when the LAR has not been appointed as the representative payee. The commenter asked the agency to consider this concern and the conflict between §9.252(a)(7) and the Social Security regulations regarding a representative payee.

Response: The agency made changes in §9.252(a)(7) to clarify the statement a program provider must provide to each individual or LAR regarding what happens if the individual or LAR requests withdrawal of all personal funds managed by the program provider or if the individual is discharged from the facility. To clarify the requirement, the agency added a reference to §9.258, relating to Closing Trust Fund Accounts. Section 9.258(b) and (c), respectively, apply to a program provider if the individual or LAR requests withdrawal of all personal funds managed by the program provider or if the individual is discharged from the facility. The agency also added a reference to the federal regulations that apply if the program provider is the representative payee. Regarding the concern that an LAR may request to withdraw all funds managed by a program provider at any time, "LAR" is defined in §9.203 as a person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, managing conservator of a minor individual, a guardian of an adult individual, or legal representative of a deceased individual. Therefore, in §9.252(a)(7), an "LAR" must be a person legally authorized to act on behalf of the individual with respect to the individual's personal funds.

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §9.203

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 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; 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.

§9.203. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Active treatment--Continuous, aggressive, consistent implementation of a program of habilitation, specialized and generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program. The program must be directed toward:

(A) the acquisition or maintenance of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status.

(2) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual's IDT, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(3) Adult--A person who is 18 years of age or older.

(4) Affiliate--An employee or independent contractor of a provider applicant or a person with a significant financial interest in a provider applicant, including the following:

(A) if the provider applicant is a corporation, then each officer, director, stockholder with an ownership of at least 5 percent, subsidiary, and parent company;

(B) if the provider applicant is a limited liability company, then each officer, member, subsidiary, and parent company;

(C) if the provider applicant is an individual, then the individual's spouse, each partnership and each partner thereof of which the individual is a partner and each corporation in which the individual is an officer, director, or stockholder with an ownership of at least 5 percent;

(D) if the provider applicant is a partnership, then each partner and parent company; or

(E) if the provider applicant is a group of co-owners under any other business arrangement, then each owner, officer, director, or the equivalent thereof under the specific business arrangement, and each parent company.

(5) Applicant--A person seeking enrollment in the ICF/IID Program or seeking admission to a facility.

(6) Applied income--The portion of an individual's cost of care that the individual is responsible for paying. The amount of an individual's applied income is determined by the policies and procedures authorized by the Health and Human Services Commission and depends on the individual's earned and unearned income.

(7) Assignment--The transfer of rights, interests, and obligations of the program provider agreement from the program provider to another person.

(8) Aversive stimulus--A stimulus that is unpleasant, noxious, startling, or painful; is applied after an inappropriate behavior; and is intended to suppress the inappropriate behavior.

(9) Behavior intervention plan--A written plan prescribing the systematic application of behavioral techniques regarding an individual that, at a minimum, contains:

(A) reliable and representative baseline data regarding the targeted behavior;

(B) a specific objective to decrease or eliminate the targeted behavior;

(C) a functional analysis of the events which contribute to or maintain the targeted behavior;

(D) detailed procedures for implementing the plan;

(E) ongoing, written quantitative data of the targeted behavior;

(F) written descriptions of incidents of the targeted behavior including the individual's actions and staff interventions;

(G) methods for evaluating plan effectiveness;

(H) procedures for making necessary plan revisions at least annually; and

(I) a fading process for one-to-one supervision, if the individual is assigned an LON 9.

(10) Budgeted amount--The amount of cash that may be disbursed to an individual at regular intervals; for example, weekly, monthly, for discretionary spending without obtaining a sales receipt for the expenditure.

(11) Campus-based facility--A facility that is located on the grounds of a state supported living center or the ICF/IID Program component of Rio Grande State Center.

(12) CARE--DADS Client Assignment and Registration System, a database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.

(13) Certified capacity--The maximum number of individuals who may reside in a facility, as set forth in the facility's provider agreement.

(14) CFR (Code of Federal Regulations)--The compilation of federal agency regulations.

(15) Community Center--A community center established under the THSC, Chapter 534, Subchapter A.

(16) Community program provider--A program provider acting on behalf of a facility that is not a campus-based facility.

(17) CRCG (Community Resource Coordination Group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Health and Human Services Commission website at www.hhsc.state.tx.us/crcg/crcg.htm.

(18) DADS--The Department of Aging and Disability Services.

(19) Day--Calendar day, unless otherwise specified.

(20) Department--Department of Aging and Disability Services.

(21) Discharge--The absence, for a full day or more, of an individual from the facility in which the individual resides, if such absence is not during a therapeutic, extended, or special leave, as described in §9.226 of this subchapter (relating to Leaves).

(22) DPoC (directed plan of correction)--A plan developed by DADS sanction team that requires a program provider to take specified actions within specified time frames to correct the program provider's failure to meet one or more federal standards of participation (SoPs) or conditions of participation (CoPs) or lack of compliance with one or more state rules.

(23) Effortful task--A task directed by staff that requires physical effort by an individual performed after an inappropriate behavior, including required exercise, negative practice, and restitutional overcorrection.

(24) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

(A) an individual needing emergency medical care;

(B) an individual being removed from his residence by law enforcement;

(C) an individual leaving his residence without notifying staff and not being located; and

(D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(25) Excluded--Temporarily or permanently prohibited by a state or federal authority from participating as a provider in a federal health care program, as defined in 42 USC §1302a-7b(f).

(26) Exclusionary time-out--A procedure by which an individual is, after an inappropriate behavior, placed alone in an enclosed area in which positive reinforcement is not available and from which egress is physically prevented by staff until appropriate behavior is exhibited.

(27) Facility--An intermediate care facility for individuals with an intellectual disability or related conditions.

(28) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(29) Full day--A 24-hour period extending from midnight to midnight.

(30) Highly restrictive procedure--The application of an aversive stimulus, exclusionary time-out, physical restraint, a requirement to engage in an effortful task, or other technique with a similar degree of restriction or intrusion to manage an individual's inappropriate behavior.

(31) Hospice--An entity that is primarily engaged in providing care to terminally ill individuals and is approved by DADS to participate in the Medicaid Hospice Program in accordance with §30.30 of this title (relating to General Contracting Requirements).

(32) ICAP (Inventory for Client and Agency Planning)--A validated, standardized assessment that measures the level of supervision an individual requires and, thus, the amount and intensity of services and supports an individual needs.

(33) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(34) ICF/MR Program--ICF/IID Program.

(35) ID/RC Assessment Form--A form used by DADS for LOC determination and LON assignment.

(36) IDT (interdisciplinary team)--A group of people assembled by the program provider who possess the knowledge, skills, and expertise to assess an individual's needs and make recommendations for the individual's IPP. The group includes the individual, LAR, intellectual disability professionals and paraprofessionals and, with approval from the individual or LAR, other concerned persons.

(37) Individual--A person enrolled in the ICF/IID Program.

(38) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(39) IPP (individual program plan)--A plan developed by an individual's IDT that identifies the individual's training, treatment, and habilitation needs and describes services to meet those needs.

(40) IQ (intelligence quotient)--A score reflecting the level of an individual's intelligence as determined by the administration of a standardized intelligence test.

(41) LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, managing conservator of a minor individual, a guardian of an adult individual, or legal representative of a deceased individual.

(42) LOC (level of care)--A determination given by DADS to an individual as part of the eligibility process based on data submitted on the ID/RC Assessment Form.

(43) Local authority--An entity to which the Health and Human Services Commission's authority and responsibility described in TSHC §531.002(11) has been delegated.

(44) LON (level of need)--An assignment given by DADS to an individual upon which reimbursement for ICF/IID Program services is based. The LON assignment is derived from the service level score obtained from the administration of the ICAP to the individual and from selected items on the ID/RC Assessment Form.

(45) Long Term Care Plan--The plan required by THSC, §533.062, which is developed by DADS and specifies, in part, the capacity of the ICF/IID Program in Texas.

(46) Major dental treatment--A dental treatment, intervention, or diagnostic procedure that:

(A) has a significant recovery period;

(B) presents a significant risk;

(C) employs a general anesthetic; or

(D) in the opinion of the individual's physician, involves a significant invasion of bodily integrity that requires an incision or the extraction of bodily fluids that produces substantial pain, discomfort, or debilitation.

(47) Major medical treatment--A medical, surgical, or diagnostic procedure or intervention that:

(A) has a significant recovery period;

(B) presents a significant risk;

(C) employs a general anesthetic; or

(D) in the opinion of the individual's physician, involves a significant invasion of bodily integrity that requires an incision or the extraction of bodily fluids that produces substantial pain, discomfort, or debilitation.

(48) Medical necessity--The need for a treatment decision that is essential to avoid adversely affecting an individual's mental or physical health or the quality of care rendered.

(49) Mental retardation--Intellectual disability.

(50) MRA (mental retardation authority)--A local authority.

(51) MR/RC--ID/RC Assessment Form.

(52) Natural support network--Those persons, including family members, church members, neighbors, and friends, who assist and sustain an individual with supports that occur naturally within the individual's environment and that are not reimbursed or purposely developed by a person or system.

(53) Negative practice--A procedure in which an individual is required, after an inappropriate behavior, to repeatedly engage in an activity that is similar to the inappropriate behavior.

(54) Non-state operated facility--A facility for which the program provider is an entity other than DADS, such as a community center or private organization.

(55) Occupational therapist (OT)--A person licensed by the Texas Board of Occupational Therapy Examiners to practice occupational therapy, as defined in Texas Occupations Code §454.002(4).

(56) PDP (person-directed plan)--A plan of services and supports developed under the direction of an individual or LAR with the support of a local authority or program provider staff and other people chosen by the individual or LAR.

(57) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(58) Permanency Planning Review Screen--A screen in CARE that, when completed by a local authority, identifies community supports needed to achieve an individual's permanency planning outcomes and provides information necessary for approval of the individual's initial and continued residence in a facility.

(59) Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(60) Personal hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of an individual's body; or

(ii) normal access by an individual to a portion of the individual's body.

(B) Physical guidance or prompting of brief duration becomes a physical restraint if the individual resists the guidance or prompting.

(61) Petty cash fund--Personal funds managed by a program provider that are maintained for individuals' cash expenditures.

(62) Physical restraint--A manual method, or a physical or mechanical device, material, or equipment attached or adjacent to an individual's body that the individual cannot remove easily, that restricts freedom of movement or normal access to an individual's body. This term includes a personal hold.

(63) Physical therapist (PT)--A person licensed by the Texas Board of Physical Therapy Examiners to practice physical therapy, as defined in Texas Occupations Code §453.001(4).

(64) Pooled account--A trust fund account containing the personal funds of more than one individual.

(65) Professional--A person who is licensed or certified by the State of Texas in a health or human services occupation or who meets DADS criteria to be a case manager, service coordinator, qualified intellectual disability professional, or certified psychologist as described in §5.161 of this title (relating to TDMHMR-Certified Psychologist).

(66) Program provider--An entity with whom DADS has a provider agreement.

(67) Provider agreement--A written agreement between DADS and a program provider that obligates the program provider to deliver ICF/IID Program services.

(68) Provider applicant--An entity seeking to participate as a program provider.

(69) Psychoactive medication--Any medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect upon the central nervous system for the purposes of influencing and modifying behavior, cognition, or affective state.

(70) Qualified intellectual disability professional (QIDP)--A person with at least a bachelor's degree who has at least one year of experience working with persons with an intellectual disability or related conditions.

(71) Qualified rehabilitation professional (QRP)--A person who holds one or more of the following certifications in good standing:

(A) certification as an assistive technology professional or a rehabilitation engineering technologist issued by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA);

(B) certification as a seating and mobility specialist issued by RESNA; or

(C) certification as a rehabilitation technology supplier issued by the National Registry of Rehabilitation Technology Suppliers.

(72) Related condition--Consistent with 42 CFR §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with intellectual disability, and requires treatment or services similar to those required for individuals with intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(73) Required exercise--A procedure in which an individual, after an inappropriate behavior, performs or is guided by staff to perform a series of physical movements that are incompatible with the inappropriate behavior.

(74) Restitutional overcorrection--A procedure in which an individual is required to correct the consequences of an inappropriate behavior by performing a task that improves the individual's environment.

(75) Sales receipt--A written statement issued by the seller that includes:

(A) the date it was created; and

(B) the cost of the item or service.

(76) Separate account--A trust fund account containing the personal funds of only one individual.

(77) Specially constituted committee--A committee designated by the program provider in accordance with 42 CFR §483.440(f)(3) that consists of staff, LARs, individuals (as appropriate), qualified persons who have experience or training in contemporary practices to change an individual's inappropriate behavior, and persons with no ownership or controlling interest in the facility. The committee is responsible, in part, for reviewing, approving, and monitoring individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to individuals' safety and rights.

(78) SSI--Supplemental Security Income.

(79) State-operated facility--A facility for which DADS is the program provider.

(80) TAC (Texas Administrative Code)--A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(81) TDHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS, except in the context of Medicaid eligibility it refers to the Health and Human Services Commission.

(82) THSC (Texas Health and Safety Code)--Texas statutes relating to health and safety.

(83) Third Party--An individual, entity, or program other than DADS or the program provider, that is or may be liable to pay all or part of the expenditures for ICF/IID Program services, including:

(A) a commercial insurance company offering health or casualty insurance to individuals or groups (including both experience-rated insurance contracts and indemnity contracts);

(B) a profit or nonprofit prepaid plan offering either medical services or full or partial payment for services; and

(C) an organization administering health or casualty insurance plans for professional associations, unions, fraternal groups, employer-employee benefit plans, and any similar organization offering these payments or services, including self-insured and self-funded plans.

(84) Trust fund account--An account at a financial institution in the program provider's control that contains personal funds.

(85) Unclaimed personal funds--Personal funds managed by the program provider that have not been transferred to the individual or LAR within 30 days after the individual's discharge.

(86) Unidentified personal funds--Personal funds managed by the program provider for which the program provider cannot identify ownership.

(87) USC (United States Code)--A compilation of statutes enacted by the United States Congress.

(88) Vendor hold--Temporary suspension of ICF/IID payments from DADS to a program provider.

(89) Wheeled mobility system--An item of durable medical equipment that is a customized, powered, or manual mobility device or a feature or component of the device, including the following:

(A) seated positioning components;

(B) powered or manual seating options;

(C) specialty driving controls;

(D) multiple adjustment frame;

(E) nonstandard performance options; and

(F) other complex or specialized components.

(90) Working day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (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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Kenneth L. Owens
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For further information, please call: (512) 438-3734

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DIVISION 2. PROVIDER ENROLLMENT

40 TAC §9.207, §9.208

The amendments are 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 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; 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.

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DIVISION 3. PROVIDER ADMINISTRATIVE REQUIREMENTS

40 TAC §9.216

The repeal 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 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; 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.

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DIVISION 4. PROVIDER SERVICE REQUIREMENTS

40 TAC §9.221, §9.225

The amendment and new section are 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 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; 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.

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40 TAC §9.225

The repeal 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 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; 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.

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DIVISION 6. PERSONAL FUNDS

40 TAC §§9.251, 9.252, 9.256, 9.262, 9.263

The amendments and new sections are 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 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; 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.

§9.251. Protecting Individuals' Personal Funds.

(a) A program provider must implement this division according to the generally accepted accounting principles of the American Institute of Certified Public Accountants.

(b) A program provider must develop and implement written policies and procedures regarding personal funds that protect the financial interest of an individual and, at a minimum, require the program provider:

(1) to instruct an individual in handling personal funds consistent with the individual's abilities and understanding;

(2) to allow an individual to hold and manage personal funds to the extent of the individual's abilities; and

(3) to comply with 20 CFR Part 404, Subpart U, and 20 CFR Part 416, Subpart F, if the Social Security Administration has appointed the program provider as the representative payee.

(c) A program provider must reimburse an individual for personal funds lost or stolen while the funds are under the program provider's control.

§9.252. Notice Regarding Personal Funds.

At the time of admission to a facility, and if changes to services or charges occur, a program provider must provide each individual or LAR with written notification containing the following information:

(1) a written explanation of §9.253(d) and (e) of this division (relating to Determining Management of Personal Funds), which describe who may manage personal funds;

(2) a list of items and services included in the program provider's ICF/IID Program reimbursement rate for which the individual will not be charged;

(3) a list of items and services for which the individual may be charged;

(4) a statement that the individual or LAR may have the Social Security Administration appoint a representative payee to receive the individual's federal benefits in accordance with 20 CFR Part 404, Subpart U, and 20 CFR Part 416, Subpart F;

(5) a statement that, if the Social Security Administration has appointed the program provider as the representative payee for an individual's social security benefits, the provider must comply with 20 CFR Part 404, Subpart U, and 20 CFR Part 416, Subpart F;

(6) a statement that, if the program provider manages the individual's personal funds, the program provider will make available the individual's personal funds record, as described in §9.256(h) of this division (relating to Program Provider-Managed Personal Funds), upon the request of the individual or LAR within 72 hours after receiving a request for a copy of the personal funds record from the individual or LAR; and

(7) a statement that, if the individual or LAR requests withdrawal of all personal funds managed by the program provider, or if the individual is discharged from the facility, the program provider will disburse funds managed by the program provider in accordance with §9.258 of this division (relating to Closing Trust Fund Accounts) and, if the program provider is the representative payee, in accordance with 20 CFR Part 404, Subpart U, and 20 CFR Part 416, Subpart F.

§9.256. Program Provider-Managed Personal Funds.

(a) Accounting for personal funds. If a program provider manages personal funds, the program provider must comply with this section and ensure that:

(1) a complete accounting of personal funds entrusted to the program provider is maintained;

(2) personal funds are not commingled with program provider funds or the funds of any person other than another individual for whom the program provider manages personal funds; and

(3) personal funds are only expended for the individual's use and benefit and in a manner and for purposes determined to be in the individual's best interest.

(b) Account requirements. A program provider must manage personal funds in a trust fund account.

(1) The program provider may manage personal funds in a pooled account or a separate account. If the program provider chooses a pooled account, an individual may request and receive a separate account. The program provider may also maintain some personal funds in a petty cash fund.

(2) Trust fund accounts must be insured under federal or state law.

(3) The program provider must retain all statements from financial institutions regarding trust fund accounts.

(4) The program provider must reconcile such statement with the account ledger as described in subsection (c)(1)(A) and (2)(A) of this section and personal ledger as described in subsection (h)(1)(F) of this section within 30 days after receiving such statement.

(c) Types of accounts.

(1) Pooled accounts. If a program provider manages personal funds in a pooled account, the program provider must:

(A) maintain an account ledger that separately identifies each financial transaction, including:

(i) the name of the individual for whom the transaction was made;

(ii) the date and amount of the transaction, including interest; and

(iii) the balance after the transaction;

(B) title the account "Name of facility), Resident Trust Fund Account" or a similar title that shows a fiduciary relationship exists between an individual and the program provider; and

(C) if the personal funds of Medicaid and private-pay individuals are pooled, obtain a signed, dated statement from private pay individuals allowing the program provider to release financial information to DADS, Health and Human Services Commission, Texas Attorney General's Medicaid Fraud Control Unit, and US Department of Health and Human Services.

(2) Separate accounts. If a program provider manages personal funds in a separate account, the program provider must:

(A) maintain an account ledger that identifies each financial transaction, including:

(i) the date and amount of the transaction, including interest; and

(ii) the balance after the transaction; and

(B) title the account "(Program Provider's Name), (Individual's Name) Trust Fund Account" or a similar title that shows a fiduciary relationship exists between an individual and the program provider.

(d) Petty cash fund. If a program provider maintains some personal funds in a petty cash fund, the program provider must:

(1) set a limit on the amount maintained in the petty cash fund;

(2) set a limit on the amount of a single expenditure from the petty cash fund;

(3) maintain a petty cash fund ledger that includes:

(A) the date and amount of each transaction;

(B) the name of the individual for whom each transaction was made; and

(C) the balance after each transaction.

(e) Interest. If personal funds accrue interest, a program provider must prorate and distribute the interest earned to each participating individual.

(f) Depositing personal funds. A program provider must deposit in a trust fund account all funds that it receives on behalf of the individual. If the deposit slip documents deposits for more than one individual, the program provider must indicate on the deposit slip the amount allocated to each individual.

(g) Access to personal funds.

(1) An individual's IDT must, based on the individual's assessment described in §9.253 of this division (relating to Determining Management of Personal Funds), determine:

(A) if there is a need for a budgeted amount and, if so, set the amount; and

(B) if there is a need to restrict the individual's use of personal funds and, if so, make a recommendation to the specially constituted committee.

(2) If the individual's IDT makes a recommendation to the specially constituted committee to restrict an individual's use of to personal funds, the specially constituted committee's decision is documented, signed by the specially constituted committee members, and made a part of the individual's IPP.

(h) Personal funds record.

(1) A program provider must maintain a personal funds record for each individual that includes:

(A) the name of the individual;

(B) the name of the individual's LAR and representative payee, as applicable;

(C) the date of the individual's admission to the facility;

(D) the individual's budgeted amount;

(E) the account number and location of all accounts in which the individual's personal funds are managed;

(F) a personal ledger that includes the date and amount of each transaction and the balance after each transaction; and

(G) any contribution acknowledgment as described in §9.261 of this division (relating to Contributions).

(2) The personal ledger reconciled in accordance with subsection (b)(4) of this section must not be less than zero. If reconciled balance is less than zero, the program provider must deposit in and credit to the individual's trust fund account the amount that increases such balance to zero.

(3) At least quarterly, and within 72 hours after receiving a request from the individual or LAR, the program provider must provide to the individual or LAR a copy of the individual's personal ledger.

(i) Documenting expenditures and deposits.

(1) Expenditures.

(A) Except as provided in subparagraph (C) of this paragraph, a program provider must retain a sales receipt for each expenditure.

(i) If a sales receipt documents an expenditure for more than one individual, the program provider must indicate on the sales receipt the amount allocated to each individual.

(ii) If a sales receipt does not include the specific item or service purchased or the name of the seller, the program provider must attach such documentation.

(B) The program provider must explain each expenditure to the individual and request that the individual sign the receipt. If the program provider determines that the individual does not understand the explanation, the individual does not sign the receipt, or the individual's signature is illegible, a witness to the expenditure must sign the receipt. The witness must not be responsible for managing personal funds or responsible for supervising persons performing such duties.

(C) A sales receipt is not required for an expenditure:

(i) if the program provider makes a purchase on behalf of an individual from a vending machine;

(ii) if an expenditure is within the individual's budgeted amount and the program provider obtains an acknowledgment signed by the individual indicating that the funds were received;

(iii) if the program provider releases funds in response to a written request in accordance with §9.257 of this division (relating to Requests for Personal Funds from Trust Fund Accounts); or

(iv) if the program provider obtains written approval for alternative documentation from DADS before the expenditure is made.

(2) Deposits. Except for deposits made electronically, a program provider must retain a deposit slip issued by the financial institution for each deposit.

§9.263. Informal Review and Administrative Hearing.

(a) Informal review.

(1) A program provider that disputes the report of findings described in §9.262(d) of this division (relating to Trust Fund Monitoring and Audits) may request an informal review. The purpose of an informal review is to provide for the informal and efficient resolution of the matters in dispute. An informal review is conducted according to the following procedures:

(A) DADS must receive a written request for an informal review by United States (U.S.) mail, hand delivery, special mail delivery, or fax no later than 15 days after the date on the written notification of the report of findings described in §9.262(d) of this division.

(i) If the 15th day is a Saturday, Sunday, national holiday, or state holiday, then the first working day after the 15th day is the final day the written request is accepted.

(ii) A request for an informal review that is not received by the stated deadline is not accepted.

(B) A program provider must submit a written request for an informal review:

(i) by U.S. mail to DADS Trust Fund Monitoring Unit, Attn: Manager, P.O. Box 149030, Mail Code W-340, Austin, Texas 78714-9030;

(ii) hand delivery or special mail delivery to 701 West 51st Street, Austin, Texas 78751-2321; or

(iii) by fax to (512) 438-3639.

(C) A program provider must, with its request for an informal review:

(i) submit a concise statement of the specific findings it disputes;

(ii) specify the procedures or rules that were not followed;

(iii) identify the affected cases;

(iv) describe the reason the findings are being disputed; and

(v) include supporting information and documentation that directly demonstrates that a disputed finding is not correct.

(D) DADS does not grant a request for an informal review that does not meet the requirements of this subsection.

(2) Upon receipt of a request for an informal review, the Trust Fund Monitoring Unit Manager coordinates the review of the information submitted.

(A) Additional information may be requested by DADS and must be received in writing by U.S. mail, hand delivery, special mail, or fax in accordance with paragraph (1)(B)(i) - (iii) of this subsection no later than 15 days after the date the program provider receives the written request for additional information. If the 15th day is a Saturday, Sunday, national holiday, or state holiday, then the first working day after the 15th day is the final day the additional information is accepted.

(B) DADS sends its written decision to the program provider by certified mail, return receipt requested.

(i) If the original findings are upheld, DADS continues the schedule of deficiencies and requirement for corrective action.

(ii) If the original findings are reversed, DADS issues a corrected schedule of deficiencies with the written decision.

(iii) If the original findings are revised, DADS issues a revised schedule of deficiencies including any revised corrective action.

(iv) If the original findings are upheld or revised, the program provider may request an administrative hearing in accordance with subsection (b) of this section.

(v) If the original findings are upheld or revised and the program provider does not request an administrative hearing, the program provider has 60 days from the date of receipt of the written decision to complete the corrective actions.

(I) If the program provider does not complete the corrective actions by that date, DADS may impose a vendor hold. If DADS imposes a vendor hold, the program provider may request an administrative hearing in accordance with subsection (b)(5) of this section.

(II) If the failure to correct is upheld, DADS continues the vendor hold until the program provider completes the corrective action.

(b) Administrative hearing.

(1) The program provider must submit a written request for an administrative hearing under this section to: HHSC Appeals Division, P.O. Box 149030, Mail Code W-613, Austin, Texas 78714-9030.

(2) The written request for a formal hearing must be received within 15 days after:

(A) the date on the written notification of the report of findings described in section §9.262(d) of this division; or

(B) the program provider receives the written decision sent as described in subsection (a)(2)(B) of this section.

(3) An administrative hearing is conducted in accordance with 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(4) No later than 60 days after a final determination is issued as a result of an administrative hearing requested by a program provider under §9.262(e)(2) of this division or subsection (a)(2)(B)(iv) of this section, the program provider must complete any corrective action required by DADS or be subject to a vendor hold on payments due to the program provider under the provider agreement until the program provider completes corrective action. If DADS imposes a vendor hold, the program provider may request an administrative hearing in accordance with paragraph (5) of this subsection. If the failure to correct is upheld, DADS continues the vendor hold until the program provider completes the corrective action.

(5) If DADS imposes a vendor hold under §9.262(g) of this division, subsection (a)(2)(B)(v) of this section, or paragraph (4) of this subsection, the program provider may request an administrative hearing within 15 days after receiving notice of the failure to correct and the vendor hold. The administrative hearing is limited to the issue of whether the program provider completed the corrective 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.

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

TRD-201304581
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: November 4, 2013
Proposal publication date: April 19, 2013
For further information, please call: (512) 438-3734

♦ ♦ ♦

DIVISION 7. PROVIDER AGREEMENT SANCTIONS

40 TAC §§9.266, 9.268, 9.270

The amendments and new section are 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 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; 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 October 15, 2013.

TRD-201304582

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: November 4, 2013
Proposal publication date: April 19, 2013
For further information, please call: (512) 438-3734

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 7, Part 5, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops. Chapter 85, Subchapter A contains Division 1, concerning General Provisions; Division 2, concerning Pawnshop License; Division 3, concerning Pawnshop Employee License; Division 4, concerning Operation of Pawnshops; Division 5, concerning Inspections and Examination; Division 6, concerning License Revocation, Suspension, and Surrender; and Division 7, concerning Enforcement; Penalties.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this subchapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201304821
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 23, 2013

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Adopted Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code (TAC), Title 7, Part 5, Chapter 88, concerning Consumer Debt Management Services, comprised of §§88.101 - 88.109, 88.201, 88.202, 88.302, and 88.304 - 88.307, pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC Part 5, Chapter 88 was published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 6044). The commission received no comments in response to that notice.

As a result of internal review by the agency, the commission has determined that certain technical corrections are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC Chapter 88 published elsewhere in this issue of the *Texas Register.*

Subject to the proposed amendments to Chapter 88, the commission finds that the reasons for initially adopting these rules continue to exist and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Part 5, Chapter 88.

TRD-201304726
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 18, 2013

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Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of 7 TAC §§91.402 (Insurance for Members), 91.403 (Debt Cancellation Products; Federal Parity), 91.404 (Purchasing Assets and Assuming Deposits and Liabilities of Another Financial Institution), 91.406 (Credit Union Service Contracts), 91.407 (Electronic Notification), 91.408 (User Fee for Shared Electronic Terminal), 91.4001 (Authority to Conduct Electronic Operations), 91.4002 (Transactional Web Site Notice Requirement; and Security Review), 91.5001 (Emergency Closing), 91.5002 (Effect of Closing), and 91.5005 (Permanent Closing of an Office), as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5743).

The rules were reviewed as a result of the Credit Union Department's (Department's) general rule review.

The Commission received no comments with respect to these rules. The Commission and the Department finds that the reasons for initially adopting §§91.402 - 91.404, 91.406 - 91.408, 91.4001, 91.4002, 91.5001, 91.5002, and 91.5005 continue to exist and readopts these rules without changes pursuant to the requirements of Texas Government Code, §2001.039.

TRD-201304737

Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 21, 2013

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Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs ("Department") has completed its rule review of 10 TAC Chapter 5, Subchapter E, §5.501 and §5.528, concerning Background and Health and Safety, pursuant to Texas Government Code, §2001.039. The Department published a Notice of Intent to Review these rules in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5313).

Public comments were accepted from August 16, 2013, through September 16, 2013, with comments received from Stella Rodriguez of the Texas Association of Community Action Agencies.

§5.528. Health and Safety.

COMMENT SUMMARY: Commenter requests that Health and Safety have a maximum of 30% of the funds for Materials, Labor, and Program Support budgets. The current maximum is 20%. Commenter notes that, due to new ASHRAE 62.2 requirements, increased Health and Safety funds are needed in units that require added ventilation.

STAFF RESPONSE: The 20% cap on Health and Safety funds has been approved in the State's current Department of Energy Health and Safety Plan. At this time, Staff recommends no change to the 20% maximum on Health and Safety funds in the TAC.

BOARD RESPONSE: The Board accepts Staff's recommendation.

These rules were initially adopted to define the background and health and safety guidelines for the Department's Weatherization Assistance Program. As a result of this review, the Department finds that the reasons for adopting Chapter 5, Subchapter E, §5.501 and §5.528 continue to exist and readopts the sections without changes in accordance with the requirements of the Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-201304719
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 18, 2013

♦ ♦ ♦

The Texas Department of Housing and Community Affairs ("Department") has completed its rule review of 10 TAC Chapter 5, Subchapter F, §§5.607 - 5.609, concerning Space Heater Requirements, Vehicle Procurement Procedures, and Grant Guidance on Leasing of Vehicles, pursuant to Texas Government Code §2001.039. The Department published Notice of Intent to Review these rules in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5313).

The purpose of the review was to assess whether the reasons for adopting the rules continue to exist. No comments were received regarding the review.

These rules were initially adopted because the Department's Weatherization Assistance Program Department of Energy follows regulations specific to the Department of Energy, relating to Space Heater Requirements and vehicle procurement and leasing. As a result of this review, the Department finds that the reasons for adopting Chapter 5, Subchapter F, §§5.607 - 5.609 continue to exist and readopts the sections without changes in accordance with the requirements of the Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-201304720
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 18, 2013

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

In accordance with the Texas Government Code §2001.039, the Texas Department of Insurance, Division of Workers' Compensation (Division) considered readoption, revision, and repeal of all sections within 28 TAC Chapter 114, concerning Self-Insurance. The notice of proposed rule review was published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3360).

The Division has determined that the reasoned justification to adopt the sections pursuant to Texas Government Code §2001.033 continues to exist. The Division received no public comment on the sections within this chapter. Accordingly, the Division readopts the following rules in this chapter:

Chapter 114. Self-Insurance

§114.1. Purpose.

§114.2. Definitions.

§114.3. Application Form and Financial Information Requirements.

§114.4. Security Deposit Requirements.

§114.5. Excess Insurance Requirements.

§114.6. Safety Program Requirements.

§114.7. Certification Process.

§114.8. Refusal To Certify an Employer.

§114.9. Required Safety Program Inspections.

§114.10. Claims Contractor Requirements.

§114.11. Audit Program.

§114.12. Required Reporting.

§114.13. Required Notices to the Director.

§114.14. Impaired Employer.

§114.15. Revocation or Suspension of Certificate of Authority To Self-Insure.

This concludes the review of 28 TAC Chapter 114. Any proposed changes to the sections within 28 TAC Chapter 114 as a result of this or future reviews will be done in accordance with the Administrative Procedure Act which governs rule proposals and adoptions.

TRD-201304794
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: October 22, 2013

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: 1 TAC §81.116(a)

The formula for estimating turnout for the 2014 [~~2012~~] primary elections is:

$$A \times B + C = D$$

Where:

A = the percentage of voter turnout for the office that received the most votes in the 2010 [~~2008~~] party primary (percentage is the sum of all votes cast for the office [~~fofice~~] that received the most votes in the 2010 [~~2008~~] primary divided by the number of registered voters).

B = the number of registered voters as of October 2013 [~~2011~~].

C = 25% of the number resulting when you multiply A x B.

D = Preliminary Estimated 2014 [~~2012~~] Turnout.

Figure: 1 TAC §81.125(a)

Number of Direct Record Electronic (DRE) Units and/or Precinct Ballot Counters Estimated

Voter Turnout [~~Turnour~~] Per Voting Precinct	DRE Units	Precinct Ballot Counters
300 or fewer	2	1
301 - 450	3	1
451 - 600	4	1
601 - 750	5	1
751 - 900	6	1
For each additional 300 voters	2	0

Figure: 1 TAC §81.152(a)

The formula for estimating turnout for the 2014 [~~2012~~] joint primary elections is:

$$(A \times B) + C + D = E$$

Where:

A = the percentage of voter turnout for the office that received the most votes in the 2010 [~~2008~~] party primary (percentage is the sum of all votes cast for the office that received the most votes in the 2010 [~~2008~~] primary divided by the number of registered voters).

B = the number of registered voters as of October 2013 [~~2011~~].

C = 25% of the number resulting when you multiply A x B.

D = Other party's estimated turnout figure.

E = Preliminary Estimated 2014 [~~2012~~] Turnout for Joint-Primary Election.

Figure: 7 TAC §89.803(a)

REQUEST FOR PROPERTY TAX LOAN PAYOFF STATEMENT

Date of request:	Requested balance date: *(7– 30 days from request date)*

REQUESTING LIENHOLDER INFORMATION:

Lienholder name:	Lienholder address:
(Optional: Lienholder phone/fax number:)	(Optional: Lienholder e-mail address:)
(Optional: Mortgage servicer name:)	(Optional: Mortgage servicer address:)
(Optional: Mortgage servicer phone/fax number:)	(Optional: Mortgage servicer e-mail address:)

PROPERTY TAX LENDER INFORMATION:

Property tax lender name:	(Optional: Property tax lender address:)

BORROWER / PROPERTY INFORMATION:

Borrower name:	Address of property subject to property tax loan:
(Optional: Co-borrower name:)	Tax account or property identification number: (or Loan number:)

We (the lienholder) request a statement of the total amount due under the property tax loan on the property listed above, as of the requested balance date. We hold an existing recorded lien on the property.

(See other side for additional information.)

We certify that *(lienholder should check one or more of the following)*:

☐ We are requesting a payoff statement for informational purposes under Section 32.06(a-6) of the Texas Tax Code. The payoff statement should be delivered to us within 7 business days of when you receive this request, unless Title 7, Section 89.802 of the Texas Administrative Code provides otherwise.

☐ We are requesting a payoff statement because we have the right to pay off the property tax loan under Section 32.06(f) of the Texas Tax Code. Within the last six months, we received notice that the property tax loan was delinquent for at least 90 consecutive days.

☐ We are requesting a payoff statement because we have the right to pay off the property tax loan under Section 32.06(f-1) of the Texas Tax Code. We are the holder of a preexisting first lien on the property that was delinquent for at least 90 consecutive days and referred to a collection specialist. Within the last six months, we notified the property tax lender of the delinquency in compliance with the Texas Tax Code.

☐ We are requesting a payoff statement because we have the right to pay off the property tax loan under Section 32.065(b-1) of the Texas Tax Code. The property owner defaulted on the property tax loan and received a notice of acceleration.

Please send the written payoff statement to the following:

☐ E-mail address: _____

☐ Fax number: _____

☐ Mailing address: _____

_____

_____

Lienholder's signature: _____

Printed name: _____

Title and company: _____

Figure: 7 TAC §89.803(b)

PROPERTY TAX LOAN PAYOFF STATEMENT

Date of payoff statement: _____

PROPERTY TAX LENDER INFORMATION:

Property tax lender name:	Property tax lender address:
(Optional: Property tax lender phone/fax number:)	(Optional: Property tax lender e-mail:)

BORROWER / PROPERTY INFORMATION:

Borrower name:	Address of property subject to property tax loan:
(Optional: Co-borrower name:)	Tax account or property identification number: (or Loan number:)

PAYOFF INFORMATION:

Total payoff amount:	Balance date:

ITEMIZATION OF TOTAL PAYOFF AMOUNT:

The total payoff amount is the total amount due under the property tax loan, as of the balance date stated above.

The total payoff amount includes:

Unpaid principal balance	$ _____
Interest as of balance date	$ _____
(Additional fee description	$ _____)
(Additional fee description	$ _____)
Total payoff amount	$ _____

Next payment due date:	Per diem interest after balance date:

(Optional: **Certain additional charges may be added to the property tax loan after the date of this statement.)**

(See other side for additional information.)

Purpose of payoff statement issued *(check one)*:

☐ We are providing this payoff statement for informational purposes under Texas Tax Code, §32.06(a-6). This information does not create a right to pay off the property tax loan.

☐ We are providing this payoff statement because of a statutory right to pay off the property tax loan under Texas Tax Code, §32.06(f), (f-1) or §32.065(b-1).

☐ We are providing this payoff statement for another purpose.

Property tax lender's signature: _____

Printed name: _____

Title and company: _____

Figure: 19 TAC §109.3001(c)(1)

IDEA-B LEA
MAINTENANCE OF EFFORT (MOE)
GUIDANCE HANDBOOK

FOR FISCAL YEAR 2014 AND BEYOND

Version 1.0 (09/2013)

Contents

Introduction

For a local educational agency (LEA) to be eligible to receive Individuals with Disabilities Education Act, Part B (IDEA-B) grant funds, the LEA must meet the federal fiscal accountability requirement known as maintenance of effort (MOE), defined under Title 34 of the Code of Federal Regulations (34 CFR) 300.203.

This handbook provides Texas LEAs with guidance on the process of complying with the IDEA-B LEA MOE requirement beginning with fiscal year 2014 (school year 2013–2014).

Relationship of Maintenance of Effort (MOE) to Other IDEA-B Fiscal Compliance Requirements

Prior to defining and providing specific guidance on compliance with IDEA-B LEA MOE, it is helpful to understand the relationship of MOE to other IDEA-B fiscal compliance requirements.

MOE is only one of several fiscal compliance requirements governing the expenditure of federal funds on students with disabilities. Others include excess cost and coordinated early intervening services (CEIS) requirements. To assist LEAs, this handbook includes definitions of these fiscal compliance requirements. Additional resources on those topics are listed below. It is important to note that the excess cost and CEIS requirements apply to the federal IDEA funds while the MOE and voluntary MOE reduction requirements relate to the expenditure of state and local funds. Voluntary MOE reduction is further described in the Voluntary Reduction of MOE section.

Before budgeting both federal and state and/or local funds for services to identified students with disabilities, the LEA should first review and determine the requirements for excess cost, CEIS, voluntary reduction, and MOE.

Definition of Excess Costs

The excess cost requirement mandates how much the LEA must expend in state and local funds before it may begin expending IDEA-B grant funds. The excess cost requirement focuses on per-student spending in special education as compared to per-student spending across all students, whereas the IDEA-B LEA MOE requirement focuses on special education spending in the current year as compared to special education spending in the previous year.

Per 34 CFR 300.202(a)(2), IDEA-B funds "Must be used only to pay the **excess** costs of providing **special** education and related services to children with disabilities" [emphasis added]. Per 34 CFR 300.16, "Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student." Per 34 CFR, Appendix A to Part 300, "An LEA must spend at least the average annual per student expenditure on the education of an elementary school or secondary school child with a disability before funds under Part B of the Act are used to pay the excess costs of providing special education and related services."

Definition of Coordinated Early Intervening Services (CEIS)

Spending of IDEA-B grant funds on CEIS is related to IDEA-B LEA MOE in that when an LEA is eligible and intends to voluntarily reduce MOE, a voluntary reduction in MOE must be planned for at the same time as any funds are set aside for CEIS. This relationship is further described in the Relationship between Voluntary Reduction of MOE and CEIS section.

CEIS is defined in 34 CFR 300.226(a) as services "for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment."

An LEA may use up to 15% of IDEA-B funds received by the LEA for any fiscal year to develop and implement CEIS. In accordance with 34 CFR 300.646, if the LEA is identified with significant proportionality, the LEA is required to reserve the maximum amount of funds (i.e., 15% of the IDEA-B allocation) to serve children in the LEA with CEIS, particularly children in those groups that were over identified. In other words, if the percentage of children of certain racial or ethnic backgrounds who are identified as disabled is significantly greater than the percentage that children of

those racial and ethnic backgrounds represent of the LEA's entire population, the LEA is required to set aside the maximum amount for CEIS, particularly for serving those children. See the Significant Disproportionality page of the TEA website for additional information on significant disproportionality.

Additional Resources Related to Other IDEA-B Fiscal Compliance Requirements

In addition to the information provided in this MOE handbook, the Division of Federal Fiscal Compliance and Reporting's (FFCR's) IDEA-B MOE page of the TEA website provides links to the IDEA-B Excess Cost Guidance and IDEA-B CEIS Guidance Handbook. Additional resources will be linked to FFCR's IDEA-B MOE page of the TEA website as they become available. To receive an alert when those resources become available, subscribe to TEA's Grants Administration and Federal Program Compliance listserv. A notice will be sent via that listserv when new resources are posted.

Definition of LEA MOE

34 CFR 300.203(a) defines LEA MOE for IDEA-B as follows: "Funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year." 34 CFR 300.203(b) requires TEA to ensure that the LEA spent (for that purpose) at least the same total or per capita amount of local funds only or the combination of state and local funds.

In other words, an LEA that accepts IDEA-B funds is required under IDEA-B to expend, for services to students with disabilities, at least an amount equal to 100% of the state and/or local funds it expended on students with disabilities during the previous year. Federal law provides four methods of demonstrating compliance (or "maintaining effort"), as described in the Methods of Determining Compliance section.

Purpose of LEA MOE

In awarding grant funds for education purposes, the federal government does not intend for LEAs to use federal funds as the primary means of providing services to students with disabilities. The LEA agrees when it accepts the IDEA-B funds that it will expend nonfederal (that is, state and local) funds in accordance with two federal fiscal accountability requirements: (i) supplement, not supplant, and (ii) MOE.

The supplement, not supplant provision of IDEA-B (34 CFR 300.202(a)(3)) mandates that state and local funds may not be diverted to other purposes simply because federal funds are available. The MOE requirement ensures, moreover, that the LEA continues to expend its state and/or local funds at the same level from year to year, either in the aggregate or on a per-pupil basis, instead of limiting services to what can be provided using federal dollars.

IDEA-B LEA MOE Methodology

This handbook includes, in Appendix 3, a detailed description of the steps the Texas Education Agency (TEA) takes to calculate an LEA's compliance with the IDEA-B LEA MOE requirement. Appendix 4 contains information on an LEA MOE Determination Calculation Tool available to assist LEAs in planning for satisfying the MOE compliance requirement. Please note, beginning in fiscal year 2014, the PIC 99 allocation (which is used to allocate PIC 99 expenditures among specific organizations and programs within the LEA) is not used in the IDEA-B LEA MOE calculation. LEAs may use the calculation tool described in Appendix 4 to calculate their own compliance for fiscal year 2014 and beyond.

Compliance with IDEA-B MOE Requirement

Per 34 CFR 300.203, LEAs that expend IDEA-B funds must comply with the IDEA-B MOE requirement. This section describes the methods of determining compliance, the consequences of noncompliance, and allowable federal exceptions and state reconsiderations to the MOE requirement.

Methods of Determining Compliance

To meet the IDEA-B MOE requirement in any fiscal year, an LEA is required to expend state and/or local funds on special education at 100% of the level at which it expended state and/or local funds on special education in the

preceding fiscal year. 34 CFR 300.203 provides the following four methods for determining whether an LEA has met the IDEA-B MOE requirement:

- The *total* amount the LEA expended in *state and local funds* must equal or exceed the amount it expended from those sources for special education during the previous fiscal year.
- The *per-pupil* amount the LEA expended in *state and local funds* must equal or exceed the amount it expended per capita from those sources for special education during the previous fiscal year.
- The *total* amount the LEA expended in *local funds* must equal or exceed the amount it expended from that source for special education during the previous fiscal year.
- The *per-pupil* amount the LEA expended in *local funds* must equal or exceed the amount it expended per capita from that source for special education during the previous fiscal year.

An LEA only needs to pass one of the four tests to be compliant.

If the LEA was noncompliant in maintaining effort in the preceding year, then the current year must be compared to the second preceding year' rather than the preceding year when the LEA was noncompliant. (See the USDE guidance from April 4, 2012, posted on the Division of Federal Fiscal Compliance and Reporting IDEA-B MOE page of the TEA website.) For example, if the LEA was noncompliant in the fiscal year 2013 final determination, then the fiscal year 2014 determination must compare fiscal year 2014 to fiscal year 2012.

Consequences of Noncompliance

If an LEA fails all four tests, it will be notified of its preliminary determination of noncompliance and given the opportunity to respond by claiming allowable federal exceptions, voluntary MOE reduction, and/or requesting state reconsiderations.

If an LEA does not have sufficient allowable federal exceptions, a voluntary MOE reduction, and/or state reconsiderations to offset the decline in fiscal effort, the LEA **must refund** to TEA the amount by which the LEA failed to maintain effort (i.e., the difference between its prior and current year expenditures on students with disabilities after all applicable federal exceptions, voluntary MOE reduction, and state reconsiderations have been applied). Likewise, note that sufficient allowable federal exceptions, voluntary MOE reduction, and/or state reconsiderations may offset, or exceed, the entire decline in fiscal effort causing no refund to be required.

If the refund amount exceeds the LEA's IDEA-B maximum entitlement for the fiscal year under determination, the LEA will only be required to refund the amount of the LEA's maximum entitlement. **The repayment must be made from nonfederal funds or from funds for which accountability to the federal government is not required, that is, from state and/or local funds.**

Federal Exceptions to the MOE Requirement

As stated in 34 CFR 300.204, the LEA may reduce the level of its state and/or local expenditures below the level of those expenditures for the preceding fiscal year only if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State Education Agency (SEA), because the child—

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the SEA under 34 CFR 300.704(c)."

These federal exceptions, if applicable, reduce the IDEA-B LEA MOE requirement in the fiscal year under determination and may result in the LEA becoming compliant or may reduce the amount of any refund due for noncompliance.

LEAs complete TEA's standardized assertion forms to document any reductions attributable to the allowable causes described above. The assertion forms will be posted on the IDEA-B MOE page of the TEA website.

Departure of Personnel

In order for the level of state and/or local expenditures to be reduced on the basis of departure of personnel, the LEA must provide the following source documentation:

- Source payroll record (e.g., personnel action form, resignation letter signed and dated by the employee) indicating the reasons why the employee departed the LEA
- Year-to-date payroll distribution journal
- Employee's State Board of Educator Certification (SBEC) record (i.e., certification)
- Employee's signed and dated job description

In addition, the following conditions must be satisfied:

- Departed personnel may no longer be employed by the LEA. If a special education teacher has been reassigned to other duties within the LEA, the reassignment **does not qualify** the LEA to claim the "departure of personnel" exception.
- The departure must be voluntary (that is, the employee resigned or retired) or for just cause (the employee was terminated as the result of misconduct or negligence). If the LEA reduces the number of special education personnel as the result of a reduction in force, the LEA **may not** claim the "departure of personnel" exception.
- The LEA **may not** claim the "departure of personnel" exception when releasing or failing to renew the contract of a probationary employee, as neither of those cases meets the "just cause" requirement.

Decrease in Enrollment of Children with Disabilities

TEA automatically accounts for a decrease in the enrollment of children with disabilities when calculating the LEA's IDEA-B MOE in the following two ways.

1. If the number of students with disabilities decreases, and per-pupil special education expenditures remain the same or increase, the LEA will pass the second and fourth tests described in the Methods of Determining Compliance section.
2. In addition, TEA implements allowable flexibility to reduce the refund due by the percentage decrease in enrollment of children with disabilities from the preceding comparison year to the most recent year. For example, if the special education enrollment in the LEA decreased by 5% and the LEA was determined to be noncompliant, then the refund due would be decreased by 5%. This reduction is reflected on the LEA's MOE report.

Termination of Obligation

In order for the level of state and/or local expenditures to be reduced because the LEA no longer has an obligation to serve a child with an exceptionally costly program, the LEA must provide the following supporting documentation:

- A schedule summarizing the total costs for each special education student that participated in an exceptionally costly program. The schedule must reconcile to the LEA's detailed general ledger and source records which must include the fund/net asset code and object code for each cost description.
- A detailed general ledger and source records supporting costs identified on the summary schedule provided.

- TEA may also request a student's individualized education program (IEP). If the IEP is requested, the LEA must provide it to TEA through a secure transmission method (provided by TEA) within 24 hours of the request.

An exceptionally costly program for serving a student with a disability is defined by the state as being services costing $35,000 or greater. Examples of reductions in an exceptionally costly program include, but are not limited to, the following:

- A student in a residential placement graduates or moves out of the LEA.
- A residential facility closes.
- A charter school or another school district begins providing educational services for a student.
- A student with a high number/level of personnel assigned to implement the student's individualized education program (IEP) leaves the LEA. Such students would include but are not limited to students who are identified as deaf, blind, deaf-blind, autistic, medically fragile, emotionally disturbed, or having a severe disability across eligibility categories.
- A settlement agreement/corrective action ends.

Termination of Costly Expenditures

In order for the level of state and/or local expenditures to be reduced because of a termination of costly expenditures for long-term purchases, the LEA must provide the following supporting documentation:

- A schedule listing all of the items purchased, description of the items purchased, and the general ledger classification of the purchases, i.e., fund/net asset code, function code and object code. The schedule must agree to the LEA's detailed general ledger and source records, which must include the fund/net asset code and object code.
- A detailed general ledger and source records supporting the costs identified on the summary schedule provided.

Assumption of Cost by High Cost Fund

In order for the level of state and/or local expenditures to be reduced because of assumption of cost by the high cost fund operated by TEA, meaning the expenditure in the current year was charged to the IDEA-B High Cost grant received from TEA, the LEA must provide the following supporting documentation:

- A detailed general ledger for the previous school year indicating the cost was previously recorded under fund code 199 or net asset code 420.
- A detailed general ledger for the current school year indicating the cost was subsequently recorded under fund code 226 (High Cost Grant).
- The source records supporting costs identified on the detailed general ledgers.

Voluntary Reduction of MOE

The federal exceptions described in the preceding section provide LEAs with possible means of addressing a preliminary determination of noncompliance with IDEA-B LEA MOE. In addition, under certain circumstances, the LEA may have the option to voluntarily reduce the amount of state and/or local expenditures on special education required to comply with IDEA-B LEA MOE.

In accordance with 34 CFR 300.205(a), if an LEA's federal IDEA-B allocation for the current year is greater than the allocation for the preceding year, the LEA may choose to reduce the level of its state and/or local expenditures below what was spent on special education services in the preceding year. **In addition, the voluntary reduction may only be taken if the LEA's state Determination Level is "Meets Requirements" and the LEA has not been identified as having "significant disproportionality."** [34 CFR 300.205(c)] The amount of that "voluntary" reduction may not exceed 50% of the allocation increase in IDEA-B formula funding.

For example, assuming the LEA has a state determination level of "Meets Requirements" and is not identified for significant disproportionality, if the LEA was allocated $100,000 more in IDEA-B formula funding for the current year than it received in the previous year, it would be eligible to reduce its state and/or local special education spending by

$50,000 while still maintaining compliance with IDEA-B LEA MOE. Note, however, that before voluntarily reducing MOE. LEAs should carefully consider the relationship of CEIS and voluntary MOE reduction and how the state and/or local funds which are reduced may be expended.

To ensure the LEA properly applies any voluntary MOE reduction, the LEA must take two requirements into consideration:

1. Per 34 CFR 300.205(b), the amount by which IDEA-B MOE is voluntarily reduced must be expended "to carry out activities that could be supported with funds under the ESEA [Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act (NCLB) of 2001] regardless of whether the LEA is using funds under the ESEA for those activities."

   The LEA must spend the amount of the reduction for ESEA activities in the same year that it takes the IDEA-B MOE reduction. The LEA must also demonstrate in the detailed general ledger that the amount of the reduction was spent on ESEA activities by using a local option code that uniquely identifies the amounts expended for ESEA activities.

2. Per 34 CFR 300.205(d), the amount by which IDEA-B MOE is voluntarily reduced is interconnected to the amount of IDEA-B funds the LEA chooses to set aside for CEIS, as described in the following section.

Relationship between Voluntary Reduction of MOE and CEIS

CEIS and the voluntary reduction of MOE provision are interconnected. 34 CFR 300.226(a) states the amount set aside for CEIS must include the amount used for voluntary MOE reduction. At the same time, 34 CFR 300.205(d) states the amount an LEA uses for CEIS shall count toward the maximum amount the LEA may voluntarily reduce the level of its expenditures for MOE. This interconnection may be due to the fact that both provisions are in essence diverting the use of federal funds (CEIS) or state and local funds (MOE reduction) away from providing services to students with disabilities for other uses.

The decisions an LEA makes about the amount of funds it uses for one purpose affects the amount it may use for the other. **The LEA must plan both for CEIS and MOE at the beginning of each grant year.** Otherwise the use of funds for CEIS could prohibit a later decision to voluntarily reduce MOE, as illustrated in 34 CFR, Appendix D to Part 300.

In summary, the rule for using funds for CEIS **and** MOE is as follows:

- If the LEA is either setting aside funds for CEIS or voluntarily reducing its MOE (but not doing both), it is unnecessary to consider the interconnection between CEIS and MOE. For CEIS, the LEA may set aside up to 15% of its IDEA-B allocation (Section 611 and Section 619 funds; 34 CFR 300.226(a)). For MOE, the LEA may voluntarily reduce its level of expenditures by up to 50% of any increase from the prior year to the current year's IDEA-B allocation (Section 611 funds; 34 CFR 300.205(a)).
- If the LEA is both setting aside funds for CEIS and voluntarily reducing its MOE, the LEA should determine which amount is the lesser: the amount available for CEIS set-aside, or the amount available for voluntary MOE reduction. **Combined, the CEIS set-aside and MOE reduction may not exceed that lesser amount.**

See Appendix 1 for a flowchart illustrating the process the LEA should use in planning for its CEIS set-aside and voluntary reduction of MOE. The Definition of CEIS section provides a list of resources where grantees may find additional detail on CEIS. See Appendix 2 for examples of the relationship between CEIS and the voluntary MOE reduction provisions.

State Reconsiderations in the MOE Calculation

As authorized by the US Department of Education (USDE), Texas law, or adopted commissioner's rule, TEA may reconsider how certain costs are accounted for in the MOE calculation. The types of state reconsiderations available to LEAs for consideration by TEA include the following:

- Legislatively mandated changes to account for funds (i.e., statutory data collection requirements)
- Federal funds that **may** be considered equivalent state or local funds (e.g., Ed Jobs funds)

- Significant errors in an LEA's reported expenditures

The requirements, terms, and conditions for state reconsiderations are identified below.

Legislatively Mandated Changes to Account for Funds

Occasionally, the Texas State Legislature passes a law that includes a statutory requirement for data collections that may affect the recording of special education expenditures. In those cases, if the statutory requirement affects the calculation of MOE adversely for the LEA, the LEA may submit a request for state reconsideration, and TEA may reconsider how certain costs are accounted for in the MOE calculation. For each fiscal year, where the Legislature has required specific reporting, TEA will provide the LEA a list of required supporting documentation, which identifies the special education costs coded to meet the Legislative requirement, which also meet the IDEA-B MOE requirement.

Federal Funds That *May* be Considered as State or Local Funds

In years when the federal government provides special and/or additional federal funds that TEA designates as state or local funds (such as ARRA SFSF, fund code 266), those specific funds will be automatically included in the total aggregated expenditures by function code for each respective compliance year in the MOE calculation.

However, federal funds that TEA does not specifically designate as state or local funds are not automatically included in the MOE calculation. For example, the federal Ed Jobs funds (fund code 287) ***may*** at the LEA's discretion be considered as state or local funds. In other words, the LEA was the entity that decided whether to consider the specially allocated federal funds as state or local funds.

The LEA may request a state reconsideration for inclusion of federal funds that the LEA used as state or local funds in the determination of compliance with IDEA-B LEA MOE. The following requirements apply:

- The LEA will be required to submit supporting documentation identifying the federal funds expended as state or local funds.
- The LEA must have available for inspection auditable documentation demonstrating that the federal funds treated as non-federal funds were spent in accordance with the requirements for use in determining compliance with IDEA-B LEA MOE.

Significant PEIMS Errors

USDE has approved TEA's request to reconsider significant errors reported in the Public Education Information Management System (PEIMS), the agency's official system of record, with "significant" defined to mean the following in relation to IDEA-B LEA MOE:

> "Corrections that change the LEA's compliance status (from noncompliant to compliant or compliant to noncompliant)."

To demonstrate that an error is "significant", the LEA must enter its self-reported, corrected data into TEA's IDEA-B LEA MOE determination calculation tool (available on the IDEA-B MOE page of the TEA website) and the results must reflect a change in the LEA's compliance status.

If the results of the TEA IDEA-B LEA MOE determination calculation tool show a change in compliance status, TEA will recalculate a revised compliance determination using the corrected data. **The calculation performed by the IDEA-B LEA MOE determination calculation tool is an estimate only and does not duplicate the exact calculation process. The results of TEA's recalculation will be the basis of the final MOE determination.**

The LEA may request a state reconsideration for significant errors in the LEA's reported expenditures by providing the following to TEA:

- The results returned by the IDEA-B MOE determination calculation tool, signed by the LEA's external auditor, showing how the corrections change the LEA's compliance status.
- A detailed schedule prepared and signed by the LEA's external auditor containing the erroneous and the correct PEIMS data, along with the supporting documentation for such claims.

- A detailed schedule with the corrected PEIMS data in the appropriate PEIMS format provided by TEA to be used in lieu of the original PEIMS data. **This schedule will not be modified by TEA. It will be used exactly as provided.**
- A description of how the error occurred and the administrative procedures taken to ensure such PEIMS data errors do not reoccur.

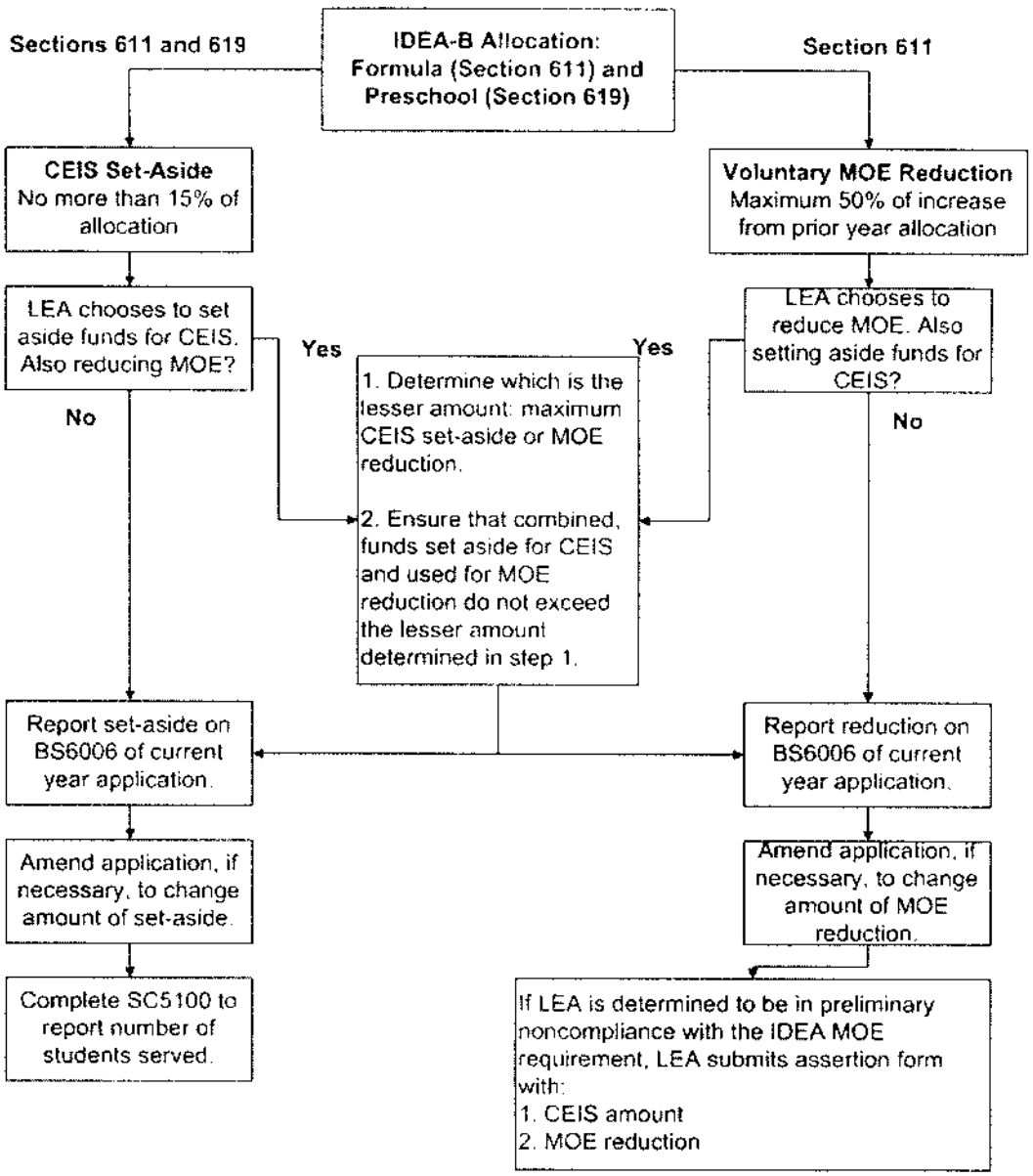
Any decision to use revised data in the calculation of IDEA-B MOE determinations will not change the official PEIMS data, which is the agency's official system of record. The official PEIMS data is final and will remain unchanged on all TEA products and reports that rely on that information.

Possible Consequences of a State Reconsideration Request Due to Significant PEIMS Errors

When an LEA notifies TEA of significant PEIMS errors in the LEA's reported expenditures in the process of requesting the state reconsideration, TEA's FFCR division will make the following notifications of the erroneous data submission to the following TEA divisions and departments, with the following possible results:

- Division of Financial Compliance: Possible increased risk for audit, investigation and/or review
- Division of State Funding: Possible effect on state funding
- Division of Federal Fiscal Monitoring: LEA's possible identification as a high-risk grantee. High-risk grantees may be subject to a review of all reimbursements across one or more grants or a random sampling of expenditures across one or more grants.
- Office for Statewide Education Data Systems: LEA's possible identification as a high-risk grantee
- Department of Accreditation and School Improvement: Possible increased risk for investigation and/or review
- Division of Enforcement Coordination and Governance: LEA possibly recommended for district-level interventions or sanctions based on investigation findings

Appendix 1: CEIS and Voluntary MOE Reduction LEA Process Flowchart



TEA reports data from SC5100 and BS6006 to USDE annually in the spring. Data reported includes allocations, amount of CEIS set-aside, CEIS students served, and amount of voluntary MOE reduction.

Process based on 34 CFR, Appendix D to Part 300.

Appendix 2: Examples of CEIS and Voluntary MOE Reduction

USDE Example 1

In this example, the maximum amount the LEA may use for CEIS is greater than the amount the LEA may use for voluntary MOE reduction. **MOE is therefore the lesser amount.** If the LEA chooses to set funds aside for CEIS and not to reduce MOE, the LEA may set aside up to the maximum of 15% of the allocation. **However, if the LEA chooses to set aside funds for CEIS *and* voluntarily reduce MOE, the combination of the LEA's CEIS set-aside and MOE reduction may not exceed the maximum amount available for MOE.**

Prior Year's Allocation: $900,000

Current Year's Allocation: $1,000,000

Increase: $100,000

Maximum Available for Voluntary MOE Reduction: $50,000 (50% of increase, or 50% of $100,000)

Maximum Available for CEIS: $150,000 (15% of current-year allocation, or 15% of $1,000,000)

- If the LEA chooses to set aside $150,000 for CEIS, it may not reduce its MOE (MOE maximum $50,000 less $150,000 for CEIS means $0 can be used for MOE).
- If the LEA chooses to set aside $100,000 for CEIS, it may not reduce its MOE (MOE maximum $50,000 less $100,000 for CEIS means $0 can be used for MOE).
- If the LEA chooses to set aside $50,000 for CEIS, it may not reduce its MOE (MOE maximum $50,000 less $50,000 for CEIS means $0 can be used for MOE).
- If the LEA chooses to set aside $30,000 for CEIS, it may reduce its MOE by $20,000 (MOE maximum $50,000 less $30,000 for CEIS means $20,000 can be used for MOE).
- If the LEA chooses to set aside $0 for CEIS, it may reduce its MOE by $50,000 (MOE maximum $50,000 less $0 for CEIS means $50,000 can be used for MOE).

USDE Example 2

In this example, the maximum amount the LEA may use for voluntary MOE reduction is greater than the amount the LEA may use for CEIS. **CEIS is therefore the lesser amount.** If the LEA chooses to voluntarily reduce MOE and not to set funds aside for CEIS, the LEA may reduce MOE by up to 50% of the increase from the prior year's allocation. **However, if the LEA chooses to set aside funds for CEIS *and* voluntarily reduce MOE, the combination of those two amounts may not exceed the maximum amount available for CEIS.**

Prior Year's Allocation: $1,000,000

Current Year's Allocation: $2,000,000

Increase: $1,000,000

Maximum Available for Voluntary MOE Reduction: $500,000 (50% of increase, or 50% of $1,000,000)

Maximum Available for CEIS: $300,000 (15% of current-year allocation, or 15% of $2,000,000)

- If the LEA chooses to use no funds for MOE, it may set aside $300,000 for CEIS (CEIS maximum $300,000 less $0 means $300,000 for CEIS).
- If the LEA chooses to use $100,000 for MOE, it may set aside $200,000 for CEIS (CEIS maximum $300,000 less $100,000 means $200,000 for CEIS).
- If the LEA chooses to use $150,000 for MOE, it may set aside $150,000 for CEIS (CEIS maximum $300,000 less $150,000 means $150,000 for CEIS).
- If the LEA chooses to use $300,000 for MOE, it may not set aside anything for CEIS (CEIS maximum $300,000 less $300,000 means $0 for CEIS).
- If the LEA chooses to use $500,000 for MOE, it may not set aside anything for CEIS (CEIS maximum $300,000 less $500,000 means $0 for CEIS).

Appendix 3: IDEA-B MOE Calculation Methodology

The methodology for calculating IDEA-B MOE compliance is based on both federal and state requirements. 34 CFR 300.203 provides the following four methods for determining compliance:

- The *total* amount the LEA expended in *state and local* funds must equal or exceed the amount it expended from those sources for special education during the previous fiscal year.
- The *per-pupil* amount the LEA expended in *state and local* funds must equal or exceed the amount it expended per capita from those sources for special education during the previous fiscal year.
- The *total* amount the LEA expended in *local* funds must equal or exceed the amount it expended from that source for special education during the previous fiscal year.
- The *per-pupil* amount the LEA expended in *local* funds must equal or exceed the amount it expended per capita from that source for special education during the previous fiscal year.

Calculating State and Local Funds

To calculate the total amount expended in state and local funds, TEA uses expenditures reported on PEIMS Record 032, Fund Code 199 for school districts, or 420 for charter schools, coded to program intent code (PIC) 23 and PIC 33. TEA also includes PEIMS Record 033, Fund Code 437 Shared Services Arrangement – Special Education for Shared Service Arrangements (Type 11) expenditures.

As described in the Federal Funds That *May* be Considered as State or Local Funds section, in years when the federal government provides special and/or additional federal funds that TEA designates as state or local funds (such as ARRA SFSF, fund code 266), those specific funds will be automatically included in the total aggregated expenditures by function code for each respective compliance year in the MOE calculation.

Function Codes Used in MOE Determination

The function codes listed in the following table meet the requirements of the IDEA regulations and are used to aggregate state and/or local expenditures within PIC 23 and PIC 33.

Function Code	Description
11	Instruction
12	Instructional Resources and Media Services
13	Curriculum and Instructional Staff Development
21	Instructional Leadership
23	School Leadership
31	Guidance and Counseling Service
32	Social Work Services
33	Health Services
34	Student (Pupil) Transportation
36	Cocurricular/Extracurricular Activities
41	General Administration
51	Plant Maintenance and Operations
53	Data Processing Services

Function Codes Not Used in MOE Determination

The function codes listed in the following table do *not* meet the requirements of the IDEA regulations and are *not* used to aggregate state and/or local expenditures within PIC 23 and PIC 33.

Function Code	Description
35	Food Service
52	Security/Monitoring Service
61	Community Service
71	Debt Service
81	Facilities Acquisition and Construction
91	Contract Services
92	Cst/SI WADA
93	PMT – SSA
95	PMT – JJAEP
97	PMT – TIF
99	Other Intragov Chgs

School Health and Related Services (SHARS)

Medicaid services provided by school districts in Texas to Medicaid-eligible students are known as SHARS. The oversight of SHARS is a cooperative effort between the Texas Education Agency (TEA) and Health and Human Services Commission (HHSC). SHARS allows school districts, including public charter schools, to obtain Medicaid reimbursement for certain health-related services documented in a student's Individualized Education Program (IEP). Using existing state and local special education allocations as the state match, SHARS providers (LEAs) are reimbursed the federal share of the established reimbursement rate of approximately 60%.

If your LEA received SHARS payment during the year, you must calculate the Medicaid cost share amount. This amount is deducted from the total state and local special education expenditures for the year.

34 CFR 300.203(b)(3) (Maintenance of effort) states:

> The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

42 CFR 433.51 (Public funds as the state share of financial participation) states, in relevant part:

> (b) The public funds are appropriated directly to the State or local Medicaid agency, or are transferred from other public agencies (including Indian tribes) to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under this section.

Because the LEA must provide for the calculated state/local share of the Medicaid payment and because this amount cannot contribute to more than one federal cost share requirement, the calculated state/local share is reduced from the total state and local expenditures for IDEA-B MOE purposes.

Special Education Student Count

PEIMS Record 163 - Child-Count-Funding-Type-Code 3 is used to identify the Special Education Student Population. This special education student count is also found on the line titled IDEA-B of the PEIMS Edit+ report PRF5D010, Special Education Child Counts by Funding Type.

Local Funds

As the State's current expenditure reporting systems do not allow tracking of which LEA expenditures (or portions thereof) are made using local funds, the local portion of these expenditures must be imputed for use in the MOE calculation.

Imputing the total local portion of LEA special education expenditures requires the following data:

- The LEA's total state and local special education expenditures.
- The LEA's Tier I Special Education Adjusted Allotment, Total Cost of Tier I, and Local Fund Assignment from the Legislative Planning Estimate (LPE) column in the Summary of Finance (SOF) dated September 10 or first date thereafter in the year under determination.

Below describes how the LEA total local special education expenditures are imputed for purposes of IDEA-B LEA MOE. The total local expenditures are imputed through a three-step process.

1. Determine the LEA's local special education expenditures that are in excess of its Tier I Special Education Adjusted Allotment.
    a. This determination is done by subtracting the Tier I Special Education Adjusted Allotment from the LEA's total state and local special education expenditures.
    b. If the LEA's total state and local special education expenditures is greater than the LEA's Tier I Special Education Adjusted Allotment, then the difference (the expenditures made in excess of the Tier I Special Education Adjusted Allotment) is considered to be expended from local funds.
2. Impute the LEA's local special education expenditures using the ratio of local funding within its total Tier I Allotment.
    a. First, determine the percentage of local funding within the Tier I Allotment by dividing the LEA's Local Fund Assignment by the Total Tier I Allotment. If the Local Fund Assignment is greater than the Total Tier I Allotment, then the percentage of local funding within Tier I is automatically adjusted to 100%.
    b. Next, multiply that percentage by the total state and local expenditures up to the Special Education Adjusted Allotment. The result is the LEA's imputed local special education expenditures.
3. Determine the LEA total local special education expenditures for IDEA-B LEA MOE by summing (a) the LEA's local special education expenditures that are in excess of its Special Education Adjusted Allotment (determined in Step 1 above); and (b) the LEA's imputed local special education expenditures (determined in Step 2 above).

Sample MOE Determination: Failure to Maintain Effort

As described in the Methods of Determining Compliance section, the LEA must pass one of four tests to determine whether it met the IDEA-B LEA MOE requirement.

In this example because the LEA failed to maintain effort, the LEA must refund to TEA the lesser of the amounts listed on lines 1 through 4. This refund may not exceed the LEA's IDEA-B maximum entitlement for the current school year.

The example below is provided for purposes of demonstrating the calculation methodology and is not intended to reflect the actual formatting of the LEA's actual MOE report that will be provided by TEA.

Function Code	Function Code Name	Prior Year	Current Year	Comparison
11	Instruction	$4,387,613.00	$4,102,277.00	($285,336.00)
12	Instructional Resources and Media Services	$109,175.00	$101,820.00	($7,355.00)
13	Curriculum and Instructional Staff Development	$36,822.00	$45,485.00	$8,663.00
21	Instructional Leadership	$0.00	$0.00	$0.00
23	School Leadership	$477,316.00	$434,765.00	($42,551.00)
31	Guidance and Counseling Service	$205,576.00	$215,552.00	$9,976.00
32	Social Work Services	$0.00	$0.00	$0.00
33	Health Services	$49,250.00	$49,313.00	$63.00
34	Student (Pupil) Transportation	$365,551.00	$424,995.00	$59,444.00
36	Cocurricular/ Extracurricular Activities	$0.00	$0.00	$0.00
41	General Administration	$0.00	$0.00	$0.00
51	Plant Maintenance and Operations	$467,082.00	$437,156.00	($29,926.00)
53	Data Processing Services	$1,678,862.00	$839,848.00	($839,014.00)
n/a	Shared Services Arrangement (from Record 033)	$149,573.00	$177,818.00	$28,245.00
n/a	SHARS Medicaid Cost Share	($50,000.00)	($10,000.00)	$40,000.00
Special Education Student Population (Student Count)		576	568	
1. Total state and local expenditures		$7,876,820.00	$6,819,029.00	($1,057,791.00)
2. Per capita expenditure of state and local funds (total state and local expenditures divided by student count)		$13,675.03	$12,005.33	($1,669.70) X 568 = ($948,389.60)
3. Total local expenditures		$5,809,263.81	$4,521,587.98	($1,287,675.83)
4. Per capita expenditure of local funds (total local expenditures divided by student count)		$10,085.53	$7,960.54	($2,124.99) X 568 = ($1,206,994.32)
Refund Due (Lesser of 1, 2, 3, or 4):				**$948,389.60**

In this example, if the LEA's current maximum entitlement is greater than the refund amount, then the refund amount would be due to TEA upon request. If the LEA's current maximum entitlement is less than the refund amount, then the amount equal to the maximum entitlement would be due to TEA upon request.

Sample MOE Determination: Effort Maintained

In this example, the result shown on line 2 of the table is a positive number, indicating that expenditures for the determination year exceeded expenditures in the prior year. The LEA thus met the MOE requirement.

Function Code	Function Code Name	Prior Year	Current Year	Comparison
11	Instruction	$4,387,613.00	$4,102,277.00	($285,336.00)
12	Instructional Resources and Media Services	$109,175.00	$101,820.00	($7,355.00)
13	Curriculum and Instructional Staff Development	$36,822.00	$45,485.00	$8,663.00
21	Instructional Leadership	$0.00	$0.00	$0.00
23	School Leadership	$477,316.00	$434,765.00	($42,551.00)
31	Guidance and Counseling Service	$205,576.00	$215,552.00	$9,976.00
32	Social Work Services	$0.00	$0.00	$0.00
33	Health Services	$49,250.00	$49,313.00	$63.00
34	Student (Pupil) Transportation	$365,551.00	$424,995.00	$59,444.00
36	Cocurricular/ Extracurricular Activities	$0.00	$0.00	$0.00
41	General Administration	$0.00	$0.00	$0.00
51	Plant Maintenance and Operations	$467,082.00	$437,156.00	($29,926.00)
53	Data Processing Services	$1,678,862.00	$839,848.00	($839,014.00)
n/a	Shared Services Arrangement (from Record 033)	$149,573.00	$177,818.00	$28,245.00
n/a	SHARS Medicaid Cost Share	($50,000.00)	($10,000.00)	$40,000.00
Special Education Student Population (Student Count)		657	568	
1. Total state and local expenditures		$7,876,820.00	$6,819,029.00	($1,057,791.00)
2. Per capita expenditure of state and local funds (total state and local expenditures divided by student count)		$11,989.07	$12,005.33	$16.26 X 568 = $9,235.68
3. Total local expenditures		$5,809,263.81	$4,521,587.98	($1,287,675.83)
4. Per capita expenditure of local funds (total local expenditures divided by student count)		$8,842.11	$7,960.54	($881.57) X 568 = ($500,731.76)
Refund Due (Lesser of 1, 2, 3, or 4):				**$0**

Appendix 4: IDEA-B MOE Determination Calculation Tool

To assist LEAs in complying with the MOE requirements for FY2014 and beyond, TEA has developed a determination calculation tool (available on the FFCR IDEA-B MOE page of the TEA website) that LEAs may use to estimate their MOE compliance. To use the tool, LEAs must be prepared to enter the following data:

- Prior year and current year state and/or local expenditures in relevant function codes as described in Appendix 3.
- Special Education Student counts for the prior year and current year (PEIMS Record 163, Child-Count-Funding-Type-Code=3).
- Tier I Special Education Adjusted Allotment, Total Cost of Tier I, and Local Fund Assignment data from the LPE Column of the LEA's Summary of Finance (SOF) dated September 10 or the first date thereafter in the year under determination.

Figure: 19 TAC §109.3001(c)(2)

NCLB LEA
MAINTENANCE OF EFFORT
(MOE)
GUIDANCE HANDBOOK

Version 1.0 (09/2013)

Contents

Introduction

As a condition for receiving its full allocation in any fiscal year, for covered programs under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), a local educational agency (LEA) must maintain its own state and local fiscal effort in accordance with Section 9521, ESEA. This requirement is known as maintenance of effort (MOE). This handbook provides Texas LEAs with guidance on how to interpret and determine compliance with the NCLB LEA MOE requirement.

Definition of Maintenance of Effort

Section 9521, ESEA, provides that "a local educational agency may receive funds under a covered program for any fiscal year only if the State educational agency (SEA) finds that either the combined fiscal effort per student or the aggregate expenditures of the LEA was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year."

In other words, an LEA must maintain 90% of its expenditures for public education from state and local funds from one year to the next. If the percentage of state and local funds expended in the year under determination is less than 90% of what was expended in the prior fiscal year, the LEA's NCLB allocations for the upcoming fiscal year will be reduced in the exact proportion by which the LEA did not meet the MOE requirement. See the Methods of Determining Compliance section for details on the four calculations used to determine compliance.

For example, if the LEA expended $500,000 in fiscal year 2013, it is required to expend at least $450,000 in fiscal year 2013 (90% of its prior year expenditures). If the LEA expends only $400,000, it has failed to maintain effort, and its allocation for the next fiscal year will be reduced by 11.1%. (The LEA expended $50,000 less than the $450,000 that was required to maintain effort; $50,000 is 11.1% of $450,000, and the allocation for the next fiscal year will be reduced by that same amount.)

Covered Programs

As used in Section 9521, ESEA, the term "covered program" means each of the following:

- Title I, Part A, Improving Basic Programs Operated by Local Educational Agencies
- Title I, Part B, Subpart 3, Even Start
- Title I, Part D, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk
- Title II, Part A, Improving Teacher Quality State Grants
- Title III, Part A, English Acquisition State Grants
- Title IV, Part B, 21st Century Learning Centers
- Title VI, Part B, Subpart 2, Rural Education

Purpose of the Provision

In awarding grant funds for education purposes, the federal government does not intend that LEAs should use those dollars as the primary means of providing services. The LEA agrees when it accepts NCLB funds that it will expend non-federal (that is, state and local) funds in accordance with a minimum of two federal fiscal accountability requirements: supplement, not supplant (at the student level), and MOE (at the LEA level). In addition, when the LEA accepts Title I, Part A funds, it also agrees it will meet the comparability of services fiscal requirement (at the campus level).

Supplement, not supplant mandates that state and local funds may not be diverted to other purposes simply because federal funds are available. The MOE requirement ensures that the LEA continues to expend its state and/or local

funds at the same level from year to year, instead of limiting services to what can be provided using federal dollars. (The Title 1, Part A comparability of services provision further requires that each campus receives its fair share of state and local resources, regardless of whether the campus is also federally funded.)

Methods of Determining Compliance

To meet the NCLB LEA MOE requirement in any fiscal year, an LEA is required to expend state and/or local funds at 90% of the level at which it expended funds in the preceding fiscal year. There are four calculations for determining whether an LEA has met the NCLB LEA MOE requirement.

An LEA needs to meet at least **one** of the following four tests to be compliant.

- Total state and local expenditures: The LEA's total state and local expenditures must equal or exceed 90% of expenditures during the previous fiscal year.
- Total state and local expenditures per-pupil for refined average daily attendance (RADA): The RADA per-pupil amount the LEA expended must equal or exceed 90% of the amount it expended during the previous fiscal year.
- Total state and local expenditures per-pupil for membership: The membership per-pupil amount the LEA expended must equal or exceed 90% of what it expended during the previous fiscal year.
- Total state and local expenditures per-pupil for enrollment: The enrollment per-pupil amount the LEA expended must equal or exceed 90% of what it expended during the previous fiscal year.

Total State and Local Expenditures

Per Title 34 of the Code of Federal Regulations (34 CFR) 299.5(d)(1), in determining an LEA's compliance with NCLB LEA MOE, the SEA shall consider only the LEA's total expenditures from state and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

For more detailed information, see the NCLB LEA MOE Calculation Methodology in Appendix 1.

Total State and Local Expenditures per Pupil (RADA, Membership, or Enrollment)

In addition to the comparison of total state and local expenditures, the LEA may meet NCLB LEA MOE requirements if its fiscal effort per student is maintained at 90% of what it expended during the previous fiscal year. Fiscal effort per student is calculated by dividing total state and local expenditures by the LEA's student count. Student count may be calculated on the basis of RADA, membership, or enrollment, as follows:

- **RADA**: The aggregate eligible days of student attendance is divided by the number of days of instruction to compute RADA. LEAs may find RADA in the reports, by school year, posted on the School Finance Average Daily Attendance (ADA) Reports page of the TEA website. (The column headed "ADA" actually reflects the RADA figure.)
- **Membership:** The total number of public school students who were reported in membership as of the October snapshot date (defined by the Public Education Information Management System [PEIMS] as the last Friday in October) at any grade, from early childhood education through grade 12. Membership is a slightly different number from enrollment because it does not include those students who are served in the LEA for fewer than two hours per day. LEAs may find their membership figure through the District Detail Search link on the Snapshot School District Profiles page of the TEA website. On the detail report, membership is listed as "Total Students."
- **Enrollment (In Enrollment):** The number of students actually receiving instruction by attendance in a public school, as opposed to being registered but not yet receiving instruction. The LEA's enrollment figure is included on the PEIMS Edit + Report View - PRFD002 Summary by Sex and Ethnicity. The Public

Education Information Management System (PEIMS) page of the TEA website includes an EDIT+ link, for more information on EDIT+ reports.

Consequences for Failure to Meet NCLB LEA MOE

Under ESEA, P.L. 107-110, Section 9521(b), if the LEA fails to meet all four tests listed in the Methods of Determining Compliance section, TEA must reduce the amount of funds allocated under ESEA-covered programs in exact proportion to the LEA's failure to meet the requirement, using the test that is most favorable to the LEA.

Fiscal Years Used in Comparison

USDE's Non-Regulatory Guidance on Title I Fiscal Issues dictates the fiscal years TEA is required to use in determining whether the LEA maintained fiscal effort in accordance with Section 9521, ESEA. Under this guidance, TEA is required to compare the LEA's state and local fiscal effort for the "preceding fiscal year" to the "second preceding fiscal year". The "preceding fiscal year" is defined as the federal fiscal year, or the 12-month fiscal period most commonly used in a state for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available. *[34 CFR 299.5(c)].*

Furthermore, Section 9521(b)(2), ESEA, provides that **for a year in which an LEA failed to maintain effort, the expenditure amount TEA uses for computing maintenance of effort in subsequent years will be 90 percent of the prior year amount rather than the actual expenditure amount.**

If the LEA was compliant with NCLB LEA MOE in the year prior to the year under determination, then NCLB LEA MOE determinations are calculated based on expenditure data from the year under determination and expenditure data from the year prior to the year under determination. For example, NCLB LEA MOE determinations for fiscal year 2012 (school year 2011-2012) would be calculated based on expenditure data from fiscal year 2012 and fiscal year 2011 (school year 2010-2011). For compliance, the required level of expenditures for fiscal year 2012 must be at least 90% of what was expended in fiscal year 2011, either in the aggregate or on a per pupil basis.

If the LEA was not compliant with NCLB LEA MOE in the year prior to the year under determination, then NCLB LEA MOE determinations are calculated based on expenditure data from the year under determination and expenditure data from two years prior to the year under determination. For example, NCLB LEA MOE determinations for fiscal year 2012 (school year 2011-2012) would be calculated based on expenditure data from fiscal year 2012 and fiscal year 2010 (school year 2009-2010). For compliance, the required level of expenditures for fiscal year 2012 must be at least 90% of 90% of what was expended in fiscal year 2010, either in the aggregate or on a per pupil basis.

The following chart demonstrates the applicable calculations and fiscal years under comparison for a three-year period where the LEA is assumed to have been in compliance the year prior to FY 2012, failed to comply in FY 2012, then returned to compliance in FY 2013 and FY 2014. In the example, the calculation to use the test that is most favorable to the LEA has already been determined, and the results are reflected below.

	1	2	3	4
Determination Year	State and Local Expenditures During Determination Year	State and Local Expenditures During Applicable Comparison Year	Level required to meet the requirement (90% of column 2)	Amount by which LEA did not maintain effort
FY 2012 (SY 2011-2012)	FY 2012 (SY 2011-2012) $850,000	FY 2011 (SY 2010-2011) $1,000,000	**$900,000** (assuming LEA was compliant in FY 2011)	($50,000)
FY 2013 (SY 2012-2013)	FY 2013 (SY 2012-2013) $810,000	FY 2012 (SY 2011-2012) **$900,000**[1]	$810,000	n/a
FY 2014 (SY 2013-2014)	FY 2014 (SY 2013-2014) $800,000	FY 2013 (SY 2012-2013) $810,000[2]	$729,000	n/a

[1]The state and local expenditures used for MOE purposes in FY 2013 is $900,000, which is 90% of FY 2011 expenditures (*fiscal year in which effort was not maintained*) rather than the actual FY 2012 expenditures of $850,000 because the LEA failed to maintain effort in FY 2012.

[2]The state and local expenditures used for MOE purposes in FY 2014 is the actual FY 2013 expenditures of $810,000 because the LEA met the MOE requirement in FY 2013.

Fiscal Years Affected By Determination

Due to the timing of when LEA expenditure data are reported to TEA and become available in PEIMS, the fiscal year to which any reduction in allocation will apply based on an LEA's failure to comply with NCLB LEA MOE will be the second year after the year of determination. For example, NCLB LEA MOE determinations are calculated for FY 2012 in late spring of 2013 (when the data are available). Any reduction in allocation for LEAs determined to be noncompliant are applied to FY 2014 (school year 2013-2014) as those allocations are calculated in the summer of 2013.

The example used in the previous chart is expanded below by the addition of an extra column to demonstrate the fiscal year affected by the NCLB LEA MOE determination. Note that only in years where an LEA is determined to be noncompliant will there be a reduction to the applicable allocations:

	1	2	3	4	5
Determination Year	State and Local Expenditures During Determination Year	State and Local Expenditures During Applicable Comparison Year	Level required to meet the requirement (90% of column 2)	Amount by which LEA failed to maintain effort	**Fiscal Year in Which Allocation is Reduction if LEA Non-Compliant**
FY 2012 (SY 2011-2012)	FY 2012 (SY 2011-2012)	FY 2011 (SY 2010-2011)			**FY 2014 (SY 2013-2014)**
	$850,000	$1,000,000	$900,000 (assuming LEA was compliant in FY 2011)	($50,000)	**Reduction of allocation by 5.6% ($50,000/$900,000)**
FY 2013 (SY 2012-2013)	FY 2013 (SY 2012-2013)	FY 2012 (SY 2011-2012)			**FY 2015 (SY 2014-2015)**
	$810,000	$900,000	$810,000	n/a	**No reduction**
FY 2014 (SY 2013-2014)	FY 2014 (SY 2013-2014)	FY 2013 (SY 2012-2013)			**FY 2016 (SY 2015-2016)**
	$800,000	$810,000	$729,000	n/a	**No reduction**

Federal Funds That *May* be Considered as State or Local Funds

In future years if the federal government provides special and/or additional federal funds that TEA designates as state or local funds (such as ARRA SFSF, fund code 266 was previously), those specific funds will be automatically included in the total aggregated expenditures by function code for each respective compliance year in the MOE calculation.

However, federal funds that TEA does not specifically designate as state or local funds will not be automatically included in the MOE calculation. For example, the federal Ed Jobs funds (fund code 287) ***may*** at the LEA's discretion have been considered as state or local funds. In other words, the LEA was the entity that decided whether to consider the specially allocated federal funds as state or local funds.

In a determination year when applicable, the LEA may request a state reconsideration for inclusion of federal funds that the LEA used as state or local funds in the determination of compliance with NCLB LEA MOE. The following requirements would apply:

- The LEA will be required to submit supporting documentation identifying the federal funds expended as state or local funds.
- The LEA must have available for inspection auditable documentation demonstrating that the federal funds treated as non-federal funds were spent in accordance with the requirements for use in determining compliance with NCLB LEA MOE.

Significant PEIMS Errors in an LEA's Reported Expenditures

USDE has approved TEA's request to reconsider significant errors reported in PEIMS. To demonstrate that an error is "significant," the LEA must enter its self-reported, corrected data into TEA's NCLB LEA MOE determination calculation tool (available on the NCLB LEA Maintenance of Effort (MOE) page of the TEA website) and the results must reflect a change in the LEA's compliance status.

If the results of the TEA NCLB LEA MOE determination calculation tool show a change in compliance status, TEA will recalculate a revised compliance determination using the corrected data. **The calculation performed by the NCLB MOE determination calculation tool is an estimate only and does not duplicate the exact calculation process. The results of TEA's recalculation will be the basis of the final MOE determination.**

The LEA may request a state reconsideration for significant errors in the LEA's reported expenditures by providing the following to TEA:

- The results returned by the NCLB MOE determination calculation tool, signed by the LEA's external auditor, showing how the corrections change the LEA's compliance status.
- A detailed schedule prepared and signed by the LEA's external auditor containing the erroneous and the correct PEIMS data, along with the supporting documentation for such claims.
- A detailed schedule with the corrected PEIMS data in the appropriate PEIMS format provided by TEA to be used in lieu of the original PEIMS data. **This schedule will not be modified by TEA. It will be used exactly as provided.**
- A description of how the error occurred and the administrative procedures taken to ensure such PEIMS data errors do not reoccur.

Any decision to use revised data in the calculation of NCLB MOE determinations will not change the official PEIMS data, which is the agency's official system of record. The official PEIMS data is final and will remain unchanged on all TEA products and reports that rely on that information.

Possible Consequences of a State Reconsideration Request Due to Significant PEIMS Errors

When an LEA notifies TEA of significant PEIMS errors in the LEA's reported expenditures in the process of requesting the state reconsideration, TEA's Division of Federal Fiscal Compliance and Reporting will make the following notifications of the erroneous data submission to the following TEA divisions and departments, with the following possible results:

- Division of Financial Compliance: Possible increased risk for audit, investigation and/or review
- Division of State Funding: Possible effect on state funding
- Division of Federal Fiscal Monitoring: LEA's possible identification as a high-risk grantee. High-risk grantees may be subject to a review of all reimbursements across one or more grants or a random sampling of expenditures across one or more grants.
- Office for Statewide Education Data Systems: LEA's possible identification as a high-risk grantee
- Department of Accreditation and School Improvement: Possible increased risk for investigation and/or review
- Division of Enforcement Coordination and Governance: LEA possibly recommended for district-level interventions or sanctions based on investigation findings

US Department of Education Waiver

Section 9521(c), ESEA, allows the US Department of Education (USDE) to waive the statutory penalty of the MOE requirement if an LEA's failure to maintain effort resulted from one or both of the following:

- Exceptional or uncontrollable circumstances, such as a natural disaster
- A precipitous decline in the financial resources of the LEA

An LEA that fails to meet the MOE requirement may request a waiver from USDE, as described in the following section. In order to make decisions on an LEA's MOE waiver request, USDE will review revenue and expenditure data provided by TEA.

TEA has no authority to waive the MOE requirement and has no input into USDE's decision regarding LEA waiver requests.

If USDE grants the LEA's request for a waiver, USDE will notify TEA, and TEA staff will notify the LEA. The LEA then receives its full allocation for Title I, Part A and other covered ESEA programs for the following fiscal year.

An approved USDE waiver only waives the statutory penalty for failing to maintain effort related to the determination year for which it was granted—i.e., the proportionate reduction in the upcoming allocations of programs subject to the NCLB LEA MOE requirements. An approved USDE waiver does not eliminate the MOE requirement or authorize the LEA to not maintain effort in future years.

Regardless of whether USDE grants the waiver, the LEA is still noncompliant with the NCLB LEA MOE requirement for that determination year. Remaining noncompliant will affect how the determination of the LEA's compliance with NCLB LEA MOE will be calculated in future determination years as discussed in the Fiscal Years Used in Determination section above.

Requesting USDE Waiver to NCLB LEA MOE Requirement

To request an MOE waiver from USDE, the LEA must write a letter outlining the reason(s) the LEA did not maintain effort and email it to TitleIWaivers@ed.gov. A copy of the letter must also be emailed to compliance@tea.state.tx.us (TEA's Division of Federal Fiscal Compliance and Reporting).

NCLB LEA MOE Timeline

- April – PEIMS actual audited financial data from PEIMS Record 032 for the applicable fiscal years is extracted by the Division of Federal Fiscal Compliance and Reporting (FFCR) to determine LEAs' compliance with the NCLB LEA MOE requirement
- May/June – Listserv announcement regarding availability of *Summary of Compliance with NCLB LEA MOE Requirement* in NCLB Reports is transmitted via the Grants Administration and Federal Program Compliance listserv (http://miller.tea.State.tx.us/list/)
- May/June – Using the ASK TED email address information, Superintendents are emailed a notification if their LEA's status is one of noncompliance with the NCLB LEA MOE requirement
- May/June – As applicable, LEAs submit waiver requests directly to the USDE and also provides a copy of the letter to TEA's Division of Federal Fiscal Compliance and Reporting at: compliance@tea.State.tx.us
- May/June – TEA posts final *Summary of Compliance with NCLB LEA MOE Requirement* in NCLB Reports
- July – TEA reduces the amount of funds allocated under ESEA covered programs in exact proportion to which an LEA fails to meet the 90 percent requirement
- Ongoing – TEA reinstates any reductions taken from an LEA's allocations, upon notification by the USDE of NCLB LEA MOE waivers granted

NCLB Reports

NCLB LEA MOE determinations are currently made available via NCLB Reports, a web-based application available through TEAL that provides reports on NCLB-related programs. Each superintendent and charter school executive director should apply for access. Other authorized LEA officials may also be granted access by the LEA superintendent or charter school director.

Accessing Summary of Compliance with NCLB LEA MOE Requirement

To access the NCLB LEA MOE Summary of Compliance, do the following:

Login through the Texas Education Agency Login (TEAL) at: https://pryor.tea.State.tx.us/

1. Select **NCLB Reports.**
2. For Report Title, select "**NCLB LEA MOE Reports**" from the drop-down menu.
3. For School Year, select the applicable school year. (For example, select the 2011–2012 school year to obtain the Summary of Compliance with NCLB LEA MOE Requirement for FY 2012, which compares total expenditures and per-pupil expenditures from 2010–2011 to 2011–2012.)

Example of the Summary of Compliance with NCLB LEA MOE Requirement

Below is an example of the *Summary of Compliance with NCLB LEA MOE Requirement* located in NCLB Reports. The report provides the LEA's status of "Compliant" or "Noncompliant" in the top right-hand corner of the document. The percent expended for state and local expenditures and per-pupil expenditures in comparison to the prior fiscal year will be shown in the far right-hand column in Line numbers 15, 17, 19, and 21, which represent the four methods of determining compliance.

In the example below, the LEA is compliant. While the LEA met compliance in all four methods for determining compliance, it only needs to show compliance for at least **one** test to be compliant.

If the LEA is noncompliant, Line 22 calculates the exact proportion to which an LEA did not meet the MOE requirement using the measure most favorable to the LEA (i.e., the test closest to demonstrating that the LEA expended at least 90% of the amount expended the prior year).

TEXAS EDUCATION AGENCY

Summary of Compliance with NCLB LEA Maintenance of Effort Requirement

Region CDN LEA Name

Status: **COMPLIANT**

Line Nbr	Function Code	Function Code Description	Prior Fiscal Year)	Fiscal Year XX	
01	11	Instruction	$2,284,382	$2,176,034	
02	12	Instructional Resources and Media Services	$25,504	$34,792	
03	13	Curriculum and Instructional Staff Development	$1,249	$5,725	
04	21	Instructional Leadership	$0	$0	
05	23	School Leadership	$268,794	$256,845	
06	31	Guidance and Counseling Service	$22,043	$16,982	
07	32	Social Work Services	$0	$0	
08	33	Health Services	$48,021	$45,766	
09	34	Student (Pupil) Transportation	$148,461	$133,331	
10	35	Food Services (Deficit only)	$0	$0	
11	36	Cocurricular/Extracurricular Activities (Deficit only)	$0	$0	
12	41	General Administration	$266,904	$251,070	
13	51	Plant Maintenance and Operations	$531,412	$513,330	
14	53	Data Processing Services	$2,800	$0	
15		Total Operating Expenditures (Add 01-14)	$3,589,570	$3,445,875	95.997 %
16		Refined Average Daily Attendance	447.848	449.63	
17		Total Operating Expend. per Pupil (Refined ADA) (15/16)	$8,015	$7,664	95.616 %
18		Membership	468	471	
19		Total Operating Expend. per Pupil (Membership) (15/18)	$7,670	$7,316	95.385 %
20		Enrollment	468	471	
21		Total Operating Expend. per Pupil (Enrollment) (15/20)	$7,670	$7,316	95.385 %
22		Adjustment to NCLB Entitlements (Refer to C Note below)			0.000 %

NCLB LEA MOE Calculation Template

To estimate preliminary compliance (prior to the consideration of exceptions or state considerations) with the NCLB LEA MOE requirement, LEAs may complete the template posted on the Maintenance of Effort page of the TEA website.

Appendix 1: NCLB LEA MOE Calculation Methodology

The information required to calculate MOE is obtained from the Public Education Information Management System (PEIMS). PEIMS Record 032- Financial Actual Data identifies the LEA's financial information as audited by a certified public accountant (CPA). LEA expenditure data from this record is used to determine compliance with the NCLB LEA MOE requirement.

Included Expenditures

Per Title 34 of the Code of Federal Regulations (34 CFR) 299.5(d)(1), in determining an LEA's compliance with NCLB LEA MOE, the SEA shall consider only the LEA's expenditures from state and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

Therefore, total state and local expenditures expended for the functions listed below are included in the NCLB LEA MOE calculation:

11	Instruction
12	Instructional Resources and Media Services
13	Curriculum and Instructional Staff Development
21	Instructional Leadership
23	School Leadership
31	Guidance and Counseling Service
32	Social Work Services
33	Health Services
34	Student (Pupil) Transportation
35	Food Services (Deficits Only)
36	Cocurricular/Extracurricular Activities (Deficits Only)
41	General Administration
51	Plant Maintenance and Operations
53	Data Processing Services

Excluded Expenditures

Per 34 CFR 299.5(d)(2), the SEA may not consider any expenditures for community services, capital outlay, debt service or supplemental expenses made as a result of a presidentially declared disaster, or any expenditures made from funds provided by the federal government.

Therefore, state and local expenditures expended for the functions and object codes listed below are excluded from the NCLB LEA MOE calculation:

Function Codes Excluded

61 Community Service

71 Debt Service

81 Facilities Acquisition and Construction

Object Codes Excluded

6500 Debt Service

6600 Capital Outlay

Figure: 19 TAC §109.3003(d)

Indirect Cost Handbook

Information, Guidance, and Maximum Indirect Costs Worksheet

DIVISION OF
GRANTS ADMINISTRATION

Contents

Introduction

This handbook provides information and guidance on indirect costs as well as a worksheet for calculating the maximum in indirect costs that may be claimed for a grant administered by the Texas Education Agency (TEA). This guidance is in effect with the 2013–2014 school and grant year and beyond.

This handbook was developed in collaboration with TEA's Division of Federal Fiscal Compliance and Reporting, which administers the implementation of indirect cost rates for state and federal grants, and the Division of Federal and Fiscal Monitoring, which monitors compliance with grant requirements.

Definition of Indirect Cost

Indirect costs are normally charged to grant programs through the indirect cost rate. Grantees must be consistent in treating costs as direct or indirect. Once a cost is treated as direct or indirect, it must be treated that way for all projects and activities, regardless of the source of funding.

The following definitions of indirect cost are drawn from the Office of Management and Budget (OMB) circulars cited:

- OMB Circular A-21—Cost Principles for Educational Institutions (applicable to institutions of higher education [IHEs]): Facilities and administrative [i.e., indirect] costs are those that are incurred for common or joint objectives and therefore cannot be identified readily with a particular sponsored project, an instructional activity, or any other institutional activity. (Section E.1)
- OMB Circular A-87—Cost Principles for State, Local, and Indian Tribal Governments (applicable to local educational agencies [LEAs], including independent school districts [ISDs], education service centers [ESCs], and *all* open-enrollment charter schools): Indirect costs are those incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. (Section F.1)

  NOTE: The definitions in the Texas Financial Accountability System Resource Guide; Financial Accounting and Reporting, January 2010, and the US Department of Education *Cost Allocation Guide for State and Local Governments* align with the definition found in OMB Circular A-87.

- OMB Circular A-122—Cost Principles for Non-Profit Organizations (applicable to nonprofit organizations [NPOs]): Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. (Section C.1)

Current, Approved Indirect Cost Rate

Grantees must have a current, approved federal indirect cost rate to charge indirect costs to the grant. The indirect cost rate is calculated using costs specified in the grantee's indirect cost plan. Those specified costs may not be charged as direct costs to the grant under any circumstances. Refer to the Indirect Cost Rates page of the TEA website for a current listing of 2013-2014 indirect cost rates by ISD and open-enrollment charter school.

Beginning with requests for indirect cost rates for the 2014-2015 school year:

- ISDs will upload requested indirect cost schedules and supporting documentation to TEA through the NCLB Reports application in TEASE, due March 14, 2014.
- For open-enrollment charter schools, the SC5010 (due March 31, 2014) will serve as the charter school's request for an indirect cost rate and contain the sending district data used to calculate the indirect cost rate.
- ESCs receive their indirect cost rate annually from TEA if they submit the indirect cost rate request, a cost allocation plan, and supporting documentation by the deadline designated by TEA.
- IHEs, NPOs, and other governmental entities receive their approved indirect cost rate from their cognizant federal agency. If a current, approved rate is not already on file with TEA's Division of Federal Fiscal

Compliance and Reporting, the grantee must immediately contact its cognizant agency to determine a rate. If it is determined that TEA is the cognizant agency, the grantee must immediately contact TEA's Division of Federal Fiscal Compliance and Reporting to begin the process of determining a rate.

Restricted and Unrestricted Indirect Cost Rates

Two indirect cost rates are calculated and used, the restricted rate and the unrestricted rate:

- The restricted rate is used for grant programs to which the supplement, not supplant provision applies.
- The unrestricted rate is used for grant programs to which supplement, not supplant does not apply.

Supplement, not supplant provisions basically require that grantees use state or local funds for all services required by state law, State Board of Education (SBOE) rule, or local policy and prohibit those funds from being diverted for other purposes when federal funds are available. Federal funds must supplement—add to, enhance, expand, increase, extend—the programs and services offered with state and local funds. Federal funds are not permitted to be used to supplant—take the place of, replace—the state and local funds used to offer those programs and services.

A supplement, not supplant provision applies to all federally and state-funded grant programs administered by TEA, unless specifically stated in the request for application. Therefore, grantees will most commonly use the restricted rate.

Limitation of Administrative Costs

Indirect costs are part of administrative costs. For most grant programs, administrative costs are limited to a certain percentage of the total grant award. If administrative costs are limited to 5%, for example, the total direct administrative costs plus indirect costs claimed for the grant cannot exceed 5%.

Limit on Indirect Costs

Regardless of the restricted or unrestricted indirect cost rate that has been approved for a grantee, the amount of indirect costs that may be claimed is limited depending on whether the grant is federally or state funded.

Use the following table to determine the appropriate indirect cost rate (either restricted or unrestricted) to use in the indirect cost calculation.

Grant Is Federally Funded	Grant Is State Funded
Use the lesser of the following: • Your current, approved indirect cost rate, or • 8%	Use the lesser of the following: • Your current, approved indirect cost rate, or • 15%

Examples

- The grant is federally funded, and supplement, not supplant applies, so the restricted indirect cost rate is used. The grantee's restricted indirect cost rate is 9.403%, which is greater than 8%. Therefore, when calculating indirect costs, the grantee will use the restricted indirect cost rate of 8%.
- The grant is state funded, and supplement, not supplant applies, so the restricted indirect cost rate is used. The grantee's restricted indirect cost rate is 1.34%, which is less than 15%. Therefore, when calculating indirect costs, the grantee will use the restricted indirect cost rate of 1.34%.

- The grant is federally funded and supplement, not supplant does not apply. The unrestricted indirect cost rate must be used. The grantee's unrestricted indirect cost rate is 17.51%, which is greater than 8%. Therefore, when calculating indirect costs, the grantee will use the indirect cost rate of 8%.
- The grant is state funded and supplement, not supplant does not apply. The unrestricted indirect cost rate must be used. The grantee's unrestricted indirect cost rate is 14.695%, which is less than 15%. Therefore, when calculating indirect costs, the grantee will use the unrestricted indirect cost rate of 14.695%.

How to Document Compliance for an Auditor

An LEA should charge indirect costs to a grant program no more than the maximum allowable amount based on their restricted or unrestricted indirect cost rate. If selected for a TEA monitoring or grant review, staff will examine grant documentation and financial records such as detailed general ledgers maintained by the LEA to ensure that the LEA did not exceed the indirect costs rates approved by TEA.

Maximum Indirect Costs Worksheet

With input from the grantee, this worksheet automatically calculates the **maximum** that may be claimed in indirect costs for a grant administered by TEA. Any amount calculated for indirect costs is an estimate only. Indirect costs are claimed based on **actual** expenditures declared on the expenditure reporting system, regardless of whether you have included indirect costs on the Program Budget Summary in the original application or amendment.

Complete the worksheet as follows:

- Yellow indicates a cell where input is required. After entering input, tab to the next yellow cell.
- Light gray indicates a table cell where an automatic calculation takes place; no input is required.
- Dark gray indicates a table cell that corresponds to instructions; no input is required.

For a tabular view of all exclusions by grantee type, refer to Table A: Costs That Must Be Excluded from the Indirect Cost Calculation, following this worksheet.

This worksheet is based on guidance from OMB circulars A-21, A-87, and A-122; US Department of Education *Cost Allocation Guide for State and Local Governments;* and the Texas Financial Accountability System Resource Guide, Financial Accounting and Reporting, January 2010. Other costs than those listed may apply; refer to the preceding guidance.

#	Description	Amount
1.	Enter the total costs budgeted for the grant program:	$0.00
2.	Refer to the Restricted and Unrestricted Indirect Cost Rates section to determine whether to use the restricted or unrestricted rate. If you must use a restricted rate and the following costs are budgeted in your application, enter the budgeted amount. If you must use an unrestricted rate, enter 0.	
	a. Function 51, 6100-6400: Operations and plant maintenance related to performance of the grant	$0.00
3.	Line 2a is subtracted from line 1 and the result entered here. This is your total budgeted cost less restricted rate exclusions.	$0.00

#		Description	Amount
4.		The total budgeted cost less restricted rate exclusions includes costs that all grantees must exclude from the indirect cost calculation. If the following costs are budgeted in your application, enter the budgeted amount(s) on lines 4a–4e:	
	a.	The portion of each subcontract* that is in excess of $25,000 (6219)	$0.00
	b.	Subgrants,* regardless of dollar amount (6290)	$0.00
	c.	Debt service (6500)	$0.00
4.	d.	Capital outlay (6600)	$0.00
	e.	Building purchase, construction, or improvements (6620)	$0.00
5.		The excluded costs listed in lines 4a–4e are added and their total entered here.	$0.00
6.		Line 5 is subtracted from line 3 and the result entered here. **ISDs, ESCs, and *all* open-enrollment charter schools will use this result as their modified total direct cost. Skip to line 13, where this result is entered.**	$0.00
7.		IHEs and NPOs must exclude additional costs. If you are one of those entity types and the following costs are budgeted in your application, enter the budgeted amount(s):	
	a.	Rental or lease of buildings, space in buildings, or land (6269)	$0.00
	b.	Scholarships or fellowships (6200) **NOTE: For NPOs, this is not an allowable cost for federal grants.**	$0.00
8.		The additional excluded costs listed in line 7a–7b are added and their total entered here.	$0.00
9.		Line 8 is subtracted from line 6 and the result entered here. NPOs will use this result as their total modified direct cost. Skip to line 13, where this result is entered	$0.00
10.		IHEs must exclude a final additional cost. If you are an IHE and the following cost is budgeted in your application, enter the budgeted amount:	
	a.	Tuition remission (6100)	$0.00
11.		Line 10a is subtracted from line 9 and the result entered here. IHEs will use this result as their total modified direct cost. Skip to line 13, where this result is entered.	$0.00
12.		**YOUR TOTAL MODIFIED DIRECT COST (from line 6, 9, or 11):**	$0.00

#	Description	Amount
13.	Refer to the Limit on Indirect Costs section to determine whether to use a limited indirect cost rate. Enter the rate here as a decimal value (3.161% = 0.03161; 17.51% = 0.1751):	0.00%
14.	Line 12 is multiplied by line 13. The cents are dropped (not rounded up) and the result entered here. This is the maximum in indirect costs that you may claim for the grant.	$0.00

* Subcontracts and subgrants may be primarily distinguished as follows:

- A contract obligates a vendor or service provider (contractor) to furnish goods or services to the buyer, who pays for and benefits from them. If the contract is for services, they are usually of a kind that the buyer would perform for itself if it had the resources. These are commonly referred to as third-party contracts.
- A grant is an agreement between an awarding agency (grantor) and a recipient of funds (grantee). The goods and services purchased with grant funds do not benefit the grantor. Instead, the funds provided by the grantor benefit the grantee, along with any grant program participants who receive program benefits. In this case, the TEA grantee (the ISD, ESC, charter school, IHE, or NPO) becomes the grantor if it awards an allowable subgrant to another organization, e.g., an IHE awards a subgrant to an LEA as part of the TEA grantee's funded project.

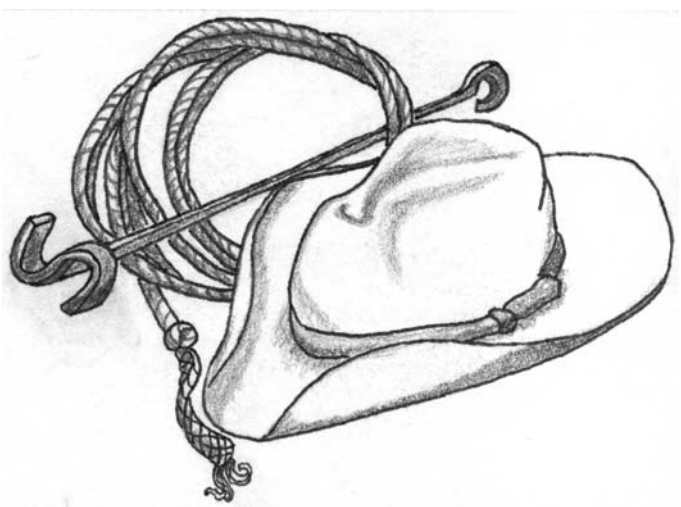
For a detailed description of the characteristics of grantees versus those of contractors, refer to OMB Circular A-133, Subpart B, § ___.210, Subrecipient and vendor determinations.

Table A: Costs That Must Be Excluded from the Indirect Cost Calculation

The excluded costs listed here are referenced in the applicable OMB circulars and in the US Department of Education *Cost Allocation Guide for State and Local Governments*.

	OMB Circular A-87 and *Cost Allocation Guide for State and Local Governments*: School districts, ESCs, *all* open-enrollment charter schools, and governmental entities		**OMB Circular A-122 and *Cost Allocation Guide for State and Local Governments*: Nonprofit organizations**		**OMB Circular A-21 and *Cost Allocation Guide for State and Local Governments*: Educational institutions, i.e., institutions of higher education**	
	Type of Rate		Type of Rate		Type of Rate	
Items of Cost	Restricted	Unrestricted	Restricted	Unrestricted	Restricted	Unrestricted
6100—Payroll Exclude: Tuition Remission					X	X
6200—Professional and Contracted Services Exclude: **6269** - Rental or lease of buildings, space in buildings, or land			X	X	X	X
6200- Scholarships and Fellowships			X (Unallowable for Federal Grants)	X (Unallowable for Federal Grants)	X	X
6219 - The portion of each subcontract in excess of $25,000	X	X	X	X	X	X
6290 - Subgrants, regardless of dollar amounts	X	X	X	X	X	X
6500—Debt Service Exclude: All costs in this category must be excluded prior to calculating indirect costs	X	X	X	X	X	X

Items of Cost	OMB Circular A-87 and *Cost Allocation Guide for State and Local Governments*: School districts, ESCs, *all* open-enrollment charter schools, and governmental entities		OMB Circular A-122 and *Cost Allocation Guide for State and Local Governments*: Nonprofit organizations		OMB Circular A-21 and *Cost Allocation Guide for State and Local Governments*: Educational institutions, i.e., institutions of higher education	
6600—Capital Outlay Exclude: All costs in this category must be excluded prior to calculating indirect costs	X	X	X	X	X	X
6620—Building Purchase, Construction, or Improvements Exclude: All costs in this category must be excluded prior to calculating indirect costs	X	X	X	X	X	X
Org 701 – Office of the Superintendent Exclude: All costs in this category must be excluded prior to calculating indirect costs	X		X		X	
Function 51, 6100-6400 – Operations and Maintenance of Plant Exclude: All costs in this category must be excluded prior to calculating indirect costs	X		X		X	



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Notice of Request for Applications

Pursuant to Chapter 403, §403.354 and §403.356, Texas Government Code; Chapter 134, §134.004 and §134.006, Texas Education Code, the Texas Comptroller of Public Accounts (Comptroller), announces this Notice of Request for Applications (RFA #E-JG8-2013) and invites applications from qualified and interested public junior colleges and public technical institutes (as defined in §61.003 of the Texas Education Code) for Jobs and Education for Texans (JET) grants to defray the start-up costs associated with the development of new career and technical education programs that meet the requirements consistent with the terms of the RFA. Comptroller reserves the right to award more than one grant under the terms of the RFA. If a grant award is made under the terms of the RFA, the recipient should anticipate an effective date no earlier than February 24, 2014, or as soon thereafter as practical.

FUNDS AVAILABLE: Comptroller anticipates awarding approximately $5,000,000 in grants under the RFA. The minimum grant amount is $50,000 and the maximum amount is $350,000.

CONTACT: Parties interested in submitting an application should contact Jason C. Frizzell, Assistant General Counsel, at: 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office) by telephone at (512) 305-8673 or by email at contract@cpa.state.tx.us. The application and instructions will be available at http://www.everychanceeverytexan.org/funds and on the Electronic State Business Daily (http://esbd.cpa.state.tx.us) after 10:00 a.m. Central Time (CT) on November 1, 2013, and during normal business hours thereafter.

QUESTIONS: All written inquiries and questions must be received in the Issuing Office no later than 2:00 p.m. (CT) on Friday, November 8, 2013. Prospective applicants are encouraged to submit questions by fax to (512) 463-3669 or by email to contracts@cpa.state.tx.us to ensure timely receipt. On or about November 13, 2013, or as soon thereafter as practical, Comptroller expects to post responses to questions at http://esbd.cpa.state.tx.us. Late questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of questions in the Issuing Office.

CLOSING DATE: Applications must be delivered in the Issuing Office to the attention of Jason C. Frizzell, Assistant General Counsel, Contracts, no later than 2:00 p.m. CT, on Thursday, December 5, 2013. Late applications will not be considered under any circumstances. Respondents shall be solely responsible for verifying the timely receipt of applications in the Issuing Office.

EVALUATION CRITERIA: Applications will be evaluated under the evaluation criteria outlined in the application instructions. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all applications submitted. Comptroller is not obligated to make a grant award or to execute a contract on the basis of this notice or RFA. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or RFA.

SCHEDULE: The anticipated schedule of events pertaining to this grant is as follows: Issuance of RFA - November 1, 2013, after 10:00 a.m. CT; Questions Due - November 8, 2013, 2:00 p.m. CT; Official Responses to Questions posted - November 13, 2013, or as soon thereafter as practical; Applications Due - December 5, 2013, 2:00 p.m. CT; Grant Award/Contract Execution - February 24, 2014, or as soon thereafter as practical; Commencement of Grant Funding - as soon thereafter as practical.

TRD-201304799
Jason C. Frizzell
Assistant General Counsel
Comptroller of Public Accounts
Filed: October 23, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/28/13 - 11/03/13 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/28/13 - 11/03/13 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201304780
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 22, 2013

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Credit Union Department

Standard Credit Union Bylaws

The Credit Union Commission (the Commission) adopts an amendment to the Standard Bylaws for State Chartered Credit Unions (Standard Bylaws) relating to the number of honorary or advisory directors that may be appointed by a credit union board, as published in the July 5, 2013 issue of the *Texas Register* (38 TexReg 4418).

The amendment to the Standard Bylaws is adopted as a result of a provision enacted in the 83rd Session of the Legislature that was contained within SB 244. The provision amended §122.056(a) of the Texas Finance Code to change the maximum number of board-appointed honorary or advisory directors from three to six. The adopted amendment brings the Standard Bylaws into conformity with the statutory changes required by SB 244.

The Commission received no comments on the amendment.

The amendment is proposed under the provision of the Texas Finance Code, §122.002, which authorizes the commission to prepare standard articles of incorporation and bylaws. The specific section affected by the proposed amendment is Texas Finance Code §122.056.

CHAPTER V. DIRECTION OF AFFAIRS

Section 5.01. BOARD OF DIRECTORS

(a) Number of Directors. The board of directors of this credit union shall consist of ____ individual members who shall be elected as provided in these bylaws. (The number of directors cannot be less than five). All of the directors shall be members of this credit union. No reduction in the number of directors may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office or other actions provided by these bylaws.

(b) Employees on Board of Directors.

OPTION 1

No director or immediate family member of a director may be a paid employee of the credit union.

OPTION 2

(Fill in the number) director(s) may be a paid employee of the credit union or immediate family members of employees of the credit union. In no case may employees of the credit union and/or immediate family members of employees of the credit union constitute a majority of the board or be the chairman, vice-chairman, or secretary of the board.

(c) Term of Office. Regular terms of office for directors shall be for ____ years. (The term of office cannot be greater than three years). All regular terms must be for the same number of years, and directors shall hold office until successors are elected and have qualified unless disqualified or removed. The regular terms must be fixed at the beginning, or upon any increase or decrease in the number of directors, such that approximately an equal number of regular terms must expire at each annual meeting.

(d) Vacancies. Vacancies on the board of directors will be filled by election at each annual meeting by and from the membership of the credit union.

(e) Terms. Directors may serve more than one term.

(f) Honorary Directors. The board may appoint not more than six honorary or advisory directors who serve at the pleasure of the board and who advise and consult with the board and aid the board in carrying out its duties and responsibilities. An honorary or advisory director is not considered a member of the board and is not entitled to vote on any matter before the board but, if the Board so determines, may participate in deliberations of the board. An honorary or advisory director need not be eligible for membership in the credit union.

TRD-201304738
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 21, 2013

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Texas Education Agency

Public Notice Announcing a Request for Public Comments on Accountability, Monitoring, and Compliance Systems Related to Special Education as Required by Senate Bill 1, General Appropriations Act, Rider 70, 83rd Texas Legislature, Regular Session, 2013

Purpose and Scope of Rider 70. Senate Bill 1, General Appropriations Act, Rider 70, 83rd Texas Legislature, Regular Session, 2013, requires the Texas Education Agency (TEA) to ensure all accountability, monitoring, and compliance systems related to special education are non-duplicative and unified and focus on positive results for students in order to ease the administrative and fiscal burden on districts. Rider 70 also requires the TEA to solicit stakeholder input with regard to this effort. TEA shall issue a report to the Lieutenant Governor, Speaker of the House, Legislative Budget Board, and the presiding officers of the standing committees of the legislature with primary jurisdiction over public education no later than January 12, 2015, regarding the TEA's efforts in implementing the provisions of this rider. In the report, TEA shall include recommendations from stakeholders, whether those recommendations were adopted, and the reasons any recommendations were rejected.

Procedures for Submitting Written Comments. In accordance with Rider 70, TEA will accept written comments on accountability, monitoring, and compliance systems related to special education. Written comments must be submitted no later than December 2, 2013. Comments should be submitted as follows:

Comments concerning accountability systems related to special education may be submitted to Performance Reporting by mail at 1701 North Congress Avenue, Room 4-103, Austin, Texas 78701; or by email at performance.reporting@tea.state.tx.us.

Comments concerning the Performance-Based Monitoring Analysis System (PBMAS) indicators related to special education may be submitted to Performance-Based Monitoring by mail at 1701 North Congress Avenue, Room 4-104, Austin, Texas 78701; or by email at pbm@tea.state.tx.us.

Comments concerning Residential Facility (RF) Monitoring, Special Education Nonpublic Monitoring, and Interventions related to special education may be submitted to Program Monitoring and Interventions by mail at 1701 North Congress Avenue, Room 5-120, Austin, Texas 78701; or by email at PMIdivision@tea.state.tx.us.

Comments concerning the State Performance Plan (SPP) and Annual Performance Report (APR) may be submitted to Federal and State Education Policy by mail at 1701 North Congress Avenue, Room 3-121, Austin, Texas 78701; or by email at spedrider70@tea.state.tx.us.

TRD-201304809
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 23, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is December 2, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that

indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 2, 2013.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: 5M's GROUP LLC dba PARADISE MARKET; DOCKET NUMBER: 2013-1283-PST-E; IDENTIFIER: RN101564094; LOCATION: Paradise, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,567; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: ANDY MINI MART, INCORPORATED; DOCKET NUMBER: 2013-1099-PST-E; IDENTIFIER: RN101431617; LOCATION: Emory, Rains 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: $2,438; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Barton, Ronnie D (Field Citation); DOCKET NUMBER: 2013-1838-WOC-E; IDENTIFIER: RN104392816; LOCATION: Eastland, Eastland County; TYPE OF FACILITY: On-Site Septic System Installer; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 1977 Industrial Blvd., Abilene, Texas 78602-7833, (325) 698-9674.

(4) COMPANY: Carmela Jackson dba Jacksons 281 Store; DOCKET NUMBER: 2013-1395-PST-E; IDENTIFIER: RN102255684; LOCATION: Donna, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Chilton Independent School District; DOCKET NUMBER: 2012-2286-PST-E; IDENTIFIER: RN102849098; LOCATION: Chilton, Falls County; TYPE OF FACILITY: fleet refueling station; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Lamesa; DOCKET NUMBER: 2013-1454-PST-E; IDENTIFIER: RN102052834; LOCATION: Lamesa, Dawson County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(7) COMPANY: City of Mercedes; DOCKET NUMBER: 2013-1282-PWS-E; IDENTIFIER: RN101385938; LOCATION: Mercedes, Hidalgo County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to collect one triggered source monitoring sample from each of the facility's wells within 24 hours of notification of a distribution total coliform-positive sample for the month of September 2012; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: $1,155; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: City of Texarkana; DOCKET NUMBER: 2013-0881-PWS-E; IDENTIFIER: RN101200665; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(8), by failing to maintain the facility's clearwells, ground storage tanks, standpipes, and elevated tanks so that they are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; 30 TAC §290.45(b)(2)(B) and Texas Health and Safety Code, §341.0315(c), by failing to provide a treatment plant capacity of 0.6 gallon per minute per connection; and 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested on an annual basis by a recognized backflow assembly tester and certify that they are operating within specifications; PENALTY: $18,850; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: City of Willow Park; DOCKET NUMBER: 2013-0836-MWD-E; IDENTIFIER: RN101920585; LOCATION: Willow Park, Parker County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013834001, Monitoring and Reporting Requirements Number 7.c, by failing to submit noncompliance notifications for any effluent violation which deviates from the permitted effluent limitation by greater than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; 30 TAC §305.125(9) and TPDES Permit Number WQ0013834001, Monitoring and Reporting Requirements Number 7.a, by failing to notify the TCEQ Regional Office within 24 hours of becoming aware of the noncompliance; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013834001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013834001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2012, by September 30, 2012; 30 TAC

§305.125(1) and (5), and TPDES Permit Number WQ0013834001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013834001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge into or adjacent to water in the state; and 30 TAC §305.125(1) and §319.4, and TPDES Permit Number WQ0013834001, Effluent Limitations and Monitoring Requirements Number 1, by failing to monitor *Escherichia coli* in the effluent as specified in the permit; PENALTY: $44,038; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Cuero Independent School District; DOCKET NUMBER: 2013-1092-PST-E; IDENTIFIER: RN101724607; LOCATION: Cuero, Dewitt County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: David Friedman; DOCKET NUMBER: 2013-1394-PWS-E; IDENTIFIER: RN101253086; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of the triennial sampling to the executive director for the monitoring period from January 1, 2008 to December 31, 2010; 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2010 - 2012 monitoring period and failed to provide the results of annual volatile organic chemical contaminants sampling to the executive director for the 2009 and 2012 monitoring periods; and 30 TAC §290.117(i)(1), by failing to provide the results of nine year lead and copper sampling to the executive director for the January 1, 2004 to December 31, 2012 monitoring period; PENALTY: $816; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: David Thompson as Trustee of THOMPSON MINERAL TRUST 2 dba 4 Way Store and Café; DOCKET NUMBER: 2013-1198-PWS-E; IDENTIFIER: RN106529092; LOCATION: Channing, Moore County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code (THSC), §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; 30 TAC §290.45(c)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of at least 220 gallons; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data to the executive director for review and approval prior to placing a water well into service as a public water supply source; PENALTY: $481; ENFORCEMENT COORDINATOR: Lisa Arneson, (512) 239-1160; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(13) COMPANY: George Watson and Laurette Watson dba Old Barn Ice House and BBQ; DOCKET NUMBER: 2013-1069-PWS-E; IDENTIFIER: RN104709936; LOCATION: Franklin, Robertson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1), (h)(1) and (m) and Texas Health and Safety Code (THSC), §341.035, by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply and by failing to notify the executive director of the startup of a new public water supply; 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for the groundwater supply to ensure microbiological control and distribution protection; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligram per liter (mg/L) of free chlorine throughout the distribution system at all times; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(q)(1), by failing to issue a boil water notification to customers of the facility within 24 hours of a low free chlorine disinfectant residual below 0.2 mg/L using the prescribed notification format as specified in 30 TAC §290.47(e); and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data to the executive director for review and approval prior to placing a well into service; PENALTY: $1,195; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Go Park Mobile, LLC; DOCKET NUMBER: 2013-1491-PWS-E; IDENTIFIER: RN101440956; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: mobile home park with a public water supply; RULE VIOLATED: 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites and provide the results to the executive director; 30 TAC §290.107(e) and §290.108(e), by failing to provide the results of triennial volatile organic chemical contaminants and radionuclides sampling to the executive director; and 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2012 monitoring period; PENALTY: $2,088; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: GOOSE CREEK CONSOLIDATED INDEPENDENT SCHOOL DISTRICT PUBLIC FACILITY CORPORATION (Field Citation); DOCKET NUMBER: 2013-1631-PST-E; IDENTIFIER: RN101790590; LOCATION: Baytown, Harris County; TYPE OF FACILITY: fleet refueling facility; 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: $2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: HABIBCO, INCORPORATED dba Whistle Stop Grocery; DOCKET NUMBER: 2013-1317-PST-E; IDENTIFIER: RN101494656; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(17) COMPANY: M-I L.L.C.; DOCKET NUMBER: 2013-1182-AIR-E; IDENTIFIER: RN100841337; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: mineral grinding plant;

RULE VIOLATED: 30 TAC §116.315(a) and §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to file an air permit renewal application at least six months prior to the expiration of New Source Review Permit Number 52781; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: NORTH VICTORIA UTILITIES, INCORPORATED; DOCKET NUMBER: 2013-0803-PWS-E; IDENTIFIER: RN102673324; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(d)(9), by failing to obtain approval of the executive director prior to the installation of more than three pressure tanks at one site; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director prior to making any significant change to the facility's production, treatment, storage, pressure maintenance, or distribution system including submitting plans and specifications for the proposed changes upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.41(c)(3)(N), by failing to provide each well with a flow measuring device to measure production yields and provide for the accumulation of water production data; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.43(c)(2), by failing to ensure that all hatches remain locked except during inspections and maintenance; 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupation Safety and Health Administration standards and is readily accessible outside the chlorination room; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation which includes high level and floor level screened vents for all enclosures in which chlorine gas is being stored or fed; 30 TAC §290.46(f)(2), (3)(A)(i)(III), and (D)(ii), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with 16 inch mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.110(f)(1)(A), by failing to include all samples collected at sites designated in the monitoring plan as microbiological and disinfectant residual monitoring sites in the compliance determination calculations; and 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction; PENALTY: $1,796; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: Quatro Oil & Gas Incorporated (Field Citation); DOCKET NUMBER: 2013-1885-WR-E; IDENTIFIER: RN106888761; LOCATION: Iowa Park, Wichita County; TYPE OF FACILITY: oil and gas exploration; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to impound, divert, or use state water without a permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 78602-7833, (325) 698-9674.

(20) COMPANY: Rafina LLC dba Korner Food Store; DOCKET NUMBER: 2013-1484-PST-E; IDENTIFIER: RN102272085; LOCATION: Euless, 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: $2,813; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Ranger Excavating LP (Field Citation); DOCKET NUMBER: 2013-1929-WR-E; IDENTIFIER: RN105906069; LOCATION: Austin, Travis County; TYPE OF FACILITY: construction; 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: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(22) COMPANY: RANGER UTILITY COMPANY; DOCKET NUMBER: 2013-1256-PWS-E; IDENTIFIER: RN101216133; LOCATION: Waller, Waller County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $836; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: SAND INCORPORATED dba Ferris Food Mart; DOCKET NUMBER: 2013-1237-PST-E; IDENTIFIER: RN103757654; LOCATION: Ferris, Ellis 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: $7,125; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Southstar LLC dba Southstar Logistics LLC of Texas; DOCKET NUMBER: 2013-1380-PST-E; IDENTIFIER: RN101914844; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: fleet refueling facility; 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: $2,813; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Teakell, Glenn R (Field Citation); DOCKET NUMBER: 2013-1839-WOC-E; IDENTIFIER: RN103258547; LOCATION: Mart, McLennan County; TYPE OF FACILITY: wastewater; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT

COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: Texas A&M University Commerce; DOCKET NUMBER: 2013-1518-PST-E; IDENTIFIER: RN102831625; LOCATION: Commerce, Hunt County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2013-1058-PST-E; IDENTIFIER: RN101696839; LOCATION: Llano, Llano County; TYPE OF FACILITY: Fleet Refueling Station; 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 (UST) system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,063; Supplemental Environmental Project offset amount of $3,251 applied to Travis Audubon Society; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(28) COMPANY: Total Petrochemicals & Refining USA, Incorporated.; DOCKET NUMBER: 2013-0773-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Numbers 46396, PSDTX1073M1, and N044, Special Conditions Number 1, and Federal Operating Permit Number O1267, Special Terms and Conditions Number 29, by failing to prevent unauthorized emissions during an emissions event; PENALTY: $19,688; Supplemental Environmental Project offset amount of $7,875 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: Veolia ES Technical Solutions, L.L.C.; DOCKET NUMBER: 2013-0965-AIR-E; IDENTIFIER: RN102599719; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: hazardous waste incinerator; RULE VIOLATED: 30 TAC §§101.20(2), 116.115(c) and 122.143(4), Texas Health and Safety Code, §382.085(b), 40 Code of Federal Regulations §63.1203(a)(5)(i), New Source Review Permit Number 42450, Special Conditions Numbers 9 and 12(H), and Federal Operating Permit Number O1509, Special Terms and Conditions Numbers 1(A) and 15(A), by failing to limit the carbon monoxide emissions below the permitted hourly rolling average of 100 parts per million by volume and 17.1 pounds per hour; PENALTY: $13,050; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: WRIGHT CONSTRUCTION COMPANY, INCORPORATED; DOCKET NUMBER: 2013-1493-PST-E; IDENTIFIER: RN100644921; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201304797
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 22, 2013

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Enforcement Orders

An agreed order was entered regarding Bigs Real Estate, L.P. and Concordia Group, Docket No. 2012-2453-EAQ-E on October 14, 2013 assessing $3,500 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Addie Marlin dba Marlin Marina Water System, Docket No. 2013-0049-PWS-E on October 14, 2013 assessing $895 in administrative penalties with $179 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 City of Arlington, Docket No. 2013-0140-PST-E on October 14, 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) 925-9336, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PNS SHELL INC, Docket No. 2013-0144-PST-E on October 14, 2013 assessing $4,251 in administrative penalties with $850 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 Woody Butler Homes, Inc., Docket No. 2013-0195-MLM-E on October 14, 2013 assessing $2,927 in administrative penalties with $585 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 BIG CHIEF R.V. RESORT, L.L.C., Docket No. 2013-0422-PWS-E on October 14, 2013 assessing $475 in administrative penalties with $95 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 Port Mansfield Public Utility District and Willacy County Navigation District, Docket No. 2013-0451-MWD-E on October 14, 2013 assessing $3,300 in administrative penalties with $660 deferred.

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 SOUTHERN TRI-STAR MARKETS, LTD. dba Texaco Food Mart, Docket No. 2013-0464-PST-E on October 14, 2013 assessing $6,100 in administrative penalties with $1,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike 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 TOM-TOM INVESTMENTS, INC dba Texas Meat Market 4, Docket No. 2013-0468-PST-E on October 14, 2013 assessing $2,813 in administrative penalties with $562 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 Chai's Family Properties, Ltd. dba LBJ Food Mart 3, Docket No. 2013-0476-PST-E on October 14, 2013 assessing $3,375 in administrative penalties with $675 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.

An agreed order was entered regarding NEW MART CORPORATION dba Speedy Stop, Docket No. 2013-0479-PST-E on October 14, 2013 assessing $7,500 in administrative penalties with $1,500 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 DOTCHY CORPORATION dba Green Oasis Market, Docket No. 2013-0487-PST-E on October 14, 2013 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding USVA ENTERPRISES INC. dba Shop N Go, Docket No. 2013-0506-PST-E on October 14, 2013 assessing $3,375 in administrative penalties with $675 deferred.

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 Harris County, Docket No. 2013-0517-PWS-E on October 14, 2013 assessing $350 in administrative penalties with $70 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 NEW MART CORPORATION dba Go 4 It Food Store, Docket No. 2013-0525-PST-E on October 14, 2013 assessing $4,500 in administrative penalties with $900 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 KUNLAYA CORPORATION dba Fastway Food Store, Docket No. 2013-0549-PST-E on October 14, 2013 assessing $4,506 in administrative penalties with $901 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.

An agreed order was entered regarding HIGHWAY 90, INC. dba Village Food Store 2, Docket No. 2013-0563-PST-E on October 14, 2013 assessing $2,813 in administrative penalties with $562 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 NEW K & T QUICK STOP, INC. dba K & H Food Store, Docket No. 2013-0566-PST-E on October 14, 2013 assessing $4,875 in administrative penalties with $975 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 SKP Inc dba Schertz Conoco FFP 820, Docket No. 2013-0601-PST-E on October 14, 2013 assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PIXLEY WATER WORKS, INC., Docket No. 2013-0615-PWS-E on October 14, 2013 assessing $253 in administrative penalties with $50 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 Texas Department of Transportation, Docket No. 2013-0624-PST-E on October 14, 2013 assessing $2,813 in administrative penalties with $562 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 AHM RETAIL, INC. dba 7 Days Food Store, Docket No. 2013-0631-PST-E on October 14, 2013 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GAA Investment Inc. dba S & S Food Mart, Docket No. 2013-0632-PST-E on October 14, 2013 assessing $2,931 in administrative penalties with $586 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 Dunlap-Swain Tire Company, Inc. dba Dunlap Swain Co, Docket No. 2013-0644-PST-E on October 14, 2013 assessing $6,188 in administrative penalties with $1,237 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 Ky Cheng dba Angus Discount Grocery, Docket No. 2013-0660-PST-E on October 14, 2013 assessing $3,879 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marine Quest - Boz I, L.P., Docket No. 2013-0669-PWS-E on October 14, 2013 assessing $847 in administrative penalties with $168 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 Markham Municipal Utility District, Docket No. 2013-0699-MWD-E on October 14, 2013 assessing $5,750 in administrative penalties with $1,150 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 Baeza Cattle Company, Inc., Docket No. 2013-0709-AGR-E on October 14, 2013 assessing $1,187 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHN B. SANFILIPPO & SON, INC., Docket No. 2013-0721-PWS-E on October 14, 2013 assessing $3,364 in administrative penalties with $672 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 Regency Field Services LLC, Docket No. 2013-0725-AIR-E on October 14, 2013 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAROC PETROLEUM INC dba Tiger Mart 68, Docket No. 2013-0746-PST-E on October 14, 2013 assessing $3,381 in administrative penalties with $676 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.

An agreed order was entered regarding Zaim C-Store, Inc. dba Super Stop, Docket No. 2013-0772-PST-E on October 14, 2013 assessing $3,750 in administrative penalties with $750 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 Fishbeck Enterprises, LLC dba Fishbeck's Shell, Docket No. 2013-0793-PST-E on October 14, 2013 assessing $3,750 in administrative penalties with $750 deferred.

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 Texas Health Harris Methodist Hospital Southwest Fort Worth, Docket No. 2013-0807-PST-E on October 14, 2013 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike 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 Raul Garcia dba Fast Mart, Docket No. 2013-0859-PST-E on October 14, 2013 assessing $2,813 in administrative penalties with $562 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 General Cable Texas Operations L.P., Docket No. 2013-0870-AIR-E on October 14, 2013 assessing $2,813 in administrative penalties with $562 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 PAINT CREEK WATER SUPPLY CORPORATION, Docket No. 2013-0878-PWS-E on October 14, 2013 assessing $952 in administrative penalties with $189 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 Chris Property Management, LLC dba Crystal Grocery, Docket No. 2013-0897-PST-E on October 14, 2013 assessing $6,900 in administrative penalties with $1,380 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 ZUBER GROUP, INC. dba Convenience King 106, Docket No. 2013-0900-PST-E on October 14, 2013 assessing $6,095 in administrative penalties with $1,218 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 TA Operating LLC dba Petro Shopping Center 304, Docket No. 2013-0956-PST-E on October 14, 2013 assessing $7,275 in administrative penalties with $1,455 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 Tiwana Investments, LLC dba T & E Country Store, Docket No. 2013-0971-PST-E on October 14, 2013 assessing $2,942 in administrative penalties with $588 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 M & M Contracting, Ltd., Docket No. 2013-1018-PST-E on October 14, 2013 assessing $2,568 in administrative penalties with $513 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 Town of Quintana, Docket No. 2013-1090-PWS-E on October 14, 2013 assessing $526 in administrative penalties with $105 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.

A field citation was entered regarding Keith Jarrell, Docket No. 2013-1112-WOC-E on October 14, 2013 assessing $175 in administrative penalties.

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.

A field citation was entered regarding Daniel H. White, Docket No. 2013-1196-WOC-E on October 14, 2013 assessing $175 in administrative penalties.

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.

A field citation was entered regarding Joe Dale Wilson, Docket No. 2013-1212-WOC-E on October 14, 2013 assessing $175 in administrative penalties.

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.

A field citation was entered regarding VJ MARLIN INVESTMENTS, INC., Docket No. 2013-1325-PST-E on October 14, 2013 assessing $1,750 in administrative penalties.

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.

A field citation was entered regarding Annette Fields, Docket No. 2013-1386-WOC-E on October 14, 2013 assessing $175 in administrative penalties.

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.

A field citation was entered regarding Stockon 5 Construction, LLC, Docket No. 2013-1407-WQ-E on October 14, 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 order was entered regarding Yahya Jafreh aka John Jafreh, Docket No. 2012-0996-PST-E on October 15, 2013 assessing $7,741 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.

TRD-201304802
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2013

Notice of Water Quality Applications

The following notices were issued on October 11, 2013 through October 18, 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

TEXAS DEPARTMENT OF CRIMINAL JUSTICE (TDCJ), which operates Terrell Cannery, a vegetable cannery plant at the TDCJ Terrell Unit, has applied to the TCEQ for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002952000, which authorizes the discharge of vegetable-wash water, retort water, can-cooling water, and washdown water at a daily average flow not to exceed 250,000 gallons per day via Outfall 001. The draft permit authorizes the discharge of vegetable-wash water, retort water, can-cooling water, and washdown water at a daily average flow not to exceed 25,000 gallons per day via Outfall 001. This application was submitted to the TCEQ on March 4, 2013. The facility is located at 1300 Farm-to-Market Road 655, at the TDCJ Terrell Prison Unit, 5.4 miles west of the intersection of Farm-to-Market Road 655 and Farm-to-Mar-

ket Road 521, at the western terminus of Farm-to-Market Road 655, on the east side of Oyster Creek, and approximately four miles southwest of the City of Rosharon, Brazoria County, Texas 77583.

ALLIED PETROCHEMICAL LLC which operates a facility that processes petroleum products and produces sulfonic acid by sulfonation, has applied for a renewal of TPDES Permit No. WQ0003903000, which authorizes the discharge of treated process wastewater and stormwater at a daily average flow not to exceed 21,000 gallons per day and a daily maximum flow not to exceed 25,000 gallons per day via Outfall 001. The facility is located at 2330 Farm-to-Market Road 2917, in the southeast quadrant of the intersection of Farm-to-Market Road 2917 and the Missouri Pacific Railroad Tracks, and northeast of the City of Liverpool, Brazoria County, Texas 77511.

GE MOBILE WATER INC which operates GE Mobile Water, Inc. - Baytown Facility, has applied for a renewal of TPDES Permit No. WQ0003964000, which authorizes to discharge ion exchange water treatment system wastes and reverse osmosis membrane cleaning wastewater at a daily average flow not to exceed 480,000 gallons per day, and a daily maximum flow not to exceed 540,000 gallons per day. The facility is located adjacent to the west side of Farm-to-Market Road 1405 and approximately 4,000 feet south of the intersection of State Highway 55 and Farm-to-Market Road 1405, east of the City of Baytown, Chambers County, Texas 77520. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

DURATHERM INC which operates DuraTherm a RCRA permitted recycling and storage facility that handles oily waste from petroleum refining and petrochemical industries has applied for a renewal of TPDES Permit No. WQ0004086000, which authorizes the discharge of stormwater associated with industrial activity. The facility is located at 2700 Avenue S, in San Leon, Galveston County, Texas, 77539.

CITY OF LULING has applied for a renewal of TPDES Permit No. WQ0010582001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 0.5 mile east of State Highway 80 and approximately 1.5 miles south of the intersection of U.S. Highway 90 and State Highway 80, at 725 Club Drive, Luling, in Caldwell County, Texas 78648.

CITY OF BLOSSOM has applied for a renewal of TPDES Permit No. WQ0010715002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 3,000 feet southwest of the intersection of U.S. Highway 82 and Farm-to-Market Road 1502, approximately 4,000 feet east of the intersection of Farm-to-Market Roads 194 and 196 in Lamar County, Texas 75416.

CITY OF LOVELADY has applied for a renewal of TPDES Permit No. WQ0010734001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 105,000 gallons per day. The facility is located approximately 2,000 feet southwest of the intersection of Farm-to-Market 1280 and State Highway 19 on the west side of the City of Lovelady in Houston County, Texas 75851.

CITY OF FLORENCE has applied for a renewal of TPDES Permit No. WQ0010944001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 0.75 mile southeast of the intersection of South Street and Preslar Avenue, Florence in Williamson County, Texas 76527.

TEXAS A&M UNIVERSITY has applied for a renewal of TPDES Permit No. WQ0010968002, 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 on the south corner of Texas A&M University Research and Extension Center, approximately 3 miles southeast of intersection of State Highway 21 and Farm-to-Market Road 50 in Brazos County, Texas 77807.

AQUA UTILITIES INC has applied for a major amendment to TPDES Permit No. WQ0011449001 to authorize a revised discharge point due to the replacement of the existing 0.30 MGD facilities with updated 0.30 MGD facilities. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 5601 Farm-to-Market Road 565 South, in the City of Baytown, in Chambers County, Texas 77580. 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.

GUADALUPE BLANCO RIVER AUTHORITY AND SUNFIELD MUNICIPAL UTILITY DISTRICT NO 4 has applied for a renewal of TPDES Permit No. WQ0014377001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day from combined Outfalls 001, 002 and 003. The facility is located at 1431 Satterwhite Road, Buda, approximately 2,000 feet east of the intersection of Farm-to-Market Road 2001 and Satterwhite Road in Hays County, Texas 78610.

529 #35 LTD has applied for a new permit, proposed TPDES Permit No. WQ0015081001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0013484001 which expired May 1, 2012. The facility is located at 11919 Farm-to-Market Road 529, Houston approximately 6,800 feet west of U.S. Highway 290, 2,900 feet south of Farm-to-Market Road 529 (Spencer Road), north of Fisher Road and east of Addicks Fairbanks Road on U.S. 65 in Harris County, Texas 77041.

JUDSON INDEPENDENT SCHOOL DISTRICT has applied for a new permit, proposed Permit No. WQ0015141001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility will be located northwest of the intersection of Wagon Road and Evans Road, 2,500 feet west of Evans Road and 380 feet north of Wagon Road in Bexar County, Texas 78266.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201304800
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2013

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Notice of Water Rights Application

Notice issued October 17, 2013.

APPLICATION NO 12468A The City of Dallas (City), 1500 Marilla Street, Room 4AN, Dallas, Texas 74201, seeks an amendment to Water Use Permit No. 12468 to authorize the use of the bed and banks of

the Trinity River, Trinity River Basin downstream of the City of Dallas' Central and Southside Waste Water Treatment Plants (WWTPs), within Dallas, Kaufman, Ellis, Henderson, and Navarro counties, to convey not to exceed 247,200 acre-feet of authorized return flows for subsequent diversion and use. More information on the application and how to participate in the permitting process is given below. The application and required fees were received on November 10, 2011. Additional information was received on March 7, May 8, and May 15, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 14, 2012. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by November 15, 2013.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201304801
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 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 September 16, 2013, through October 21, 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 October 23, 2013. The public comment period for this project will close at 5:00 p.m. on November 22, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: City of Vidor; Location: The project site is located in approximately 1.5 miles of an unnamed tributary of the Neches River (locally referred to as Schoolhouse Ditch) approximately 0.2 miles east of the intersection of Main Street (Farm-to-Market Road (FM)105) and Orange Street, in Vidor, Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: TX-BEAUMONT EAST, Texas. Latitude: 30.1137 North; Longitude: -94.0099 West. Project Description: The applicant proposes to fill and excavate below the plane of the ordinary high water mark to improve floodwater conveyance and to increase erosion control. CMP Project No.: 14-1073-F1. Type of Application: This application will be reviewed pursuant to Section 404 of the Clean Water Act (CWA).

Applicant: Glen Forman; Location: The project site is located in Galveston Bay, at 6400 Harborside Drive in Galveston, Galveston County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: GALVESTON, Texas. Latitude: 29.297778 North; Longitude: -94.846667 West. Project Description: The applicant proposes to discharge fill material into 10.65 acres of Galveston Bay to expand the existing land out into the bay. Such activities include installing approximately 1,125 linear feet of sheet piling, discharging 36,000 cubic yards of sandy clay and 560 cubic yards of rip-rap into Galveston Bay. CMP Project No.: 14-1072-F1. Type of Application: This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the CWA.

Applicant: Texas Department of Transportation; Location: The project is an 11-mile-long section (Section 4) of the overall 55-mile-long project for roadway improvements that extends from State Highway (SH) 36 from south of FM 2004 to FM 1495. Section 4 is located in wetlands and waters of the US, adjacent to the Brazos River. The remaining portion of the route is either located in uplands or in areas where aquatic resources have been avoided. The project route extends along SH 36 from FM 2004 to 1,850 feet south of Velasco Boulevard, in Freeport, Brazoria County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: JONES CREEK, Texas. Latitude: 28.985541; N Longitude: -95.515803 W. Project Description: The applicant proposes to excavate 9,907 cubic yards of fill material and to place 15,576 cubic yards of fill material into waters of the US, including wetlands, during roadway improvements along this portion of SH 36, within Section 4. Impacts to 10.761 acres of wetlands and 3.926 acres of waters of the US will occur as a result of crossing 6 waters of the US and 24 wetlands from the proposed roadway improvements. CMP Project No.: 14-1080-F1. Type of Application: This application

will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the CWA.

Applicant: Baryonyx Corporation; Location: The project site is located in Gulf of Mexico, offshore South Padre Island, in Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Isabel NW, Texas. Turbine 1 Latitude: 26.216344 North; Longitude: -97.099182 West; Turbine 2 Latitude: 26.221474 North; Longitude: -97.092199 West; Turbine 3 Latitude: 26.226603 North; Longitude: -97.085215 West. Project Description: The applicant proposes to install three wind turbines with an electric collection system between the turbines. The turbine area will then be tied into an existing electric substation located on South Padre Island. The beach and nearshore area of the export transmission cable will be installed using Horizontal Directional Drilling (HDD). CMP Project No.: 14-1081-F1. Type of Application: This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

Applicant: U.S. Army Corps of Engineers; Location: Coast-wide. Project Description: Public notice is for the re-issuance of three Regional General Permits: #SWG-1998-02413 to install pipelines by directional drilling; #SWG-2002-02392 to construct aerial electric power transmission and distribution lines, and utility cable crossing, where support structures are not to be located in navigable waters of the United States and; #SWG-2002-02405 to maintenance dredge existing authorized facilities in the Corpus Christi Ship Channel, and the Rincon Channel, from Corpus Christi Channel, to and including Canals A and B. CMP Project No.: 13-1120-F1. Type of Application: These applications are being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act.

Applicant: U.S. Army Corps of Engineers; Location: Waters of the United States within a portion of the High Island Oil Field, bounded on the south and west by the existing perimeter levee, on the north by a marsh adjacent to the perimeter levee, and on the east by State Highway 124 and the 5-foot elevation contour, at the base of High Island, Galveston County, Texas. Project Description: Public notice is for the re-issuance of Regional General Permit #SWG-1997-02818 to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities provided that certain special conditions are met. CMP Project No.: 13-1120-F1. Type of Application: This application is being evaluated under §404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act.

Applicant: City of Galveston; Location: The project site is at Dellanera Beach in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Galveston OE S, Texas. Latitude: 24.241184 North; Longitude: -94.871641 West. Project Description: The applicant is applying to the Federal Emergency Management Agency for Public Assistance funds to repair an existing dune damaged by Hurricane Ike in Sept. 2008. FEMA Project Worksheet #1791 DR TX 15155. CMP Project No.: 14-1103-F5. Type of Application: This application will be reviewed pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288) as amended.

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-201304824
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: October 23, 2013

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Texas Health and Human Services Commission

Correction of Public Notice

The Texas Health and Human Services Commission (HHSC) published a public notice in the September 13, 2013, issue of the *Texas Register* (38 TexReg 6060), regarding the intent to submit a request for an amendment to the Medically Dependent Children Program (MDCP) Medicaid waiver, which is a waiver program under the authority of §1915(c) of the Social Security Act. The MDCP waiver is currently approved for the five-year period beginning September 1, 2012, and ending August 31, 2017.

The MDCP provides home and community-based services to persons under age 21 who are medically fragile and meet the requirements for nursing facility care. Services include respite, adaptive aids, minor home modifications, financial management services, transition assistance services, and adjunct support services. Texas uses the MDCP waiver to provide services to Texans in the least restrictive environment possible. These environments include the individual's or a family member's home, a foster care home, or an assisted living facility.

The waiver transfer process, allowing individuals to transfer between waivers when medically necessary for services to continue to ensure health and safety, was previously described in the public notice published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 6060). The waiver transfer process will not be added to this amendment. HHSC is requesting that the Centers for Medicare and Medicaid Services approve this waiver amendment beginning September 1, 2013, and ending August 31, 2017. The waiver amendment application maintains cost neutrality for federal years 2013 through 2017.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-370, Austin, Texas 78708-5200; phone (512) 462-6289; fax (512) 730-7472; or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201304732
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 18, 2013

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Correction of Public Notice

The Texas Health and Human Services Commission (HHSC) published a public notice in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5570), regarding the intent to submit a request for an amendment to the Community-Based Alternatives (CBA) Medicaid waiver, which is a waiver program under the authority of §1915(c) of the Social Security Act. The CBA waiver is currently approved for the five-year period beginning September 1, 2012, and ending August 31, 2017.

The CBA waiver provides home and community based services to persons age 21 and older who meet the requirements for nursing facility care and who reside in the CBA waiver service areas. Services are offered in the participant's home, a Department of Aging and Disability Services contracted adult foster care home, or a licensed assisted living facility. Services include personal assistance services; nursing; physical therapy; occupational therapy; speech, hearing, and language therapy; support consultation services; respite; prescribed drugs; financial management services; adaptive aids and medical supplies; dental; emergency response services; home delivered meals; minor home modifications; adult foster care; assisted living; and transition assistance services.

The waiver transfer process, allowing individuals to transfer between waivers when medically necessary for services to continue to ensure health and safety, was previously described in the public notice published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5570). The waiver transfer process will not be added to this amendment. HHSC is requesting that the Centers for Medicare and Medicaid Services approve this waiver amendment beginning September 1, 2013, and ending August 31, 2017. The waiver amendment application maintains cost neutrality for federal years 2013 through 2017.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-370, Austin, Texas 78708-5200; phone (512) 462-6289; fax (512) 730-7472; or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201304733
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 18, 2013

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Texas Medicaid Wellness Program (TMWP) waiver. The TMWP waiver is currently approved for a one year period beginning June 1, 2013, and ending May 31, 2014. The proposed effective date of the amendment is March 1, 2014.

Under §1915(b) of the Social Security Act, the TMWP waiver is designed to be an educational and care management service offered as an additional benefit to eligible enrollees in the traditional Medicaid Fee-For-Service program. For clients who choose to participate, the program focuses on removing barriers to care and promoting self-management. In addition, the TMWP vendor works closely with providers to promote patient self-management and the medical home. Care management services are provided to individuals with complex chronic or co-morbid conditions at a frequency based on the client's risk level.

HHSC is requesting an amendment to TMWP to allow fee-for-service dual eligible members under the age of 21 that are eligible for both Medicare and Medicaid to participate in the waiver program. HHSC is requesting that CMS approve the waiver amendment beginning March 1, 2014, and ending when the waiver expires on May 31, 2014. The amendment does not impact cost effectiveness.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-370, Austin, Texas 78708-5200, phone (512) 462-6289, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201304822
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 23, 2013

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Public Notice of Draft Temporary Assistance for Needy Families State Plan

The Texas Health and Human Services Commission (HHSC) will post the draft Temporary Assistance for Needy Families (TANF) State Plan on the HHSC Internet web site at http://www.hhsc.state.tx.us/ for public review by November 1, 2013. Comments may be submitted during the public comment period that begins November 1, 2013, and ends December 16, 2013. Comments must be submitted in writing to Hilary Davis, Policy Strategy, Analysis, and Development, MC-2115, 909 W. 45th Street, Austin, Texas 78751 or electronically to hilary.davis@hhsc.state.tx.us. For additional information or a copy of the TANF State Plan, contact Hilary Davis at (512) 206-5556.

TRD-201304812
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 23, 2013

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by AMERIHEALTH CASUALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Wilmington, Delaware.

Application for MNM-1997, INC., a domestic health maintenance organization, DBA (doing business as) DENTAL SOURCE. The home office is in Sugar Land, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201304823
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: October 23, 2013

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Texas Department of Licensing and Regulation

Vacancies on Advisory Board on Cosmetology

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Advisory Board on Cosmetology (Board) established by Texas Occupations Code, Chapter 1602. The pertinent rule may be found in 16 TAC §83.65. The purpose of the Advisory Board on Cosmetology is to advise the Commission and department on adopting rules, setting fees, and enforcing and administering the Act, as applicable.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of one member who holds a license for a beauty shop that is part of a chain of beauty shops; one member who holds a license for

a beauty shop that is not part of a chain of beauty shops; one member who holds a private beauty culture school license; two members who each hold an operator license; one member who represents a licensed public secondary or post secondary beauty culture school; one member who represents a licensed public secondary beauty culture school; and two public members. Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year. This announcement is for the vacancies of a member who holds a license for a beauty shop that is part of a chain of beauty shops and a member who holds an operator license.

Interested persons should download an application from the Department website at: www.tdlr.texas.gov. Applicants can also request an application from the Texas Department of Licensing and Regulation by telephone at (800) 803-9202, fax at (512) 475-2874 or email to advisory.boards@tdlr.texas.gov. Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201304828
William H. Kuntz Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: October 23, 2013

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Vacancy on Polygraph Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Polygraph Advisory Committee established by Texas Occupations Code, Chapter 1701. The purpose of the Polygraph Advisory Committee (Committee) is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on: educational requirements for a polygraph examiner; the content of licensing examination; technical issues related to a polygraph examination; the specific offenses for which a conviction would constitute grounds for the department to take action under §53.021; and administering and enforcing Chapter 1701.

The Committee is composed of five members appointed by the presiding officer of the Commission, with the Commission's approval. The advisory board consists of the following members: two polygraph examiner members who are qualified polygraph examiners for a governmental law enforcement agency; two polygraph examiner members who are qualified polygraph examiners in the commercial field; and one member who represents the public. A member must have been a United States citizen and a resident of this state for at least two years before the date of appointment. A polygraph examiner member must be actively engaged as a polygraph examiner on the date of appointment. Two committee members may not be employed by the same person. Members serve terms of six years, with the terms of one or two members, as appropriate, expiring on February 1 of each odd-numbered year. This announcement is for a polygraph examiner who is qualified in the commercial field.

Interested persons should download an application from the Department website at: www.tdlr.texas.gov. Applicants can also request an application from the Texas Department of Licensing and Regulation by telephone at (800) 803-9202, fax at (512) 475-2874 or email to advisory.boards@tdlr.texas.gov. Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201304827
William H. Kuntz Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: October 23, 2013

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Texas Department of Public Safety

Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Department of Public Safety ("TxDPS") announces its Request for Proposals No. 405-FIN-14-P40548 ("RFP") for major consulting services. TxDPS solicits proposals from interested and qualified firms as specified in the RFP. TxDPS is pursuing a contract with a qualified independent consulting firm to prepare and negotiate the indirect cost allocation plan for the State of Texas for fiscal year 2015 based on actual costs for fiscal year 2013 and for specified additional fiscal years at the option of TxDPS.

Contact: Parties interested in a hard copy of the RFP should contact Joe Woolverton, Contract Administrator, Procurement and Contract Services, TxDPS, joseph.woolverton@dps.texas.gov ("Issuing Office"), telephone number: (512) 424-2065. The RFP will be released and available electronically on the Electronic State Business Daily ("ESBD") at: http://esbd.cpa.state.tx.us on Friday, November 1, 2013, after 10:00 a.m., CT.

Questions: The schedule of events is specified in the RFP posted on the ESBD. For example, a pre-proposal conference will be held on November 14, 2013 at 10:00 a.m., CT, at the TxDPS offices designated in the RFP. All written questions must be received in the Issuing Office no later than 5:00 p.m., CT, on Wednesday, November 20, 2013. Questions received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of their questions in the Issuing Office. On or about Friday, November 22, 2013, TxDPS expects to post responses to the questions as an addendum to the ESBD notice of issuance of the RFP.

Closing Date: Proposals must be delivered to and received in the Issuing Office no later than 3:00 p.m., CT, on Tuesday, December 3, 2013. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. TxDPS shall make the final decision on any contract award or awards resulting from the RFP. TxDPS reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. TxDPS is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. TxDPS shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a response.

TRD-201304820
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: October 23, 2013

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Public Utility Commission of Texas

Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 21, 2013, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one thousand-block of numbers in the Austin rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 41956.

The Application: AT&T Texas requested one (1) thousand-block of numbers on behalf of its customer, Innovative Aftermarket Systems, in the Austin rate center. AT&T Texas submitted an application to the PA for the requested block in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than October 30, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 41956.

TRD-201304795
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 22, 2013

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Consolidated Communications of Texas to Withdraw Telepak Services - Docket Number 41933.

The Application: On October 14, 2013, pursuant to P.U.C. Substantive Rule §26.208(h), Consolidated Communications of Texas (CCTX) filed an application with the Commission to withdraw the offering of Telepak Services from Section 5 of the General Exchange Tariff. Telepak Services is a CCTX service which offers customers a choice of three different service packages, each priced at a flat rate. CCTX indicated that there are currently seven subscribers to Telepak Services. This service provided revenues during the last three years as shown below:

Year/Revenue:

August 2010 - July 2011: $10,445.98

August 2011 - July 2012: $7,318.94

August 2012 - July 2013: $5,801.92

CCTX proposed an effective date of December 1, 2013. The proceedings were docketed and suspended on October 15, 2013, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 41933.

TRD-201304796
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 22, 2013

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Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Monday, November 25, 2013 at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas to receive public comments on the November 2013 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2013-2016.

The STIP reflects the federally funded transportation projects in the FY 2013-2016 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed November 2013 Quarterly Revisions to the FY 2013-2016 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at: http://www.txdot.gov/government/programs/stips.html

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Friday, November 22, 2013, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests

should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed November 2013 Quarterly Revisions to the FY 2013-2016 STIP to Marc Williams, P.E., Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, December 2, 2013.

TRD-201304826
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 23, 2013

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 TAC §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects. For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings. Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule. Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201304825
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 23, 2013

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Texas Veterans Commission

Request for Applications Concerning the Housing4Texas-Heroes Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017; and Senate Bill 1, 83rd Legislature, Regular Session (2013), Article VII, Rider 16, Page VII-7.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants. The TVC is authorized to use funds appropriated to Housing4TexasHeroes (H4TXH) to administer the program and make reimbursement grants to address the Home Modification assistance needs of Low Income, Very Low Income and Disabled Texas Veterans and their families. Such needs include, but are not limited to, the following: walkways, ramps; doors, windows, and flooring materials; sliding doors; handrails and grab bars; bathroom modifications; and weatherization.

The Texas Veterans Commission established the following priorities for this RFA: widespread distribution of grants across the state; varied services in geographic areas to ensure no over-saturation or duplication of services in areas of the state; outstanding grant applications; and full funding of grant requests, when possible.

Grant Funding Period. Grants awarded will begin on July 1, 2014, and end on June 30, 2016. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 20% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

Grant Amounts. For this solicitation, the minimum grant award will be $5,000. The maximum grant award will be $500,000.

Number of Grants to be Awarded and Total Available. The total amount of grant funding available for this award is $3,000,000; $1.5 million will be available in year 1 and $1.5 million in year 2 of this grant. This is a 2-year grant. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants.

Selection Criteria. Applications will be reviewed by TVC staff for conformance to RFA guidelines. All eligible applications will be evaluated and recommended for funding by the Fund for Veterans' Assistance (FVA) Advisory Committee. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at *http://tvc.texas.gov/Apply-For-A-Grant.aspx* on or about Friday, November 1, 2013.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, all questions must be submitted via email to *grants@tvc.texas.gov.* All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 4:00 p.m. on Thursday, January 9, 2014 at the William B. Travis Building, 1701 N. Congress Ave., Ste. 9-100, Austin, Texas 78701 to be considered for funding.

TRD-201304829
Kathy I. Wood
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Filed: October 23, 2013

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 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.

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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

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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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