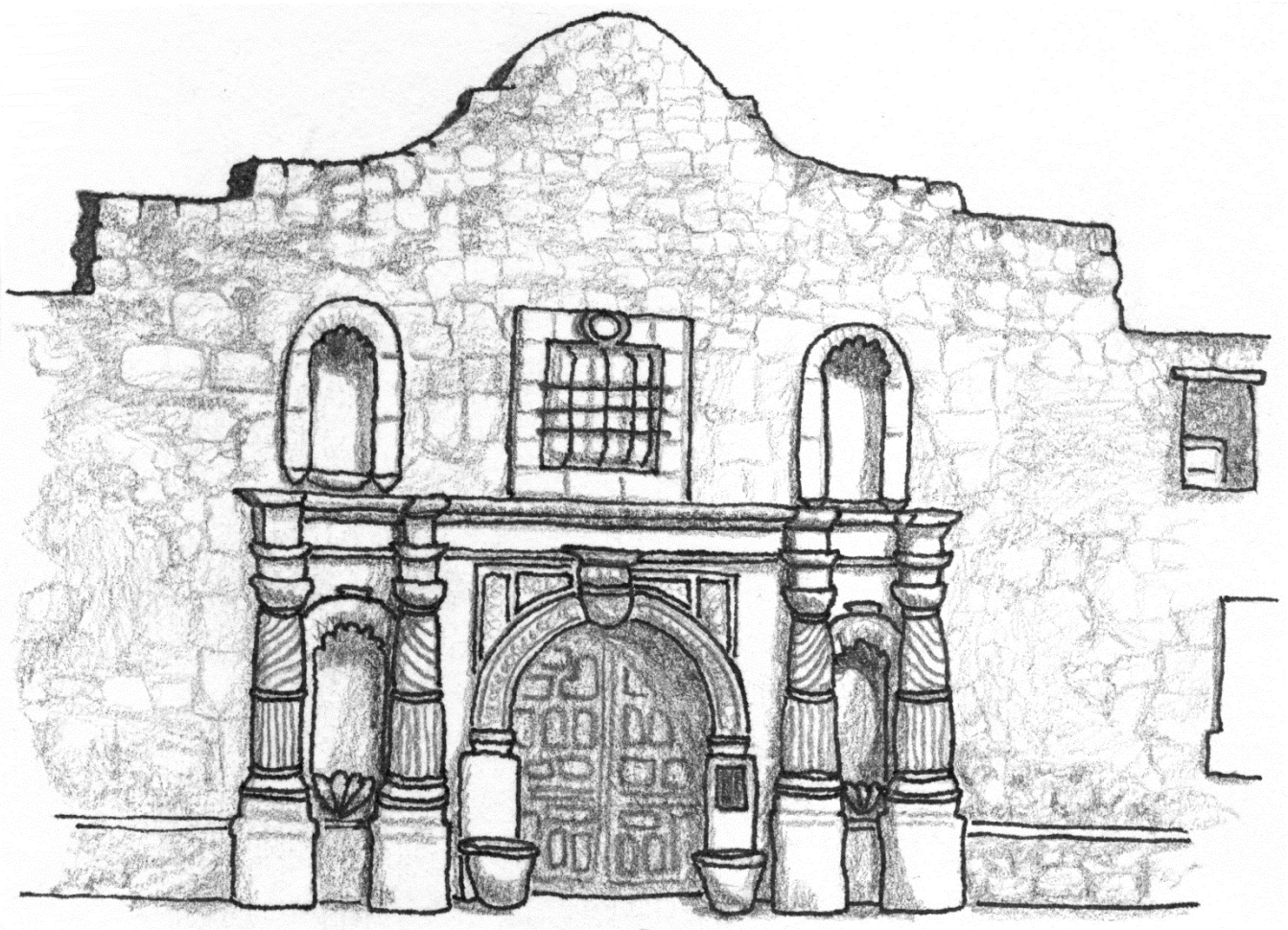

TEXAS REGISTER

Volume 38 Number 43

October 25, 2013

Pages 7375 – 7520



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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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 GOVERNOR

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

Appointments

Appointments for September 30, 2013

Appointed to the Interstate Oil and Gas Compact Commission for a term to expire at the pleasure of the Governor, Commissioner Christi Craddick of Austin.

Designating Christina Rawls Martin as presiding officer of the Family and Protective Services Council for a term at the pleasure of the Governor. Ms. Martin is replacing Gigi Edwards Bryant as presiding officer.

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire September 1, 2015, Richard Battle of Lakeway (replacing Terry Hazell of Georgetown whose term expired).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire September 1, 2015, Susan M. Georgen-Saad of Austin (Ms. Georgen-Saad is being reappointed).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire September 1, 2015, Randal W. Hill of Baird (Mr. Hill is being reappointed).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire September 1, 2015, Munir A. Lalani of Wichita Falls (replacing Thomas Halbouty of Southlake whose term expired).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire September 1, 2015, Wesley Glenn Terrell of Dallas (Mr. Terrell is being reappointed).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire September 1, 2015, Richard D. Williams of Richardson (Mr. Williams is being reappointed).

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2019, William Scott McAfee of Driftwood (Mr. McAfee is being reappointed).

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2019, Michael Cooper Waters of Abilene (Mr. Waters is being reappointed).

Appointed to the Family and Protective Services Council for a term to expire February 1, 2017, Lisa Annette Hembry of Dallas (replacing Anna Maria Jimenez-Martinez of Corpus Christi who resigned).

Appointed to the Family and Protective Services Council for a term to expire February 1, 2019, Krizia Bernadette Ramirez of San Antonio (replacing Gigi Edwards Bryant of Austin whose term expired).

Appointed to the Family and Protective Services Council for a term to expire February 1, 2019, Juan Antonio Sorto of Houston (replacing Deborah Epperson of Dallas whose term expired).

Appointed to the Family and Protective Services Council for a term to expire February 1, 2019, Linda Davis Timmerman of Streetman (replacing Linda Bell Robinson of Houston whose term expired).

Appointments for October 2, 2013

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2017, Jana Sue Burns of Saginaw (replacing Geralda Morales-Whittemore of Brownsville whose term expired).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2015, Anna A. Chapman of Del Rio (replacing Ernest Aliseda of McAllen who resigned).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2019, Charles E. Powell of San Angelo (Mr. Powell is being reappointed).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2019, Connie W. Scott of Robstown (replacing William Heine of Austin whose term expired).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2019, William L. Shine of Harker Heights (replacing William Parry of Belton whose term expired).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2019, Thomas A. Whaylen of Wichita Falls (Mr. Whaylen is being reappointed).

Appointments for October 8, 2013

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2019, T. Lonnie Arrington of Beaumont (reappointed).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2019, Brian Babin of Woodville (reappointed).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2019, Steven M. McReynolds of Port Neches (reappointed).

Appointed to the North Texas Tollway Authority Board of Directors for a term to expire August 31, 2015, William D. "Bill" Elliott of Ravenna (Mr. Elliott is being reappointed).

Appointments for October 10, 2013

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2019, Joe Colonna, Jr. of Dallas (Mr. Colonna is being reappointed).

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2019, David Corpus of Humble (replacing Eric McDonald of Lubbock whose term expired).

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2019, Dolores Ramirez of San Benito (replacing Charlotte Clifton of Snyder whose term expired).

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2019, Dan Lee Craven of Crockett (replacing David Rosberg, Jr. of Mason whose term expired).

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2019, Roland Lenarduzzi of Alvin (replacing John David Clader of Pleasanton whose term expired).

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2019, James D. "Jim" McAdams of Seguin (replacing Rick Bonner, Jr. of Corpus Christi whose term expired).

Appointed as Judge of the Criminal District Court No. 1, Tarrant County for a term until the next General Election and until her successor shall be duly elected and qualified, Elizabeth Hardeman Beach of Fort Worth. Ms. Beach is replacing Judge Sharen Wilson who resigned.

Appointed to the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 2015, Efrain Avila, Jr. of Universal City (replacing Brenda Compagnone of Carrizo Springs who resigned).

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2019, J.D. Jacobs, Jr. of Rockwall (reappointed).

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2019, David Koonce of Center (reappointed).

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2019, Clarence Earl Williams, Jr. of Orange (reappointed).

Appointed to the Office of Public Utility Counsel for a term to expire February 1, 2015, Tonya Baer of Austin (replacing Sheri Givens of Round Rock whose term expired).

Appointed as Justice of the Fourteenth Appellate District, Place 7, for a term until the next General Election and until his successor shall be duly elected and qualified, Kenneth Price Wise of Humble. Judge Wise is replacing Justice Kem Thompson Frost of Katy who was appointed as Chief Justice of the Fourteenth Appellate District, Place 1.

Appointments for October 11, 2013

Appointed as Judge of the 180th Judicial District Court, Harris County, for a term until the next General Election and until her successor shall be duly elected and qualified, Catherine V. Evans of Houston. Ms. Evans is replacing Judge Marc Brown who was appointed as a Justice of the Fourteenth Appellate District.

Appointed to the Drought Preparedness Council for a term to expire at the pleasure of the Governor, William A. "Bill" Masterson of Guthrie.

Appointed to the Drought Preparedness Council for a term to expire at the pleasure of the Governor, Oscar H. Fogle of Lockhart.

Appointed to the Drought Preparedness Council for a term to expire at the pleasure of the Governor, Thomas Michael Martine of Cypress Mill.

Appointed to the Texas Poet Laureate, State Musician and State Artists Committee for a term to expire October 1, 2015, Ted L. Stewart of Austin (Mr. Stewart is being reappointed).

Appointed to Humanities Texas for a term to expire December 31, 2013, Becky McKinley of Amarillo (replacing J. Bruce Bugg, Jr. of San Antonio who resigned).

Appointed to Humanities Texas for a term to expire December 31, 2013, Carol Peterson of Alpine (replacing Polly Sowell of Austin who resigned).

Appointments for October 14, 2013

Appointed as Judge of the 291st Judicial District Court, Dallas County, for a term until the next General Election and until her successor shall

be duly elected and qualified, Jennifer Jackson Balido of Dallas. Ms. Balido is replacing Judge Susan Hawk who resigned.

Appointed as Criminal District Attorney for Newton County, effective October 31, 2013, for a term until the next General Election and until her successor shall be duly elected and qualified, Courtney Jaye Tracy of Newton. Ms. Tracy is replacing Robert Choate who resigned.

Appointed as Judge of the 334th Judicial District Court, Harris County, for a term until the next General Election and until his successor shall be duly elected and qualified, S. Grant Dorfman of Houston. Mr. Dorfman is replacing Judge Kenneth Wise who was appointed as Justice of the Fourteenth Appellate District.

Appointed as District Attorney of the 132nd Judicial District, Borden and Scurry Counties, for a term until the next General Election and until his successor shall be duly elected and qualified, Benjamin R. Smith of Snyder. Mr. Smith is replacing Dana Cooley who resigned.

Rick Perry, Governor

TRD-201304543



Proclamation 41-3361

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

WHEREAS, this state of disaster includes the counties of Anderson, Andrews, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Navarro, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts,

Robertson, Rockwall, Runnels, Rusk, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata and Zavala.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 3rd day of October, 2013.

Rick Perry, Governor

TRD-201304544





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

(Editor's Note: The Office of the Attorney General submitted the following notice for publication in the October 11, 2013, issue of the Texas Register. Although it was posted in the searchable on-line database, it was inadvertently omitted from the weekly issue.)

RQ-1152-GA

Requestor:

The Honorable Dan Patrick
Chair, Committee on Education
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether Education Code section 11.301 authorizes the citizens of Harris County to use repealed chapter 18 of the Education Code to increase the county equalization tax (RQ-1152-GA)

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

TRD-201304334
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 1, 2013



Requests for Opinions

RQ-1153-GA

RQ-1153-GA has been withdrawn by the requestor.

RQ-1154-GA

Requestor:

The Honorable Rod Ponton
83rd District Attorney
400 South Nelson Street
Fort Stockton, Texas 79735

Re: Whether the Science Advisory Workgroup of the State Fire Marshal's Office has authority to review prior arson investigations (RQ-1154-GA)

Briefs requested by October 28, 2013

RQ-1155-GA

Requestor:

The Honorable Craig Estes
Chair, Committee on Agriculture, Rural Affairs & Homeland Security
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether the Red River Authority must obtain county approval for any purchase of groundwater in a county without a groundwater conservation district (RQ-1155-GA)

Briefs requested by October 29, 2013

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

TRD-201304586
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 15, 2013





TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-580. The Texas Ethics Commission has been asked to consider applicable reporting requirements in a situation in which a candidate incurs processing fees when accepting political contributions by credit card.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201304591
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Filed: October 15, 2013



Advisory Opinion Request

AOR-581. The Texas Ethics Commission has been asked to consider questions regarding the reporting requirements for a registered lobbyist under §305.005(m) of the Government Code.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201304592
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Filed: October 15, 2013



Advisory Opinion Request

AOR-582. The Texas Ethics Commission has been asked to consider questions regarding the reporting requirements for a registered lobbyist under §305.005(m) of the Government Code.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201304593
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Filed: October 15, 2013



Advisory Opinion Request

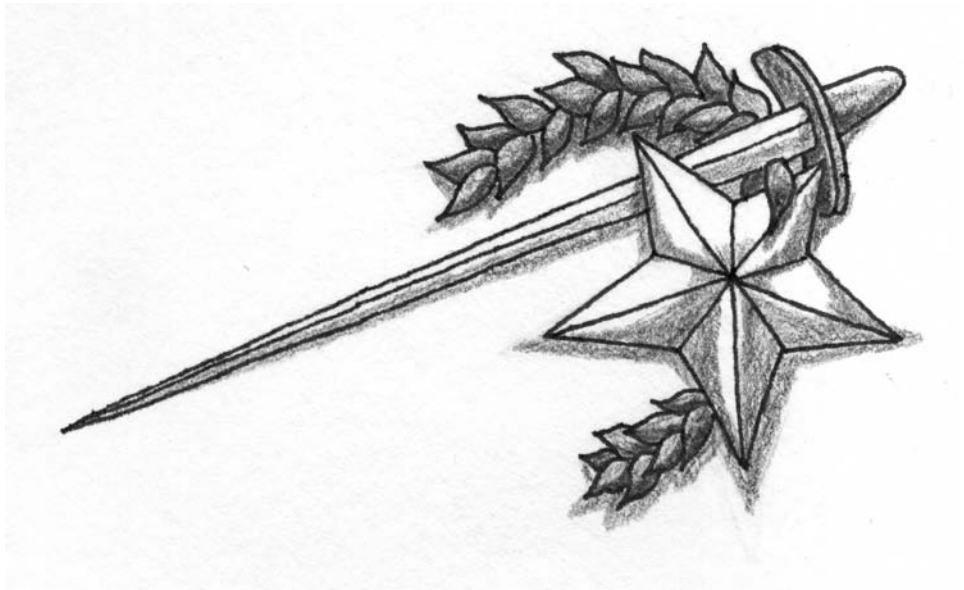
AOR-583. The Texas Ethics Commission has been asked to consider questions about required reporting in a situation where an individual candidate files the campaign treasurer appointment required of candidates and also files form STA to create a specific-purpose committee to support the individual's candidacy.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201304594
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Filed: October 15, 2013





PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 64. STANDARDS OF OPERATION FOR LOCAL COURT-APPOINTED VOLUNTEER ADVOCATE PROGRAMS

1 TAC §64.9, §64.13

The Office of the Attorney General and its Crime Victim Services Division, proposes amendments to Chapter 64, §64.9 and §64.13, concerning Standards of Operation for Local Court-Appointed Volunteer Advocate Programs. The proposed amendments will update §64.9 and §64.13. The nature of the positions sought in court appointed volunteer advocate programs necessitates close proximity and interaction with minor children. These amendments are necessary to add clarity to the requirements for contracts and standards of operations for local programs and requirements for volunteer, employee, and director eligibility.

Gene McCleskey, Division Chief for the Crime Victim Services Division, has determined that for the first five-year period the amendments to §64.9 and §64.13 are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Mr. McCleskey 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 enforcing the amended sections will be the clarification of procedures that a local court appointed volunteer advocate program must follow with regards to the role and training of a local program's volunteers, employees, and directors; as well as the clarification of background check and adequate screening procedures required for a person to become a volunteer, employee, or director of a local program as required by Texas Family Code §264.607. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on this proposed amendments should be submitted to Gene McCleskey, Division Chief for the Crime Victim Services Division, Office of the Attorney General (physical address) 1106 Clayton Lane, Suite 500E, Austin, Texas 78723-2495 or (mailing address) P.O. Box 12198, Austin, Texas 78711-2198. Comments on this proposed amendments must be submitted no later than 30 days from the date of this publication.

The proposed amendments are authorized under Texas Family Code §264.602, requiring the OAG to contract with a volunteer advocate program that provides advocacy services to abused or

neglected children and to adopt rules developing standards for that statewide organization.

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

§64.9. *Contracts with ~~[With]~~ Local Programs.*

(a) Eligibility Requirements for Local Programs.

(1) To be eligible for a contract with the statewide organization under Texas Family Code §264.602, a local program must:

(A) use individuals appointed as volunteer advocates or guardians ad litem by the court to provide for the needs of abused or neglected children;

(B) demonstrate that it has provided court-appointed advocacy services for at least six months ~~[two years]~~;

(C) provide court-appointed advocacy services for at least ten children each month; and

(D) demonstrate that it has local judicial support.

(2) Local judicial support may be demonstrated by a signed Judicial Endorsement form and an annual approval from the court, Child Protective Services and other affiliated agencies as deemed appropriate by the statewide organization.

(3) The statewide organization may not contract with a person who is not eligible under this section. However, the statewide organization may waive the requirement in paragraph (1)(C) of this subsection ~~[subsection (a)(1)(C)]~~ for an established program in a rural area or under other special circumstances.

(b) Criteria for Award of Contracts. The statewide organization shall consider the following in awarding a contract to a local program:

(1) The local program's eligibility for, and use of, funds from local, state, or federal governmental sources, philanthropic organizations, and other sources;

(2) Community support for the local program as indicated by financial contributions from civic organizations, individuals, and other community resources;

(3) Whether the local program provides services that encourage the permanent placement of children through reunification with their families or timely placement with an adoptive family; and

(4) Whether the local program has the endorsement and cooperation of the local court system.

(c) Contract Requirements.

(1) A contract between the statewide organization and a local program shall require the local program to:

(A) Make quarterly and annual financial reports on a form provided by the Office of the Attorney General;

(B) Make quarterly and annual reports of performance factors as identified by the Office of the Attorney General and submit such reports to the statewide organization by the deadlines designated by the statewide organization;

(C) Obtain annual independent financial audits or audited financial statements as required by state or federal law and provide copies of the auditor's reports and related documents in the form and in accordance with the deadlines designated by the statewide organization;

(D) Cooperate with inspections and audits that the Office of the Attorney General makes to ensure service standards and fiscal responsibility; and

(E) Provide as a minimum:

(i) Independent and factual information in writing to the court and to counsel for the parties involved regarding the child;

(ii) Advocacy through the courts for permanent home placement and rehabilitation services for the child;

(iii) Monitoring of the child to ensure the safety of the child and to prevent unnecessary movement of the child to multiple temporary placements;

(iv) Reports in writing to the presiding judge and to counsel for the parties involved;

(v) Community education relating to child abuse and neglect;

(vi) Referral services to existing community services;

(vii) A volunteer recruitment and training program, including adequate screening procedures for volunteers;

(viii) Procedures to assure the confidentiality of records or information relating to the child; and

(ix) Compliance with the standards adopted under Texas Family Code, Section §264.602.

(2) A contract between the statewide organization and a local program shall be enforced through the use of the remedies and in accordance with the procedures provided in the Uniform Grant and Contracts Management Standards. Contracts between the statewide organization and the local volunteer programs shall reference these remedies.

(3) A local program shall comply with the requirements and provisions of the contract between the statewide organization and the Office of the Attorney General.

§64.13. Operation of Local Program.

(a) Personnel.

(1) Volunteers.

(A) volunteers [Volunteers] must be a minimum of 18 years of age;[-]

~~{(B) A volunteer may serve as either:}~~

~~{(i) a guardian ad litem for abused and neglected children; or}~~

~~{(ii) an independent third party "friend of the court."}~~

(B) ~~{(C)}~~ duties [Duties] of volunteers may include, but are not limited to, reviewing applicable records, facilitating prompt and thorough review of the case, interviewing appropriate parties in order to make recommendations regarding the child's best interests, attend-

ing court hearings, and making written recommendations to the court concerning the outcome that would be in the child's best interest;[-]

(C) ~~{(D)}~~ volunteers [Volunteers] may not:

(i) take a child home for any period of time;

(ii) give therapeutic counseling;

(iii) make placement arrangements for a child;

(iv) give or lend money or expensive gifts to a child or family;

(v) take a child on an overnight outing; or

(vi) allow a child to come into contact with someone the volunteer knows or should know has a criminal history involving violence, child abuse, neglect, drugs, or a sex-related offense;[-]

(D) a volunteer may on an individual case basis get written permission from the local program for an exception to an action listed under subparagraph (C) of this paragraph. If a request for an exception is made, a volunteer must disclose if anyone who resides with the volunteer or that the child might come in contact with through the volunteer does not meet the background requirements of subsection (e) of this section. A reason for granting or not granting an exception must be documented in the child's case file;

(E) volunteers [Volunteers] shall not be assigned to more than three cases simultaneously unless the assignment is approved by the local program's executive director and/or caseworker supervisor;[-]

(F) a [A] volunteer shall not provide foster care to a child in the managing conservatorship of the Texas Department of Family Protective Services (DFPS) [Texas Department of Protective and Regulatory Services ("TDPRS")] unless the volunteer is related to the child. This prohibition does not apply to:

(i) a volunteer with whom a child has been placed with DFPS [TDPRS] prior to June 30, 1999;[-] or

(ii) a volunteer with whom a child has been placed by an agency or person other than DFPS [TDPRS] and the child is not in the managing conservatorship of the DFPS [TDPRS].

(G) volunteers [Volunteers] may not be assigned to any case in which they are related to any parties.

(2) Employees.

(A) employees [Employees] must be a minimum of 18 years of age;[-]

(B) if [If] an employee also serves on the board of directors, he or she may not be a voting director.

(3) Board of Directors.

(A) the [The] board of directors shall have at least nine members, with an executive committee composed of, at a minimum, the offices of president, vice president, secretary, and treasurer;[-]

(B) the [The] bylaws of the local program shall include a rotation of directors, as well as term limits for directors and executive committee officers;[-] The program's bylaws must be reviewed annually.

(C) directors [Directors] must be at least of 18 years of age; and[-]

(D) at [At] least one director from each local program should attend [the] annual training [conference] provided by the statewide organization or a national association. [If no director can

attend the annual training conference, at least one director must obtain and review materials therefrom.]

(b) Training.

(1) Board of Directors: A local program shall provide annual orientation for new directors and ongoing education for incumbent directors which must include information on: [~~including information on the dynamics of child abuse, family violence, and applicable statutes. All such training materials are subject to review and revision by the statewide organization.~~]

(A) the applicable local program's goals, objectives, and methods of operation;

(B) current local, statewide and national association services;

(C) the court and child welfare system; and

(D) program governance.

(2) Volunteers and Employees: A local program shall plan and implement a training and development program for employees and volunteers and shall inform employees and volunteers about:

(A) the background and needs of children served by the local program;[~~]~~

(B) [~~The training program must include information regarding~~] the operation of the court and the child welfare system; and

(C) the nature and effect of child abuse and neglect.

(3) The training program must consist of at least thirty (30) hours of pre-service training and twelve (12) hours of in-service training per year. [~~All such training materials are subject to review and revision by the statewide organization.~~]

(4) [(3)] Diversity Training: The program shall provide cultural diversity training for volunteers, employees, and directors on an annual basis.

(5) Review: All training and training materials for volunteers, directors, and employees are subject to review and revision by the statewide organization.

(c) Administrative Matters.

(1) Requirements: A local program must:

(A) operate under the auspices of state or county government or shall be incorporated as part of a not-for-profit organization;

(B) have a maximum volunteer-to-supervisor ratio of 30:1 and a maximum case-to-supervisor ratio of 45:1; and

(C) have a mission and purpose statement approved by the statewide organization.

(2) Written Documentation: A local program shall have in writing:

(A) the local program's [~~Agency~~] goals and objectives with an action plan and timeline [~~or time line~~] for meeting those goals and objectives;

(B) a [A] method for evaluating the progress of accomplishing the local program's [~~program~~] goals and objectives;

(C) a [A] funding plan based on the local program's goals and objectives;

(D) personnel [~~Personnel~~] policies and procedures;

(E) job [Job] descriptions for employees, directors and volunteers;

(F) procedures [~~Procedures~~] for volunteer recruiting, screening, training and appointment to cases;

(G) policies [~~Guidelines~~] for support and supervision of volunteers;

(H) a [A] grievance procedure;

(I) a [A] media/crisis communication plan;

(J) a [A] fidelity bond;

(K) accounting [~~Aeeounting~~] procedures; [and]

(L) a [A] weapons prohibition policy approved by the statewide organization; and[~~].~~

(M) a memorandum of understanding between DFPS, the court with appropriate jurisdiction, and the local program that defines the working relationship between the local program, DFPS, and the court.

(3) Equal Employment Opportunity: Local programs shall endeavor to provide equal employment opportunity regardless of race, color, religion, national origin, age, sex (including pregnancy), disability, or other status protected by law, and shall comply with all applicable laws and regulations regarding employment.

(4) Inclusive Organization: A local program shall endeavor to be an inclusive organization whose employees, volunteers, and directors reflect the diversity of the children and community it serves in terms of gender, ethnicity, and cultural and socio-economic backgrounds.

(5) Liability: Neither the Office of the Attorney General nor the statewide organization will be liable for the actions of local program volunteers, directors or employees. Volunteers, directors and employees of local programs must abide by the conduct, confidentiality, and conflict of interest rules required by subsection (f) of this section [~~Code of Ethics established herein~~] and all other laws and regulations governing their conduct and activities.

(d) Application Process.

(1) Volunteers and Directors: Prospective volunteers and directors must complete a written application, personal interview(s), volunteer status acknowledgment forms, and consent and release forms for appropriate background investigations.

(2) Employees: Prospective employees must complete a written application, personal interview(s), employee handbook acknowledgment forms, and consent and release forms for appropriate background investigations.

[(3) Background investigations include, but are not limited to, the procurement of relevant information, including criminal history, from references, courts, the Central Registry, law enforcement and other governmental agencies.]

[(A) If the candidate has lived in another state within the past five years, the local program shall conduct a criminal history investigation in that area.]

[(B) Criminal history (including guilty pleas, pleas of no contest, acceptance of deferred adjudication, and charges, whether pending or not, and regardless of whether an offense is classified as a felony or misdemeanor) involving violence, child abuse or neglect, or sex- or drug-related offenses of an individual or of someone with whom the individual resides or regularly comes into contact, as well as any criminal history involving offenses classified as felonies, will

preclude an individual from serving as a volunteer and may preclude an individual from serving as an employee. Driving While Intoxicated convictions (including guilty pleas and pleas of no contest) or charges may disqualify individuals from positions involving driving.]

(e) Criminal Background Checks; Barred and Reviewable Offenses.

(1) Background Check Resources: All volunteers, employees and directors shall be subject to a criminal background check every 2 years that will include a review of an applicant's criminal history information from:

(A) the Texas Crime Information Center maintained by Texas Department of Public Safety;

(B) the National Crime Information Center maintained by Federal Bureau of Investigations;

(C) the Texas Public Sex Offender Registry maintained by Texas Department of Public Safety;

(D) the National Sex Offender Public Website maintained by the United States Department of Justice; and

(E) the Child Abuse and Neglect Central Registry maintained by the Texas Department of Family and Protective Services.

(2) Barred Felony Offenses: A volunteer, employee, or director whose background check produces a conviction, guilty plea, plea of no contest, acceptance of deferred adjudication or pending charge that includes any grade of felony is barred from being a volunteer, employee or director.

(3) Barred Felony or Misdemeanor Offense: A volunteer, employee, or director whose background check produces a conviction, guilty plea, plea of no contest, acceptance of deferred adjudication or pending charge is barred from being a volunteer, employee or director if the charge is any level of offense under:

(A) Chapter 19, Penal Code;

(B) Chapter 20, Penal Code;

(C) Chapter 20A, Penal Code;

(D) Sections 21.02, 21.07, 21.08, 21.11, 21.12, Penal Code;

(E) Sections 22.011, 22.02, 22.021, 22.04, 22.041, 22.05, 22.07, 22.11, Penal Code;

(F) Chapter 25, Penal Code;

(G) Section 28.02, Penal Code;

(H) Chapter 29, Penal Code;

(I) Section 30.02, Penal Code;

(J) Section 33.021, Penal Code;

(K) Section 42.072, Penal Code;

(L) Chapter 43, Penal Code;

(M) Sections 46.06, 46.09, 46.10, Penal Code;

(N) Section 48.02, Penal Code;

(O) Sections 49.045, 49.05, 49.07, 49.08, Penal Code;

(P) Chapter 71, Penal Code; or

(Q) any other charge involving violence, child abuse or neglect, assault with family violence, or a sex-related offense.

(4) Driving or Boating While Intoxicated: A volunteer, employee, or director whose background check produces a conviction, guilty plea, plea of no contest, acceptance of deferred adjudication or pending charge under Section 49.04 or 49.06, Penal Code, that is less than 5 years old from the date of the background check is barred from being a volunteer, employee or director.

(5) Other Offenses: The local program may review to determine eligibility of a volunteer, employee, or director whose background check shows an offense that is not a felony or listed under paragraph (3) of this subsection, including a misdemeanor drug-related offense.

(6) Pending Charge: If the charge barring the volunteer, employee, or director is not final, a review of the application may be made if the charge is dismissed or a finding of not guilty or other determination of innocence is entered.

(7) Pattern of Offenses: A volunteer, employee, or director whose background check produces information that includes a group of offenses or information that if considered separately would not bar an applicant, may result in the disqualification of a volunteer, employee, or director if it is determined that the offenses constitute a problematic pattern.

(8) Contact with Disqualified Individuals: A volunteer, employee, or director shall be barred if the volunteer, employee, or director knowingly or intentionally places a child through the actions of the volunteer, employee, or director in contact with a person whose criminal history involves a felony offense or offense under paragraph (3) of this subsection.

(9) Background Checks In Other States: If a volunteer, employee, or director has lived in a state other than Texas within the last seven (7) years, the local program shall also conduct a criminal background check in that state.

(10) ~~[(C)]~~ Driving Record and Insurance: Positions involving driving will also require investigation of the individual's driving record and insurability, and documentation of a current license and satisfactory personal liability insurance.

(11) ~~[(D)]~~ Consent and Release Forms: The refusal to execute consent and release forms necessary to conduct a criminal background check ~~[relating to background investigations]~~ shall disqualify an individual from serving as a volunteer, ~~or a~~ director, or employee ~~[and from being considered for employment].~~

(f) Confidentiality; Conduct; and Conflicts of Interest.

(1) Conduct:

(A) all volunteers, directors, and employees shall conduct themselves in a professional manner and may not discriminate against any individual on the grounds of race, color, national origin, religion, sex, age, disability, or other legally protected characteristics;

(B) a local program may not retain a volunteer, director, or employee that does not conduct themselves in accordance with the policies of the local program or who has abused or neglected a position of trust.

(2) Confidentiality:

(A) all volunteers, directors, and employees shall be instructed on what constitutes confidential information;

(B) a volunteer, director, or employee may not communicate any confidential information about an individual being served by a local program to a person who is not authorized to know the confidential information.

(3) Conflicts of Interest: Each local program must have a written conflict of interest policy that:

(A) prohibits any personal, business or financial interest that renders a volunteer, director, or employee unable or potentially unable to perform the duties and responsibilities assigned to that volunteer, director, or employee in an efficient and impartial manner; and

(B) prohibits a volunteer, director, or employee from using the position for private gain or acting in manner that creates the appearance of impropriety.

~~[(e) Code of Ethics.]~~

~~[(1) Volunteers, directors and employees of local programs must:]~~

~~[(A) Keep any information obtained about individuals served by the local program confidential; and]~~

~~[(B) Conduct all business in a professional manner without improper or unlawful consideration of race, religion, sex (including pregnancy), age, national origin, disability, or other legally protected characteristics;]~~

~~[(2) Volunteers, directors and employees of local programs must not allow, through action or inaction, a conflict of interest to arise. A conflict of interest includes any situation in which a person has a personal, business, or financial interest or relationship which:]~~

~~[(A) Renders the person unable or potentially unable to perform his or her duties and responsibilities in an efficient and impartial manner; or]~~

~~[(B) Permits a person to receive or potentially receive private gain or favor for himself or herself or others, or otherwise creates the appearance of impropriety.]~~

~~[(3) A local program shall not engage or retain volunteers, directors or employees who have abused or neglected any position of trust or violated the Code of Ethics.]~~

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

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

TRD-201304540

Katherine Cary

General Counsel

Office of the Attorney General

Earliest possible date of adoption: November 24, 2013

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



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 12. WEIGHTS AND MEASURES

The Texas Department of Agriculture (department) proposes amendments to Chapter 12, Subchapter A, §12.1, concerning Definitions; Subchapter E, §§12.40 - 12.42, concerning Licensed Service Companies; and Subchapter G, §12.60 and §12.61, concerning Registered Technicians; and the repeal of

Subchapter F, §§12.50 - 12.53, concerning Licensed Inspection Companies.

The amendments and repeal are proposed to clarify definitions, licensing requirements, application and renewal procedures, and authorities and responsibilities for service technicians and service companies, and are necessary to comply with changes made to the weights and measures program by the passage of House Bill 1494 (HB 1494), by the 83rd Texas Legislature, Regular Session (2013). Changes are made throughout the rules to eliminate the use of the terms changed by the enactment of HB 1494. The amendment to §12.1, clarifies the placement of the Weights and Measures Certificate of Registration. Section 12.42 is amended to add new insurance requirements for licensed service companies, as required by HB 1494. In addition, §12.60 is amended in accordance with the passage of Senate Bill 162 by the 83rd Texas Legislature, Regular Session (2013), which requires the department to establish expedited registration requirements for military members, military veterans, and military spouses.

Andria Perales, Coordinator for Weights and Measures Program, has determined that for the first five-year period the amended sections and repeal are in effect, there will not be any fiscal implications for state and local government as a result of enforcing or administering the amended sections and repeal, as proposed.

Ms. Perales also has determined that for the first five-year period the amended sections and repeal are in effect, the public benefit of enforcing and administering the amended sections and repeal will be enhanced consumer protection. There will be a fiscal impact on small businesses, microbusinesses or individuals required to comply with the proposal. The new requirement for the maintenance of general liability insurance coverage by service companies licensed with the department may result in service companies having to incur the cost of insurance. Coverage includes premises and operations in an amount not less than \$25,000 per occurrence or \$50,000 aggregate. It is not possible to determine an estimated cost per company as it would be based upon the size and operations of individual businesses, among other factors.

Comments on the proposal may be submitted to Andria Perales, Coordinator for Weights and Measures Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §12.1

The amendments to Subchapter A, §12.1, are proposed under the Texas Agriculture Code, §13.021, which provides the department with the authority to adopt rules to establish standard weights and measures and bring about uniformity between the standards established under Texas Agriculture Code, Chapter 13, and the standards established by federal law; §13.1011, which provides the department with the authority to adopt rules related to registration of a person who operates a weighing or measuring device for a commercial transactions; and §13.453, as enacted by House Bill 1494, which provides the department with the authority to adopt rules for the licensing service technicians and service companies, and rules necessary for the regulation of device maintenance activities.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.1. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 13, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

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

(4) Certified/Certification--Written verification from a department approved laboratory declaring the accuracy of a ~~[licensed inspection company's or licensed]~~ service company's test standards.

(5) - (8) (No change.)

~~[(9) Licensed inspection company--A company licensed by the department authorized to employ registered technicians who may place devices into service or remove an out-of-order tag and may also perform inspections of LPG meters and ranch scales.]~~

~~[(10) Licensed service company--A company licensed by the department authorized to employ registered technicians who may place devices into service or remove an out-of-order tag.]~~

(9) ~~[(11)]~~ LPG Meter--A device used for the measurement of liquefied petroleum gas.

(10) ~~[(12)]~~ NCWM--National Conference on Weights and Measures.

(11) ~~[(13)]~~ NIST--National Institute of Standards and Technology, United States Department of Commerce.

(12) ~~[(14)]~~ Official certificate--A certificate declaring the accurate weight or measure of a commodity which includes: the time and date the weight or measure was taken, signature and license number of the public weigher, and the seal of the department.

(13) ~~[(15)]~~ OIML--International Organization of Legal Metrology.

(14) ~~[(16)]~~ Operator of a Device--A person operates a device if the person collects or distributes payments for a commercial transaction for which the device is used; oversees the day-to-day operation of the device; or owns, leases, manages, or otherwise controls the physical location of the device or the device itself.

(15) ~~[(17)]~~ Out-of-Order tag--A notice attached to a device directing that the device may not be used for commercial service.

(16) ~~[(18)]~~ Person--An individual, partnership, firm, corporation, or association.

(17) ~~[(19)]~~ Place in service--An approval for the device to be used.

(18) ~~[(20)]~~ Public Weigher--A business appointed to issue an official certificate in Texas.

(19) ~~[(21)]~~ Ranch scale--A livestock scale which is located on a private ranch and which has a capacity of 5,000 pounds or greater.

(20) Service company--A person who holds a service company license issued by the department under this chapter.

(21) Service report--A prescribed report, prepared by a service technician and filed with the department by a service company, describing the services performed on a device or a set of devices by the technician.

(22) Service technician--An individual who holds a service technician license issued by the department under this chapter.

~~[(22) Registered technician--An individual registered with the department who may place devices into service and remove an out-of-order tag or, if employed by an inspection company, may also perform inspections of LPG meters and ranch scales.]~~

~~[(23) Service report--A report prescribed by the department, indicating the type of service, device type, device location, service/inspection company license number, and registered technician number.]~~

(23) ~~[(24)]~~ Sub-kit--A subdivided series of test standards that weigh a total of not less than one pound in avoirdupois units and whose smallest test standard weighs not more than one-sixteenth (1/16) ounce or five-thousandths (0.005) pound.

(24) ~~[(25)]~~ Test--A field examination of a device to determine compliance with the requirements of this chapter.

(25) ~~[(26)]~~ Test Standard--A certified weight or measure used to test a device.

(26) ~~[(27)]~~ Test kit--A collection of test standards that collectively weigh 30 pounds and that consists of one sub-kit, at least two one-pound standards, and any other combination of standards that allows a scale with a capacity of 30 pounds or less be tested in one-pound increments to capacity.

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

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

TRD-201304534

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: November 24, 2013

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



SUBCHAPTER E. SERVICE COMPANIES

4 TAC §§12.40 - 12.42

The amendments to Subchapter E, §§12.40 - 12.42, are proposed under the Texas Agriculture Code, §13.021, which provides the department with the authority to adopt rules to establish standard weights and measures and bring about uniformity between the standards established under Texas Agriculture Code, Chapter 13, and the standards established by federal law; §13.1011, which provides the department with the authority to adopt rules related to registration of a person who operates a weighing or measuring device for a commercial transactions; and §13.453, as enacted by House Bill 1494, which provides the department with the authority to adopt rules for the licensing service technicians and service companies, and rules necessary for the regulation of device maintenance activities.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.40. License Requirements.

(a) Unless the person is exempt from the license requirement, a person may not employ an individual who performs or offers to perform device maintenance activities unless the person holds a service company license issued by the department under this subchapter.

~~[(a) A person shall not employ registered technicians to place devices into service or remove an out-of-order tag unless licensed as a licensed service company. Except as provided by Chapter 2, Subchapter B of this title (relating to Consolidated Licenses), the license is valid for one year and, if not renewed, shall expire on the last day of the month corresponding to the company's anniversary date.]~~

(b) (No change.)

§12.41. Application and Renewal Procedure.

(a) An applicant must submit to the department an application. An application may be obtained from the department. An out-of-state ~~[licensed]~~ service company shall designate on the application an agent who meets the following requirements:

(1) (No change.)

(2) maintains a permanent address within Texas where documents dealing with the administration and enforcement of this law may be served. An out-of-state ~~[licensed]~~ service company shall notify the department in writing within ten days of any change of their resident agent. Failure to give such notice shall be grounds for suspending the ~~[licensed]~~ service company's license.

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

§12.42. Authority and Responsibilities.

(a) Authority. A ~~[licensed]~~ service company is authorized to perform device maintenance activities ~~[place devices into service and remove out-of-order tags].~~

(b) Responsibilities. A ~~[licensed]~~ service company is authorized to ~~[shall]~~:

(1) (No change.)

(2) submit a prescribed service report to the appropriate Texas Department of Agriculture regional office, within ten days of:

(A) placing a commercial weighing or measuring device into service;

(B) installing, calibrating, or repairing a commercial weighing or measuring device; or

(C) removing an out-of-order tag, stop-sale order, security seal, lock, condemnation notice, or other form of use prohibition placed on a weighing or measuring device by the department;

~~[(A) calibrating or repairing a device that lacks a department consumer information sticker;]~~

~~[(B) removing or replacing the security seal on a device; or]~~

~~[(C) performing any work on a portion or an accessory of a device when such accessory or portion is so designed that its operation affects the accuracy of the device;]~~

~~[(D) calibrating or repairing a device that was placed out-of-order by the department.]~~

(3) notify the department in writing within ten days of a change of name, address, or business location; ~~[and]~~

(4) provide security seals approved by the department to an individual employed as a service ~~[registered]~~ technician; ~~[and]~~[-]

(5) maintain at all times while the service company performs device maintenance activities a current effective operations liability insurance policy issued by the an insurance company authorized to do business in this state or by a surplus lines insurer that meets the required of Chapter 981, Texas Insurance Code, and rules adopted by

the commissioner of insurance in an amount set by the department and based on the type of licensed activities to be performed. General liability coverage including: premises and operations in an amount not less than \$25,000 per occurrence; or \$50,000 aggregate.

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

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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



SUBCHAPTER F. LICENSED INSPECTION COMPANIES

4 TAC §§12.50 - 12.53

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

The repeal of Subchapter F, §§12.50 - 12.53, is proposed under the Texas Agriculture Code, §13.021, which provides the department with the authority to adopt rules to establish standard weights and measures and bring about uniformity between the standards established under Texas Agriculture Code, Chapter 13, and the standards established by federal law; §13.1011, which provides the department with the authority to adopt rules related to registration of a person who operates a weighing or measuring device for a commercial transactions; and §13.453, as enacted by House Bill 1494, which provides the department with the authority to adopt rules for the licensing service technicians and service companies, and rules necessary for the regulation of device maintenance activities.

The code affected by this proposal is the Texas Agriculture Code, Chapter 13.

§12.50. License Requirements.

§12.51. Application and Renewal Procedure.

§12.52. Authority and Responsibilities.

§12.53. Fees.

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

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TRD-201304536

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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

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SUBCHAPTER G. SERVICE TECHNICIANS

4 TAC §12.60, §12.61

The amendments to Subchapter G, §12.60 and §12.61, are proposed under the Texas Agriculture Code, §13.021, which provides the department with the authority to adopt rules to establish standard weights and measures and bring about uniformity between the standards established under Texas Agriculture Code, Chapter 13, and the standards established by federal law; §13.1011, which provides the department with the authority to adopt rules related to registration of a person who operates a weighing or measuring device for a commercial transactions; §13.453, as enacted by House Bill 1494, which provides the department with the authority to adopt rules for the licensing service technicians and service companies, and rules necessary for the regulation of device maintenance activities; Texas Occupations Code, §55.005, as amended by Senate Bill 162, which requires the department to establish expedited registration requirements for military members, military veterans, and military spouses; and Texas Agriculture Code, §12.016, which provides the department with the authority to adopt rules to administer its duties.

The codes affected by this proposal are the Texas Agriculture Code, Chapters 12 and 13; and Texas Occupations Code, Chapter 55.

§12.60. *Registration Requirement and Procedure.*

~~[(a) An individual may not place a device into service, remove an out-of-order tag or perform inspections of LPG meters or ranch scales for payment of any kind unless he is registered with the department.]~~

~~(a) [(b)] The department may issue a registration to each individual who:~~

~~(1) submits to the department an application obtained from the department; and~~

~~(2) passes a written examination for each class of license which test the applicant's knowledge of Texas Weights and Measures Laws and Regulations and NIST Handbook 44.~~

~~[(A) Appointments for these examinations may be made at the Giddings metrology laboratory or at one of the department's regional offices.]~~

~~(b) [(B)] The minimum passing score for each examination shall be 70%.~~

~~(c) (No change.)~~

~~(d) Military members, military veterans, and military spouses as defined in Texas Occupations Code, Chapter 55 may request on their application form for an examination to be expedited, as long as they meet all other licensing requirements.~~

~~[(d) If the applicant is a sole proprietorship, the licensed service company and the registered technician may be the same individual. Likewise, a licensed inspection company and registered technician may be the same individual.]~~

~~(e) (No change.)~~

§12.61. *Authority and Responsibilities.*

~~(a) Employment. A service [registered] technician shall be employed by a [licensed] service company [or a licensed inspection~~

~~company] before that individual can perform device maintenance activities [place a device into service, remove an out-of-order tag or perform inspections of LPG meters or ranch scales].~~

~~(b) Responsibilities. In addition to the responsibilities and authority provided in Texas Agriculture Code, Chapter 13, a service [A registered] technician shall:~~

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

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

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

TRD-201304537

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: November 24, 2013

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

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.3

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC §1.3 concerning Delinquent Audits and Related Issues. The proposed amendment requires Subrecipients and Affiliates to submit a Single Audit Certification Form indicating whether or not they have expended \$500,000 or more in federal and/or state funds. Subrecipients and Affiliates who have expended more than \$500,000 in Federal and/or state funds must submit a Single Audit. Failure to do so will result in suspension of payments under current contracts, the inability to enter into new contracts and/or renew existing contracts.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated, as a result of the amendment, will be improved compliance and clarity regarding requirements. There will not be any additional economic cost to any individuals required to comply with the amendment.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2013, through November 25, 2013, to receive input on the amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 25, 2013.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendment affects no other code, article, or statute.

§1.3. Delinquent Audits and Related Issues.

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

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this title. [~~CSBG--The Community Services Block Grant, 42 United States Code, §9901 et seq.~~]

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

(3) Single Audit--An audit report required by Office of Management and Budget (OMB) Circular A-133 or Texas Government Code, Chapter 738, Uniform Grant and Contract Management. [~~Low-income housing tax credit--The credit against federal income tax as provided for in §42 of the Internal Revenue Code (42 United States Code, §42).~~]

(4) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds received by the Subrecipient. [~~Past due audit--An audit report required by the department that has not been received by the department on or before its due date.~~]

(5) Subrecipient--Includes any entity receiving funds or awards from the Department. [~~Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.~~]

(b) Subrecipients and Affiliates are required to submit a Single Audit Certification form within two (2) months after the end of their fiscal year indicating whether they exceeded the expenditure threshold of \$500,000 for their respective fiscal year. [A person is not eligible to apply for funds or any other assistance from the department unless any past due audit has been submitted to the department in a satisfactory format on or before the application deadline for the funds or other assistance.]

(c) Subrecipients and Affiliates that expend \$500,000 or more in federal and/or state awards must have a Single Audit or program-specific audit conducted and submit the audit to the Department the earlier of thirty (30) days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal year. [Except as provided in this subsection, a person is not eligible to receive funds, a new contract, loan, or allocation of low-income housing tax credits from the department until any unresolved audit finding or questioned or disallowed cost is resolved. This section does not apply to the receipt of CSBG or energy assistance funds.]

(d) In accordance with OMB Circular A-133 § .225 and the State of Texas Single Audit Circular § .225 the Department will suspend and cease payments under all active contracts and/or not renew

or enter into a new contract with a Subrecipient or Affiliate who fails to timely submit its Single Audit Certification form or Single Audit.

(e) In accordance with §1.5 of this subchapter (relating to Previous Participation Reviews), if a Subrecipient or Affiliate applies for funding or an award from the Department, the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to the Executive Award Review Advisory Committee.

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

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304551

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 475-3974



10 TAC §1.19

(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 Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC §1.19 concerning Deobligated Funds. The purpose of the proposed repeal is to allow for proposal of a simplified policy for the use of deobligated or other available funds the program governs. The proposed new section is published concurrently with this repeal in this issue of the *Texas Register*.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal, is to increase program flexibility in expending funds and assisting households and communities. There will be no economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held from October 25, 2013, through November 25, 2013, to receive input on the proposed repeal. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or by email to Brooke Boston at the following address: brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 25, 2013.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§1.19. Deobligated Funds.

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

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304549

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 475-3974



10 TAC §1.19

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC §1.19 concerning the Reallocation of Financial Assistance. The purpose of the proposed new section is to set forth a simplified policy for the use of deobligated funds.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new rule will be in effect, the public benefit anticipated as a result of the new rule is to increase program flexibility in expending funds and expedite the ability to assist households and communities. There will be no economic cost to any individuals required to comply with the proposed new rule.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2013, through November 25, 2013, to receive input on the new section. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or by email to Brooke Boston at the following address: brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 25, 2013.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§1.19. Reallocation of Financial Assistance.

(a) Purpose. It is the policy of the Department to take prudent measures to ensure that, when funds are provided to recipients for assistance, they are timely and lawfully utilized and that, if they cannot be timely and lawfully utilized by the initial recipient, there are mechanisms in place to reallocate those funds to other recipients in order to

ensure their full utilization while maximizing assistance to beneficiaries.

(b) Consistent with Texas Government Code, §2306.111(h), this rule establishes the policy of the Department for the reallocation of federal or state financial assistance administered by the Department when:

(1) an administrator or contractor returns contracted funds;
(2) reserved funds are not fully utilized at completion of an activity;

(3) balances on contracts remain unused;
(4) funds in a contract or reservation are partially or fully recaptured or terminated; or

(5) in instances where the Department recaptures funds because a party to a contract with the Department has been unable to meet required benchmarks or expend funds within the time frames agreed, despite notices and opportunities to cure as provided in the related rule, contract and/or written correspondence (if any) from the Department.

(c) Reallocation of financial assistance for specific federal or state funding sources or programs administered by the Department may already be governed by or provided for in:

(1) federal regulations and requirements;
(2) state rules adopted in this part;
(3) in funding plans approved by the Board governing federal or state resources; or

(4) written agreements relating to the administration of such funds.

(d) To the extent that programs or funding sources are governed by any of the items provided for in subsection (c) of this section, further Board approval is not required. Those funding uses not governed by subsection (c) of this section will require Board approval.

(e) To the extent that certain programs are required to regionally allocate their annual allocations of funds, funds reallocated under this section do not require subsequent regional allocation.

(f) At least one million dollars of HOME funds made available under this section, or other HOME program funds including program income, will be set-aside by the Department annually for the purposes of disaster relief.

(g) Funds made available under this section may be aggregated over a period of time prior to being reallocated.

(h) Consistent with the requirements of Texas Government Code, §2306.111(h), if the Department's obligation of financial assistance related to bonds is terminated prior to issuance, the assistance will be reallocated among other activities permitted by that bond issuance and any indenture associated with those bonds, as approved by the Board.

(i) Any portion of this rule may be waived for good cause by the Governing Board of the Department.

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

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TRD-201304550

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 24, 2013
For further information, please call: (512) 475-3974



10 TAC §1.21

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC §1.21 concerning Action by Department if Outstanding Balances Exist. The proposed amendment provides notice to Persons who may request certain actions that their request may be denied or delayed if required fees are past due and/or if they have past due loan payments.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated, as a result of the amendment, will be improved compliance and clarity regarding requirements concerning past due fees and payments. There will not be any additional economic cost to any individuals required to comply with the amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2013, through November 25, 2013, to receive input on the amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 25, 2013.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendment affect no other code, article, or statute.

§1.21. Action by Department if Outstanding Balances Exist.

(a) Purpose. The purpose of this section is to inform Persons or entities requesting Form(s) 8609, application amendments, LURA amendments, contract amendments, contract extensions, contract renewals or loan modifications that, if fees or loan payments are past due to the Department, the request may be delayed or terminated. [provide guidance to persons requesting action by the Department on Applications, Amendments, Awards, Appeals, Contracts, Commitment, Executed Form Documents, Loan Documents, or LURAs when outstanding balances are owed to the Department by any Administrator, Applicant, Person or Related Party on any relationship between the requestor and the Department, regardless if it is the subject of the request.]

(b) Definitions. Capitalized words used herein have the meaning assigned in §10.3 of this title (relating to Definitions), or assigned by federal or state law. [The following words and terms, when used in

this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:]

[(1) Action—Request for the Department to perform a function required or allowed under Texas Government Code §2306.001 et seq.]

[(2) Administrator—the Person responsible for performing under a Contract with the Department.]

[(3) Affiliated Party—A person in a relationship with the Administrator on a Contract with the Department. Does not apply to an Affiliated Party for Application purposes.]

[(4) Appeal—Action filed on behalf of an Administrator, Affiliated Party, Applicant, to request reconsideration or challenge a prior decision made by the staff, Executive Director or Board.]

[(5) Applicant—A person who has submitted to the Department an Application for Department funds or other assistance.]

[(6) Application—The written request for Department funds or other assistance in the format required by the Department including any exhibits or other supporting material.]

[(7) Award—Any grant, commitment, or loan provided by the Department.]

[(8) Board—The Governing Board of the Texas Department of Housing and Community Affairs.]

[(9) Commitment—A fully executed document that commits the Department to funding or other activity related to a program administered by the Department.]

[(10) Contract—The executed written agreement between the Department and an Administrator performing an activity related to a program that outlines performance requirements and responsibilities assigned by the document.]

[(11) Department—The Texas Department of Housing and Community Affairs.]

[(12) Executed Form Documents—documents that are signed by the Department at the Request of any Administrator, Applicant, Person or Related Party.]

[(13) Executive Director—The administrative head of the Department as defined under Texas Government Code §2306.036 and/or §2306.038.]

[(14) Loan Documents—An agreement between the Department and a Person regarding the terms and conditions of a loan provided to the Person from the Department.]

[(15) LURA—A Land Use Restriction Agreement that has been executed by the Department and a Person related to a specific property or properties and filed with the responsible recording authority.]

[(16) Person—Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.]

[(17) Request—action initiated by voluntarily seeking Department Action regardless of whether it is part of a statutory requirement (application cycle, etc.) or an action to alter a previous Action taken by the Department. Ongoing requirements such as compliance with reporting functions are not considered to be a voluntary function.]

(c) Except in the case of interim construction loans, the [The] Department will not issue Form(s) 8609, amend applications, LURAs or contracts, extend or renew contracts or modify loan documents if

fees or loan payment are past due to the Department related to the subject of the request. [take Action on any Request involving Applications, Amendments, Awards, Appeals, Contracts, Commitment, Executed Form Documents, Loan Documents, or LURAs unless all funds owed to the Department are current by any Administrator, Applicant, Person or Related Party involved in any relationship between the requestor and the Department. The non-current account need not be directly related to the Request.]

(d) Once the Department notifies a Person or entity that they are responsible for the payment of a required fee or loan balance that is past due, if no corrective action is taken within five (5) business days of notification, the Executive Director may deny the requested action for failure to comply with this rule. [an Administrator, Applicant, Person or Related Party that they are subject to this rule, if no corrective action has been taken by the Administrator, Applicant, Person or Related Party, the Executive Director, may, after seven (7) days, deny the requested action for failure to comply with this rule.]

(e) Exception for work outs. If fees or loan payments affiliated with a work out are past due, then the past due amounts affiliated with a work out may be excepted from this rule so long as the work out is actively underway by Department staff. In which case, in the Department's sole discretion, LURA or any other kinds of amendments may be considered for the subject Development or Contract. [When time of submission is a factor in the Action requested, the Action requested will not be considered submitted until this parameters of this rule are met.]

(f) In accordance with §1.5 of this subchapter (relating to Previous Participation Reviews), if a Person or entity applies for funding or an award from the Department, any payment of principal or interest to the Department that is past due beyond any grace period provided for in the applicable loan documents and any past due fees (not just those related to the subject of the request) will be reported to the Executive Award Review Advisory Committee. [An appeal of any decision under this may be appealed in accordance with §1.7 of this subchapter.]

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

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TRD-201304552

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3974



CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER H. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801

The Texas Department of Housing and Community Affairs (the "Department") proposes amendment to 10 TAC §5.801 concerning the Project Access Initiative. The purpose of the proposed amendments is to make updates to the Project Access Program

based on guidance from HUD and to make additional staff recommendations related to the Department's Project Program.

The proposed amendment includes, but is not limited to: 1) clarification that the Department's Section 8 program has an explicit preference for Project Access vouchers; 2) clarification that a household will maintain their eligibility status on the Project Access waiting list if they: apply for the waiting list prior to exiting the institution and receive continuous assistance from the HOME Investment Partnership program from the time of exit of the institution to the receipt of the Project Access Voucher; 3) allowing someone that exits an institution with assistance from a HOME Investment Partnership program and loses that assistance due to lack of funding from the Participating Jurisdiction to qualify for the At-Risk category; and 4) clarifying that an entire household can qualify for Project Access as long as one person, including a minor child, in the household qualifies for the program requirements.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendment will be in effect, the public benefit anticipated as a result of the amendment will be to increase efficiency and effectiveness of the Department's Project Access Program. There will be no economic cost to any individuals required to comply with the amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2013, to November 25, 2013, to receive input on the amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: kate.moore@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 25, 2013.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendment affects no other code, article, or statute.

§5.801. Project Access Initiative.

(a) Purpose. Project Access is a program with a preference in the Department's Annual Public Housing Agency (PHA) Plan that utilizes federal Section 8 Housing Choice Vouchers administered by the Texas Department of Housing and Community Affairs (the "Department") to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing.

(b) Definitions.

[~~(1)~~] Section 8--The U.S. Department of Housing and Urban Development Section 8 Housing Choice Voucher Program administered by the Department.

[~~(2)~~] At-Risk Applicant--Applicant that meets the criteria in subparagraphs (A) and (B) of this paragraph:]

~~{(A) current recipient of Tenant-Based Rental Assistance from the Department's HOME Investments Partnership Program; and}~~

~~{(B) within six (6) months prior to expiration of assistance.}~~

(c) Regulations Governing Program. All Section 8 Program rules and regulations apply to the program.

(d) Program Design.

(1) At least 90 percent of Project Access Vouchers will be reserved for households with a household member who meets ~~[persons that meet]~~ the eligibility criteria of subsection (e)(1) and (2) of this section.

(2) Unless no longer authorized as a set-aside by HUD, no [No] more than 10 percent of Project Access Vouchers will be reserved for households with a household member [individuals] eligible for a pilot program in partnership with the Department of State Health Services (DSHS) [and the Department] for Texas state psychiatric hospitals who meets [that meet] the criteria of subsection (e)(1) and (3) of this section at the time of voucher issuance. If not permitted by HUD, the percentage in paragraph (1) of this subsection goes up to 100%.

(3) The total number of Project Access Vouchers will be determined each year in the Department's PHA Plan [Departmental Annual Public Housing Agency (PHA) Plan]. The number of vouchers allocated to each sub-population listed in paragraphs (1) and (2) of this subsection will be determined by the Department.

(4) The Project Access households have a preference in the Department's Section 8 Program, as designated in the Department's Annual PHA Plan.

(e) Project Access Eligibility Criteria. A Project Access voucher household [recipient] must meet all Section 8 eligibility criteria, and one member of the household must ~~[as well as]~~ meet all of the eligibility criteria in paragraph (1) of this subsection and either paragraph (2) or (3) of this subsection:

(1) have a permanent disability as defined in §223 of the Social Security Code or be determined to have a physical, mental, or emotional disability that is expected to be of long-continued and indefinite duration that impedes one's ability to live independently; and

(2) meet one of the criteria in subparagraphs (A) and (B) of this paragraph:

(A) At-Risk Applicant. At-Risk applicants must be [an At-Risk Applicant and] a previous resident of a nursing facility, Texas state psychiatric hospital, intermediate care facility, or board and care facility as defined by the U.S. Department of Housing and Urban Development (HUD) and meet the criteria of clause (i) or (ii) of this subparagraph.;~~;~~

(i) A current recipient of Tenant-Based Rental Assistance (TBRA) from a HOME Investment Partnership Program and within six (6) months prior to expiration of that TBRA assistance; or

(ii) A household with a household member who meets the criteria of subsection (f) of this section, or clause (i) of this subparagraph and has lost their Tenant Based Rental Assistance from a HOME Investment Partnership Program due to lack of available funding from the Participating Jurisdiction.

(B) be a current resident of a nursing facility, Texas state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD at the time of voucher issuance, unless otherwise

determined by HUD which may extend Project Access to all state regulated institutions [as defined by HUD]; or

(3) be eligible for the DSHS pilot program for Texas state psychiatric hospitals at the time of voucher issuance ~~[as described in subsection (d)(2) of this section].~~

(f) Maintaining Status on the Project Access Waiting List. A household on the Project Access waiting list may maintain their status on the waiting list and eligibility for a Project Access voucher if the household:

(1) applied for a Project Access Voucher and was placed on the waiting list prior to transition out of the institution; and

(2) received continuous Tenant Based Rental Assistance from a HOME Investment Partnership Program from the time of exit from the institution until the issuance of the Project Access voucher.

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

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304557

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 475-3974



CHAPTER 21. MINIMUM ENERGY EFFICIENCY REQUIREMENTS FOR SINGLE FAMILY CONSTRUCTION ACTIVITIES

10 TAC §§21.1 - 21.6

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC §§21.1 - 21.6, concerning the Minimum Energy Efficiency Requirements for Single Family Construction Activities. The purpose of the proposed new sections is to set forth minimum energy efficiency requirements for new construction, reconstruction, and rehabilitation activities in Single Family Programs in accordance with Texas Government Code, §2306.187.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of the proposed new sections will be an increase in sustainable and affordable housing throughout the state as homes are required to be built to conform to stricter energy efficiency standards for Single Family housing programs. The economic costs of complying with the proposed new sections will be to generate energy costs savings realized by households benefiting from the Department's Single Family programs.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there may be minor effect on small or micro-businesses in the short term as they prepare to comply with new construction requirements and adjust to minor increases in construction costs and additional inspections.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held from October 25, 2013, to November 25, 2013, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-2365. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 25, 2013.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, and §2306.187, which requires the establishment of minimum energy efficiency requirements.

The proposed new sections affect no other code, article, or statute.

§21.1. Purpose.

(a) Texas Government Code, §2306.187 requires that the Department develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities in Single Family Programs.

(b) This chapter describes the Minimum Energy Efficiency Requirements for all single family construction activities, which includes the Department's HOME Investment Partnerships Program (HOME), Housing Trust Fund (HTF), Neighborhood Stabilization Program (NSP), Office of Colonia Initiatives (OCI) Programs, and other single family programs as developed by the Department.

(c) Single family programs are designed to improve and provide affordable housing opportunities to low-income individuals in Texas and in accordance with Texas Government Code, Chapter 2306, and any applicable statutes and federal regulations.

§21.2. Applicability.

Unless otherwise noted, this chapter only applies to single family programs. Program rules may impose additional requirements related to any provision of this chapter. Where program rules conflict with this chapter, the provisions of this chapter will control program decisions, unless it is a federal requirement.

§21.3. Definitions.

(a) Any capitalized terms that are defined in Texas Government Code, Chapter 2306, and Chapter 1 of this title (relating to Administration) and Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), or other Department rules have, when capitalized, the meanings ascribed to them therein.

(b) The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

(1) Energy Star Certified Appliances, Equipment, and Products--Labeled appliances, equipment, and products that are independently certified to save energy without sacrificing features or functionality, meeting the US EPA's specifications for energy efficiency and performance.

(2) Energy Star Certified Home--A new home that has earned the Energy Star label and has undergone a process of inspections, testing, and verification to meet requirements set forth by the US EPA.

(3) RESNET--Residential Energy Services Network. RESNET is an independent, nonprofit organization established in 1995 to help homeowners reduce the cost of their utility bills by making their homes more energy efficient. RESNET-certified Home Energy Systems Raters are required to inspect, test, and verify homes for Energy Star certification.

(4) WaterSense Certified Fixtures--Labeled products that are backed by independent, third-party testing and certification, meeting the US EPA's specifications for water efficiency and performance.

(5) US EPA--United States Environmental Protection Agency.

(c) Defined terms when not capitalized are to be read in context and construed according to common usage.

§21.4. General Requirements.

The following general requirements shall apply to all single family construction activities.

(1) This chapter shall go into effect on December 12, 2014. All construction activities permitted or otherwise begun after this date shall comply with this chapter.

(2) Local residential building codes that exceed some or all parts of this chapter shall take precedence.

(3) A final inspection conducted by Administrators confirming compliance with this chapter shall be required for release of final payment from the Department.

(4) All appliances, equipment, and fixtures installed or replaced shall be Energy Star or WaterSense certified products.

§21.5. New Construction and Reconstruction Activities.

Single family detached residential dwellings up to three stories high, including townhouses, that are newly constructed or reconstructed shall comply with this chapter in one of the following two ways:

(1) Compliance with the energy efficiency provisions of the International Residential Code as they existed on May 1, 2009; or

(2) Compliance with the Energy Star Certified Homes Program as demonstrated through RESNET-approved procedures.

§21.6. Housing Rehabilitation Activities.

(a) A proposed scope of work and awarded construction contract for existing single family residential dwellings that are rehabilitated shall contain, at a minimum, six of the measures described in paragraphs (1) - (14) of this subsection:

(1) Airsealing of all penetrations in the building envelope in accordance with Section N1102.4.1 of the 2009 International Residential Code. Exhaust fans in bathrooms and kitchens are required if airsealing is completed;

(2) Airsealing of ductwork located in unconditioned spaces in accordance with Section M1601.4.1 of the 2009 International Residential Code. Ductwork located in unconditioned spaces shall be insulated to R-8;

(3) Attic insulation shall be increased to R-30 (R-38 in Climate Zone 4 as defined by Figure N1101.2 of the 2009 International Residential Code), including insulation covering the top plates of exterior walls. Baffles shall be installed in framing bays of existing soffit vents;

(4) Attic accesses shall be insulated in accordance with Section N1102.2.3 of the 2009 International Residential Code;

(5) Energy Star certified ceiling fans with light(s) shall be installed in each bedroom and in the main living space;

(6) Inoperable windows requiring replacement shall be replaced with Energy Star certified windows for southern climates, meeting the U-factor and Solar Heat Gain Coefficient for the climate zone of the dwelling as identified in Table N1101.2 of the 2009 International Residential Code;

(7) Windows located on eastern and western facing walls shall have solar shades permanently installed;

(8) South facing windows shall have permanently installed overhangs sized to keep summer sun from entering the home while allowing winter sun to enter the home. Flashing details shall maintain a positive drainage plane;

(9) Exterior doors requiring replacement shall be replaced with Energy Star certified exterior doors;

(10) All incandescent light bulbs in the kitchen, bathrooms, bedrooms, hallways, and the main living area shall be replaced with Energy Star certified compact florescent lamps (CFLs) or light-emitting diodes (LEDs);

(11) WaterSense certified sink faucets and showerheads shall be installed in all bathrooms and the kitchen. If existing sinks are operable and do not need to be replaced, WaterSense Qualified aerators shall be installed;

(12) Exhaust fans venting to the exterior shall be installed in all bathrooms and the kitchen in accordance with Chapter 15 of the 2009 International Residential Code;

(13) Replacement or installation of central heating and cooling equipment shall be sized as specified in Section M1401.3 of the 2009 International Residential Code; or

(14) Weatherstripping existing and operable exterior doors and windows.

(b) If one or more of these measures are existing and in operable condition, they may be counted as a required measure.

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

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304561

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 475-3974



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.13

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §33.13, relating to Process to Apply for License or Permit. The amendment would implement changes to licensing procedures required by Senate Bill 1035, 83rd Legislature, Regular Session, and to specify situations where applications will be considered incomplete and withdrawn.

Alcoholic Beverage Code (Code) §61.35(e), as added by Senate Bill 1035, requires the commission to have a rule establishing a method for returning 5% of the license fee to the assessor and collector of taxes of the county in which the licensee's business is located. The commission proposes to amend §33.13 by adding new subsection (g), which provides that the commission will transmit to the county tax assessor 5% of the license fee collected for each license issued in that county. The transmission will occur in the month following the issuance of the license.

Code §61.38, as amended by Senate Bill 1035, requires an original applicant for a license to sell beer at retail to publish notice of the application. Prior to this amendment, Code §61.38 required the county clerk to publish such notices. The commission proposes to amend §33.13(b)(4) to require applicants for such licenses to publish notice.

Amy Harrison, Director of the Licensing Division, has determined that for the first five years the amendment is in effect it will have no fiscal impact on state or local government.

The amendment will have no economic effect on persons required to comply with the rule, including micro-businesses and small businesses. There is no anticipated negative impact on local employment.

Ms. Harrison has also determined that for the first five years the section is in effect, the public will benefit because county governments will continue to receive a portion of license fees and will not have the expense of publishing notices of applications.

Comments on the proposed section may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission at (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on November 14, 2013, in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §61.35, which requires

the commission to have a rule establishing a method for returning 5% of the license fee to the assessor and collector of taxes of the county in which the licensee's business is located.

The proposed amendment affects Alcoholic Beverage Code §§5.31, 61.35 and 61.38.

§33.13. *Process to Apply for License or Permit.*

(a) This section relates to any license or permit. The purpose of this section is to clarify the pre-qualification process in subsection (b) of this section and distinguish it from the application process described in subsections (c) and (d) of this section.

(b) Before an application for a license or permit that is required to be certified under §11.37 or §61.37 of the Alcoholic Beverage Code may be filed with the commission, a pre-qualification packet must be completed. A pre-qualification packet is deemed incomplete if it does not contain all required certifications applicable to the type of license or permit sought and for the location requested, and a response to each item requested by the commission in the packet. For purposes of this section, a completed pre-qualification packet is one that contains:

(1) all required certifications signed by the city secretary, where appropriate, and the county clerk that the location for which the license or permit is sought is in a "wet" area for such license or permit and is not prohibited by charter, by ordinance, or by valid order in reference to the sale of any alcoholic beverage allowed by the license or permit;

(2) all other applicable certifications signed by the city secretary, where appropriate, and the county clerk that are in the pre-qualification packet prescribed by the commission;

(3) the required certification by the Comptroller of Public Accounts that the person submitting the packet holds, or has applied for and satisfies all legal requirements for, the issuance of a sales tax permit;

(4) proof of publication of notice of the application, if required by §11.39 or §61.38 of the Alcoholic Beverage Code; and

(5) a response to each item requested by the commission in the packet.

(c) A person or entity may file an application with the commission by submitting all forms, documents and information prescribed by the commission in accordance with the practices, policies, and standards relating to the processing of applications for licenses and permits. If a pre-qualification packet is required by subsection (b) of this section, the packet must be completed before an application is filed. The commission shall process the application to determine whether the application is in compliance with all provisions of the Alcoholic Beverage Code and rules of the commission or whether there is legal reason to deny the application. If additional documentation or information is requested and not provided within the requested period of time, the application will be considered incomplete and withdrawn.

(d) On completion of its processing pursuant to subsection (c) of this section, the commission shall inform the applicant that the application:

(1) may be filed with the county judge as mandated by §61.31 of the Alcoholic Beverage Code;

(2) has been referred to the State Office of Administrative Hearings;

(3) is granted; or

(4) is refused.

(e) For purposes of §11.391 and §61.381 of the Alcoholic Beverage Code, a notice sign must be posted for 60 days before the date the permit or license is issued.

(f) A notice sign is required for purposes of §11.391 and §61.381 of the Alcoholic Beverage Code unless a license or permit authorizing the on-premises consumption of alcoholic beverages has been active at the requested location any time during the 24 months immediately preceding the filing of the application. For purposes of this subsection, an application is filed on the date a completed application packet is received by the commission.

(g) For the purposes of §61.35(e) of the Alcoholic Beverage Code, the commission will transmit to the county tax assessor 5% of the license fee collected for each issued license in that county. This transmission will occur the month following the issuance of the license.

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

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

TRD-201304517

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 206-3489



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.10, 70.25, 70.50, 70.51, 70.62, 70.70, 70.73 - 70.75, 70.78

The Texas Department of Licensing and Regulation (Department) proposes amendments to §§70.10, 70.25, 70.50, 70.51, 70.62, 70.70, 70.73 - 70.75, and 70.78, relating to the Industrialized Housing and Buildings (IHB) program. The proposed amendments incorporate the changes brought about by the passage of Senate Bill 672 (SB 672), 83rd Legislature, Regular Session (2013). SB 672 prohibits the Department from opening a complaint, performing an inspection or investigation, or initiating an administrative or enforcement action against a builder, manufacturer, or third-party inspector of industrialized housing after the second anniversary of the final on-site inspection.

The proposed amendments to §70.10 add a definition for "final on-site inspection report."

Proposed amendments to §§70.24, 70.25 and 70.70 correct a reference to §70.73.

Proposed amendments to §70.50 reorganize and clarify the requirements for builders responsible for any part of the on-site construction and also authorize Department audits of the documents. These revisions will help to ensure that the Department has the information necessary to calculate the 24 month time limit set by SB 672.

Proposed amendments to §70.51 require that a council-approved inspector shall make available to the Department upon request copies of the inspection reports from other phases of the inspection or re-inspection. These revisions will help to ensure that the Department has the information necessary to calculate the time limits set by SB 672.

The proposed amendments to §70.62 add to the responsibilities of a local building official to provide an industrialized builder with a record of a successful final inspection as defined in §70.73(d).

Proposed amendments to §70.73 define a successful final inspection of on-site construction for both inside a municipality and outside a municipality (or within a municipality without a building inspection department); clarify that inspections by council-approved inspectors may not be substituted for inspections by municipal inspection departments; clarify that the industrialized builder or installation permit holder is responsible for ensuring that the inspections take place; and require council-approved site inspectors to schedule a re-inspection if the final on-site inspection cannot be performed or completed during its scheduled inspection. Also, for industrialized housing, a builder must give a copy of the final on-site inspection report to the purchaser within 5 business days of completion of the report. This will help to ensure that the owner is aware of the start date for the 24-month period set by SB 672.

Proposed amendments to §70.75 require the industrialized builder to give to the purchaser of industrialized housing a copy of the final on-site inspection report within 5 business days after the inspection is complete and also to give the purchaser the notice and acknowledgment as described in §70.78(c).

Proposed amendments to §70.78 add a new subsection (c) requiring an industrialized builder to provide a notice to the owner about the time limits for filing complaints and to require that the builder obtain written confirmation that the owner received this notice and the final on-site inspection report or record of final inspection. This will help to ensure that the owner knows time frame during which complaints can be filed with the Department.

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

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be greater consumer protection because purchasers of modular housing will be informed and notified of the timelines to file a complaint with the Department.

There is no anticipated adverse economic effect on small- or micro-business or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed rules will have no adverse economic effect on small or micro businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or elec-

tronically to erule@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 1202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposal.

§70.10. Definitions.

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

(1) - (13) (No change.)

(14) Final on-site inspection report--A report issued by a council-approved inspector, or a record of final inspection issued by a municipal building inspection department, indicating that the inspection of the on-site construction was successful and any noted violations have been corrected by the industrialized builder or installation permit holder in accordance with §70.73.

(15) [~~14~~] IAS--International Accreditation Service.

(16) [~~15~~] ICC--International Code Council, Inc.

(17) [~~16~~] ICC ES--International Code Council Evaluation Services.

(18) [~~17~~] Industrialized builder--A person who is engaged in the assembly, connection, and on-site construction and erection of modules or modular components at the building site or who is engaged in the purchase of industrialized housing or buildings modules or modular components for sale or lease to the public. An industrialized builder also includes a person who assembles and installs site-built REFs that are moved from the initial construction site.

(19) [~~18~~] Insignia--The approved form of certification issued by the department to the manufacturer to be permanently affixed to the modular component indicating that it has been constructed to meet or exceed the code requirements and in compliance with the sections in this chapter.

(20) [~~19~~] Installation--On-site construction of industrialized housing or buildings. (see definition of on-site construction [paragraph (29)]).

(21) [~~20~~] Lease, or offer to lease--A contract or other instrument by which a person grants to another the right to possess and use industrialized housing or buildings for a specified period of time in exchange for payment of a stipulated price.

(22) [~~21~~] Local building official--The agency or department of a municipality or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of residential and commercial structures.

(23) [~~22~~] Manufacturer--A person who constructs or assembles modules or modular components at a manufacturing facility which are offered for sale or lease, sold or leased, or otherwise used.

(24) [~~23~~] Manufacturing facility--The place other than the building site, at which machinery, equipment, and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming, or assembly of industrialized housing, buildings, modules, or modular components.

(25) [(24)] Model--A specific design of an industrialized house, building, or modular component which is based on size, room arrangement, method of construction, location, arrangement, or size of plumbing, mechanical, or electrical equipment and systems therein in accordance with an approved design package.

(26) [(25)] Module--A three dimensional section of industrialized housing or buildings, designed and approved to be transported as a single section independent of other sections, to a site for on-site construction with or without other modules or modular components.

(27) [(26)] Modular building--Industrialized housing and buildings as defined in Texas Occupations Code §1202.002 and §1202.003, and any relocatable, educational facility as defined in §1202.004, regardless of the location of construction of the facility.

(28) [(27)] NFPA--National Fire Protection Association.

(29) [(28)] Non site-specific building--An industrialized house or building for which the permanent site location is unknown at the time of construction.

(30) [(29)] On-site construction--Preparation of the site, foundation construction, assembly and connection of the modules or modular components, affixing the structure to the permanent foundation, connecting the structures together, completing all site-related construction in accordance with designs, plans, specifications, and on-site construction documentation.

(31) [(30)] Open construction--That condition where any house, building, or portion thereof is constructed in such a manner that all parts or processes of manufacture can be readily inspected at the building site without disassembly, damage to, or destruction thereof.

(32) [(31)] Permanent foundation system--A foundation system for industrialized housing or buildings designed to meet the applicable building code as set forth in §§70.100, 70.101, and 70.102.

(33) [(32)] Permanent industrialized building--An industrialized building that is not designed to be transported from one commercial site to another commercial site.

(34) [(33)] Permit, Alteration--A registration issued by the department to a person who is responsible for the alteration construction of industrialized housing, buildings or site-built REF's and who is not also registered as an industrialized builder.

(35) [(34)] Permit, Commercial Installation--A registration issued by the department to a person who purchases an industrialized building for the person's own use and who assumes responsibility for the installation of the industrialized building.

(36) [(35)] Permit, Residential Installation--A registration issued by the department to a person who purchases an industrialized house for the person's own use and who assumes responsibility for all or part of the construction relating to the installation of the industrialized house.

(37) [(36)] Person--An individual, partnership, company, corporation, association, or any other legal entity, however organized.

(38) [(37)] Public--The people of the state as a whole to include individuals, companies, corporations, associations or other groups, however organized, and governmental agencies.

(39) [(38)] REF, Site-built--A relocatable educational facility (REF) as defined by Texas Occupations Code §1202.004 that is constructed at the first installation site by an REF builder.

(40) [(39)] REF Builder--A person who constructs REF's at the first installation site. A person who assembles REF's constructed in a manufacturing facility is not an REF builder.

(41) [(40)] Registrant--A person who, or which, is registered with the department pursuant to the rules of this chapter as a manufacturer, a REF builder, an industrialized builder, a design review agency, a third party inspection agency, a third party inspector, a third party site inspector, or a permit holder.

(42) [(41)] Residential structure--Industrialized housing designed for occupancy and use as a residence by one or more families.

(43) [(42)] Sale, sell, offer to sell, or offer for sale--Includes any contract of sale or other instrument of transfer of ownership of property, or solicitation to offer to sell or otherwise transfer ownership of property.

(44) [(43)] Site or building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(45) [(44)] Special conditions and/or limitations--On-site construction documentation which alerts the local building official of items, such as placement of the building on the property or the requirements for roof ventilation, which may need to be verified by the local building official for conformance to the mandatory building codes.

(46) [(45)] Structure--An industrialized house or building that results from the complete assemblage of the modules or modular components designed to be used together to form a completed unit.

(47) [(46)] Third party inspection agency (TPIA)--An approved person or entity determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability, and independence of judgment to inspect industrialized housing, building, site-built REFs, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable codes.

(48) [(47)] Third party inspector (TPI)--An approved person determined by the council to be qualified by reason of experience, demonstrated reliability, and independence of judgment to inspect industrialized housing, buildings, site-built REFs, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable code. A third party inspector works under the direction of a third party inspection agency or TPIA.

(49) [(48)] Third party site inspector (TPSI)--An approved person determined by the council to be qualified by reason of experience, demonstrated reliability, and independence of judgment to inspect construction of REF's or the foundation and installation of industrialized housing, buildings, and portions thereof for compliance with the approved plans or engineered plans and the applicable code.

(50) [(49)] Unique on-site construction details--Construction details that are not part of, or that differ from, the manufacturer's approved on-site construction details or REF builder's approved construction plans. Unique on-site construction details include additions that may affect the code compliance of the house or building such as car ports, garages, porches, decks, and stairs.

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

§70.25. *Permits.*

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

(c) Installation Permit--Commercial.

(1) A person who purchases an industrialized building or modular component for the person's own use and who is responsible for construction related to the installation of the building may file for a commercial installation permit in lieu of registering as an industrialized builder.

(2) A separate application shall be submitted for each building that contains industrialized building modules or modular components.

(3) The installation permit shall be posted at the installation site for all buildings that are required to have site inspections in accordance with §70.73 [§70.73(b)].

(d) (No change.)

§70.50. Reporting Requirements for IHB Registrants [Manufacturers, Industrialized Builders, REF Builders, and Permit Holders].

(a) (No change.)

(b) Each industrialized builder responsible for any portion of the on-site construction in accordance with §70.73 shall keep records of all industrialized housing, buildings, modules, and modular components that were sold, leased, or installed. The records shall be kept for a minimum of 10 years from the date of the final on-site inspection report and made available to the department upon request. These records shall include the following:

(1) Decal or insignia number and corresponding serial number from the manufacturer of each module or modular component installed;

(2) Documents showing compliance with §70.75;

(3) The address where each module or modular component was installed;

(4) Date the on-site construction began at the installation site;

(5) The occupancy use of each building containing modules or modular components. Examples of the occupancy use of each building include, but are not limited to, the following: portable classroom buildings; school buildings; restaurants; bank buildings; equipment shelters; single-family residences; duplexes; apartment buildings; dormitories; and hazardous storage buildings;

(6) A copy of the site-specific foundation drawings;

(7) A copy of any unique on-site construction detail drawings;

(8) A copy of the on-site inspection reports;

(9) The date of the successful on-site inspection in accordance with §70.73(d);

(10) The name and registration number of the industrialized builder responsible for any on-site construction not completed by the first industrialized builder;

(11) A copy of the installation permit of the permit holder responsible for any on-site construction not completed by the industrialized builder; and

(12) Other records that may be necessary to demonstrate compliance with this chapter or Texas Occupations Code, Chapter 1202.

{(1) These records shall be kept for a minimum of ten years from the date of successful completion of the final site inspection and shall be made available to the department for review upon request. If the industrialized builder is not responsible for the installation, then the records shall be maintained for a period of 5 years from the date of sale or lease and shall be made available to the department upon request.}

{(2) An annual audit of units sold, leased, or installed by industrialized builders shall be conducted by the department. The au-

dit will identify the modules or modular components by the name and Texas registration number of the manufacturer of each unit and the assigned Texas decal or insignia numbers and the corresponding identification, or serial numbers, as assigned by the manufacturer. The industrialized builder shall report, or provide, the following information to the department for each unit identified in the audit within the timeframe set by the audit.}

{(A) Evidence of compliance with §70.75.}

{(B) The address where each unit was installed. If the industrialized builder is not responsible for the installation, then the address to where each unit was delivered. If the unit has not been installed, then the address where the unit is stored.}

{(C) Date construction began at the installation site.}

{(D) Date of occupation by owners or lessees or date released to owners or lessees for occupation.}

{(E) The occupancy use of each building containing modules or modular components. For example, is the building used as a classroom or school; a restaurant, a bank, an equipment shelter, a single-family residence, etc.}

{(F) If the industrialized builder is responsible for the installation and site work, then the industrialized builder.}

{(i) shall keep a copy of the foundation plans;}

{(ii) shall keep a copy of any unique on-site construction plans;}

{(iii) shall keep a copy of the site inspection report in accordance with §§70.73 or evidence of the city responsible for the site inspection, such as a permit number or copy of a certificate of occupancy; and}

{(iv) give a copy of these documents or information to the department upon request.}

{(G) If the industrialized builder is not responsible for all of the construction related to the installation and site work, then the industrialized builder.}

{(i) shall keep a copy of the engineered construction plans for that portion of the construction work for which he is responsible;}

{(ii) shall keep a copy of the site inspection report for that portion of the construction work for which he is responsible in accordance with §70.73 or evidence of the city responsible for the site inspection, such as a permit number or copy of a certificate of occupancy; and}

{(iii) shall give a copy of these documents or information to the department upon request.}

{(H) If the industrialized builder is not responsible for the installation and site work, or if the industrialized builder has transferred or sold the unit to another person, then the industrialized builder shall provide identification of the installation permit number, assigned by the department, or industrialized builder registration number, assigned by the department, of the person responsible.}

(c) Each industrialized builder who is not responsible for any portion of the on-site construction in accordance with §70.73 shall keep records of all industrialized housing, buildings, modules, and modular components that were sold or leased and make a copy of the records available to the department upon request. The records shall be kept for a minimum of 5 years from the date of sale or lease of each industri-

alized house, building, module, or modular component. These records shall include the following.

(1) Decal or insignia number and the corresponding serial number from the manufacturer of each module or modular component sold or leased;

(2) Documents showing compliance with §70.75.

(3) The address where the modules or modular components were shipped.

(4) Either of the following:

(A) the name and registration number of the industrialized builder who received the modules or modular components; or

(B) a copy of the installation permit of the permit holder who received the modules or modular components.

(5) Other records that may be necessary to demonstrate compliance with this chapter and Texas Occupations Code, Chapter 1202.

(d) The department may conduct an audit of any of the records identified in subsections (b) and (c) to verify compliance with this chapter and Texas Occupations Code, Chapter 1202. The industrialized builder shall provide the information and records requested by the audit within the time frame set by the audit.

(e) [(e)] Each REF builder shall keep records of all REFs constructed for a minimum of 10 years and provide a copy of these records to the department upon request. At a minimum the records shall include copies of the approved construction documents, inspection reports, and construction address for each REF.

(f) [(f)] An installation permit holder shall keep a copy of the foundation plans and other construction plans and, for units installed outside the jurisdiction of a municipality, the site inspection report in accordance with §70.73 for a period of ten years from the date of successful completion of the final inspection of the industrialized house or building. A copy of these records shall be provided to the department upon request.

§70.51. *Third Party Inspection Reports.*

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

(c) On-site inspections--installation of industrialized housing and buildings. A council-approved inspector shall document inspections on the forms and in the format required by the department (in accordance with any requirements set by the council).

(1) The council-approved inspector shall keep a copy of all inspection reports for a minimum of 5 years from the date of inspection.

(2) The council-approved inspector shall make a copy of the on-site inspection reports for industrialized housing and buildings, including the final on-site inspection report and the date of the final inspection, [report] available to the department upon request.

(3) The council-approved inspector shall notify the department [Department] if the industrialized builder or installation permit holder fails to call for final inspection within 180 days of the start of construction as required by §70.73.

(4) The council-approved inspector shall notify the department whenever the industrialized builder or installation permit holder fails to correct deviations prior to occupation of the industrialized house or building.

§70.62. *Responsibilities of the Local Building Official--Inspections.*

(a) Installation inspections. When the installation site is within a municipality that has a building inspection agency or department, the

local building official will inspect all on-site construction and the attachment of the structure to the foundation to assure completion and attachment in accordance with the approved design package, the engineered foundation system, any unique on-site details, and the mandatory building codes. As a minimum the local building official shall:

(1) perform an overall visual inspection for obvious non-conformity to the approved design manual, the engineered foundation system, any unique on-site details, and the mandatory building code;

(2) require final inspections along with any tests that are required by the approved installation instructions, on-site construction documentation, and/or the mandatory building code;

(3) require the correction of deficiencies identified by the tests or discovered in inspections; [and]

(4) issue a certificate of occupancy in accordance with locally adopted rules and regulations;[-]

(5) provide the industrialized builder with a record of a successful final inspection as defined in §70.73(d); and

(6) provide the date of the final inspection.

(b) (No change.)

§70.70. *Responsibilities of the Registrants--Manufacturer's Design Package and REF Builder's Construction Documents.*

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

(e) Other construction documentation for REF builders. Construction documentation for the foundation and site specific elements, such as ramps and stairs, of the site-built REF's shall be reviewed and approved by the DRA, the local building official, or, in areas where the building site is outside a municipality or within a municipality with no building department or agency, by the school district. At a minimum the documentation shall include all construction documentation necessary to complete the building at the first commercial site including a foundation system design meeting the requirements of §70.73(h) [§70.73(g)]. The use of ground anchors shall comply with §70.73(i) [§70.73(h)].

(f) (No change.)

§70.73. *Responsibilities of the Registrants--Building Site Construction and Inspections.*

(a) Industrialized housing shall be installed on a permanent foundation system.

(b) The initial construction and inspection of a site-built REF at the 1st commercial site falls under the provisions of §70.79. Subsequent installation of REFs shall comply with this section.

(c) Responsibility for on-site [building site] construction. The industrialized builder or installation permit holder shall be responsible for assuring that the foundation and the installation of an industrialized house, building, or site-built REF complies with the manufacturer's or REF builder's on-site construction specifications or documentation that have been approved in accordance with §70.70 of this chapter, any unique on-site construction details, the engineered foundation design, and the mandatory building codes.

(1) The industrialized builder or installation permit holder is responsible for assuring that all sub-contractors are licensed as required by applicable state law.

(2) The industrialized builder is not responsible for construction performed by the installation permit holder as specified on the installation permit application submitted to the department. Construction not covered by the installation permit is the responsibility of the industrialized builder.

(3) The installation permit holder is responsible only for the construction specified on the installation permit application submitted to the department.

(d) For purposes of this chapter and Texas Occupations Code, Chapter 1202, a final inspection of on-site construction of industrialized housing and buildings is successful if it meets one of the following.

(1) Inside a municipality: All on-site construction has been completed to the satisfaction of the municipality's building inspection department and a record of final inspection was issued authorizing the release of the house or building.

(2) Outside the jurisdiction of a municipality or within a municipality without a building inspection department: All inspections required in accordance with subsection (f) have been completed and a final on-site inspection report has been issued with no outstanding violations from any of these inspections. For purposes of this section, a violation is any of the following:

(A) on-site construction that does not meet the mandatory building codes;

(B) failure to correct damage to the factory-built portion of the house or building that was caused by on-site construction;

(C) on-site construction that does not follow the documents approved in accordance with §70.70, the engineered foundation system drawings, or unique on-site construction detail drawings; or

(D) on-site construction that is incomplete.

(e) [(d)] Responsibility for inspections within jurisdiction of a municipality. When the building site is within a municipality that has a building inspection agency or department, the local building official will inspect all on-site construction done at the site and the attachment of the structure to the foundation to assure completion and attachment in accordance with the documents approved in accordance with §70.70, the foundation system drawings [design], any unique on-site construction detail drawings [details], and the mandatory building codes.

(1) A municipality that regulates the on-site construction or installation of industrialized housing or buildings may require and review, for compliance with the mandatory building codes, a complete set of plans and specifications, including the foundation system design and any unique on-site construction details.

(2) The industrialized builder or installation permit holder shall not permit occupation of, or release for occupation, the industrialized house or building unless approved by the municipality.

(3) The industrialized builder or installation permit holder is responsible for ensuring that all inspections are completed in accordance with procedures established by the municipality's building inspection department.

(f) [(e)] Responsibility for inspections outside the jurisdiction of a municipality or within a municipality without a building inspection agency or department. When the building site is outside a municipality, or within a municipality that has no building department or agency, a council-approved inspector will perform the required inspections in accordance with this section and the inspection procedures established by the council to assure completion and attachment in accordance with the documents approved in accordance with §70.70, the mandatory building codes, the foundation system drawings [design], and any unique on-site construction detail drawings [details].

(1) The on-site inspection is normally accomplished in three phases: foundation inspection, set inspection, and final inspection.

The foundation inspection shall be performed before the concrete is poured.

(2) The final inspection shall be completed within 180 days of the start of construction. The department may grant an extension upon receipt of a written request that demonstrates a justifiable cause.

(3) Site inspections are required for the first installation of all industrialized housing and permanent industrialized buildings. Exception: Site inspections are not required for the installation of unoccupied industrialized buildings not open to the public, such as communication equipment shelters, that are not also classified as a hazardous occupancy by the mandatory building code.

(4) Site inspections are required for industrialized buildings that are designed to be moved from one commercial site to another commercial site if the buildings are used as a school or place of religious worship.

(5) The industrialized builder, or installation permit holder, is responsible for scheduling each phase of the inspection with the inspector and for ensuring that all inspections have been completed. Additional inspections will be scheduled as required for larger structures and to correct violations [discrepancies]. The industrialized builder, or installation permit holder, may utilize a different inspector for different projects, but may not change the inspector for a project once started without the written approval of the department.

(6) The inspector shall give [provide] the industrialized builder or installation permit holder a copy of the site inspection report upon completion of each [phase of the] inspection including re-inspections. Violations shall be documented on the Violations Report form. [If the inspector finds a structure, or any part thereof, does not meet the approved design package, the mandatory building codes, the engineered foundation plans, or the engineered on-site construction details, then the inspection report shall include a list of violations.] The industrialized builder or installation permit holder is responsible for assuring that all violations are corrected.

(7) The industrialized builder, or installation permit holder, shall not permit occupancy, or release the house or building for occupation, until a successful final inspection has been completed. A final on-site inspection report shall be issued showing no outstanding violations prior to occupation, or release for occupation, of the house or building. Exception: Occupancy of the house or building may be permitted and approved with outstanding items provided that the items are not in violation of the mandatory building codes.

[(A) A successful final inspection means that all on-site construction has been completed, that all violations have been corrected, and that the construction has been found to be in compliance with the mandatory building codes, the approved on-site construction documentation, the engineered foundation system, and the engineered on-site construction documents.]

(A) [(B)] The industrialized builder or installation permit holder shall maintain a copy of the on-site inspection reports in accordance with the requirements of §70.50 [each site inspection report for a minimum of ten years from the date of successful final inspection] and make a copy of all on-site inspection reports [the report] available to the department upon request. The reports [report] shall include a list of all violations and corrective action documented on the Violations Report form [documentation from the inspector showing that all outstanding violations have been corrected].

(B) The industrialized builder shall give a copy of the on-site inspection reports to the owner of the building upon request.

(C) The industrialized builder shall give a copy of the final on-site inspection report to the owner of the industrialized house no later than 5 business days after the final inspection is complete and a copy of the other on-site inspection reports to the owner if requested.

~~[(C) Upon request a copy of all site inspection reports shall be given to the owner of the house or building.]~~

(g) ~~[(f)]~~ Destructive disassembly shall not be performed at the site in order to conduct tests or inspections, nor shall there be imposed standards or test criteria different from those required by the approved installation instructions, on-site construction documentation, and the applicable mandatory building code. Nondestructive disassembly may be performed only to the extent of opening access panels and cover plates.

(h) ~~[(g)]~~ Foundation system designs. A licensed professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) shall design and seal the foundation systems for each industrialized house or building. Review by a DRA is not needed or required. A municipality that regulates the on-site construction or installation of industrialized housing or buildings may review the foundation system design for compliance with the mandatory building code. Foundation system designs shall comply with the mandatory building code referenced in §70.100 and §70.101 and shall contain complete details for the construction and attachment of the house or building on the foundation, including, but not limited to the following:

- (1) address or area for which the foundation is suitable;
- (2) minimum load specifications, including wind loads, seismic design loads, soil bearing capacity, and if the foundation is designed for expansive soils;
- (3) site preparation details;
- (4) material specifications;
- (5) requirements for corrosion resistance, protection against decay, and termite resistance;
- (6) size, configuration, and depth below grade of all footings, piers, and slabs including, but not limited to, details of concrete reinforcement, spacing of footings and piers, capping of piers, and mortar or concrete fill requirements for piers;
- (7) fastening requirements, including, but not limited to, size, spacing, and corrosion resistance;
- (8) requirements for surface drainage; and
- (9) details for enclosure of the crawl space, including details for ventilation and access.

(i) ~~[(h)]~~ Ground anchors. The use of ground anchors in the installation of industrialized housing is not permitted. The use of ground anchors in the installation of industrialized buildings is allowed if deemed appropriate by a municipality or other political subdivision. The foundation design shall be prepared by a licensed professional engineer and shall contain complete details for the construction and attachment of the building on the foundation, including, but not limited to the following:

- (1) address or area for which the foundation is suitable, including a soil investigative report prepared by a qualified engineer or a description of the soil type for which the anchoring system is suitable;
- (2) minimum load specifications, including wind loads, seismic design loads, soil bearing capacity, and if the foundation is designed for expansive soils;

- (3) site preparation details;
- (4) material specifications;
- (5) requirements for corrosion resistance, protection against decay, and termite resistance;
- (6) size, configuration, and depth below grade of all footings and piers including spacing of footings and piers;
- (7) specification and installation requirements for the tie-down anchoring system, including specifications for corrosion resistance for the ground anchors and associated tie-down system;
- (8) requirements for surface drainage; and
- (9) details for enclosure of the crawl space, including details for ventilation and access.

(j) ~~[(i)]~~ Unique on-site construction details. Unique on-site construction details as defined by §70.10(a) shall be designed and sealed by a licensed Texas professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) and review by a DRA is not needed or required. The unique on-site construction details shall comply with the mandatory building codes referenced in §70.100 and §70.101. A municipality that regulates the on-site construction or installation of industrialized housing or buildings may require and review the unique on-site details for compliance with the mandatory building code.

§70.74. Responsibilities of the Registrants--Alterations.

(a) The manufacturer shall not alter construction of the industrialized house or building from the approved design package. Industrialized builders or installation permit holders shall not alter construction performed at the installation from the approved on-site construction documentation except in accordance with this section or §70.73(j) ~~[(§70.73(g))]~~. Alterations of industrialized housing or buildings shall be as specified in this section.

(b) - (g) (No change.)

§70.75. Responsibilities of the Registrants--Permit/Owner Information.

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

(c) The industrialized builder shall provide the purchaser (owner) or installation permit holder of any industrialized house or building the following information:

- (1) the name, Texas registration number, and address of the manufacturer or REF builder and industrialized builder;
- (2) the location of the data plate and explanation of the information thereon;
- (3) ~~[(upon request)]~~ a copy of the on-site [site] inspection reports in accordance with §70.73;
- (4) a complete set of approved plans and specifications in accordance with §70.70, including all records pertinent to alterations of the house or building in accordance with §70.74;
- (5) a copy of the foundation system design and any unique on-site details in accordance with §70.73;
- (6) the location of the decal(s) or insignia on the module, modular components, or site-built REF;
- (7) a site plan showing the on-site location of all utilities and utility taps;
- (8) a completed signed copy of the energy compliance checklist (referenced in subsection (a)(5)); ~~[(and)]~~

(9) for all industrialized housing and buildings, the information required by §70.78(b); and[-]

(10) for industrialized housing, the information required by §70.78(c).

(d) - (f) (No change.)

§70.78. *Responsibilities of the Registrants--General.*

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

(c) Each industrialized builder responsible for any portion of the installation of industrialized housing shall present the following to the purchaser:

(1) Upon execution of a contract to purchase industrialized housing, and within 5 business days after a successful final on-site inspection of industrialized housing, a written notice that states, in minimum 12-point bold print: "The Texas Department of Licensing and Regulation may not open or investigate a consumer complaint or perform an inspection related to industrialized housing more than two years after a successful final on-site inspection of the housing."

(2) Within 5 business days after a successful final on-site inspection of industrialized housing, one of the following acknowledgements:

(A) For a successful final on-site inspection completed by a council-approved inspector in accordance with §70.73: "I acknowledge receipt of a copy of the final on-site inspection report dated: (insert date of the final on-site inspection)"; or

(B) For a successful final on-site inspection completed by a municipal inspection department in accordance with §70.73: "I acknowledge receipt of a copy of the record of final on-site inspection dated: (insert date of the record of final inspection)."

(3) Each acknowledgement shall be signed and dated by the purchaser and also include the following information:

(A) the registration number and registered name and address of the industrialized builder;

(B) the registration number and registered name and address of the manufacturer of the industrialized housing;

(C) the decal or insignia number for each modular section of the industrialized housing;

(D) the manufacturer's serial number for each modular section of the industrialized housing; and

(E) the name, mailing address, telephone number, and web address of the department.

(d) [(e)] The registrant must allow the department, as part of an inspection or investigation, to enter his business premises during regular business hours and examine and copy any records that relate directly or indirectly to the inspection or investigation being conducted. The department may inspect all records, books and documents, whether paper or electronic, pertaining to the agency's operation.

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

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304548

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 463-7348

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**PART 8. TEXAS RACING
COMMISSION**

**CHAPTER 307. PROCEEDINGS BEFORE THE
COMMISSION**

**SUBCHAPTER C. PROCEEDINGS BY
STEWARDS AND RACING JUDGES**

16 TAC §307.64, §307.69

The Texas Racing Commission proposes amendments to 16 TAC §307.64 and §307.69. Section 307.64 relates to penalties for violations of the Texas Racing Act (the "Act") or the Commission's rules. Section 307.69 relates to the executive secretary's ability to review and modify penalties. The proposed amendments would bring the rules into conformity with amendments to the Act that were implemented through House Bill (HB) 1187 (83rd Legislature, Regular Session, 2013). HB 1187 raised the maximum fine that stewards and racing judges may impose from \$5,000 to \$25,000 and the maximum suspension from one year to five years. It also raised the maximum fine that the executive secretary may impose from \$10,000 to \$100,000 and the maximum suspension from two years to five years.

Chuck Trout, Executive Director, 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 enforcing the amended rules.

Mr. Trout has determined that for each year of the first five years that the amendments are in effect the anticipated public benefit will be consistency with the Act.

It is possible that the amendments could have an adverse economic effect on small or micro-businesses if such businesses commit violations of the Act or the rules; however, these amendments are necessary to bring the agency's penalty authority into consistency with the authority established in the Act. There will not be any adverse economic impact on small or micro-businesses that comply with the Act and the rules.

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

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

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

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §3.07,

which requires the Commission to adopt rules specifying the authority and duties of each racing official.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§307.64. *Penalties.*

(a) For each violation of the Act or a Rule, the stewards and racing judges may:

(1) impose a fine of not more than \$25,000 [~~\$5,000~~]; and

(2) suspend an occupational license for not more than five years [~~one year~~].

(b) (No change.)

§307.69. *Review by Executive Secretary.*

(a) Within fourteen days after a board of stewards or judges issues a written ruling under §307.63 of this title (relating to Ruling), the executive secretary may review the ruling and modify the penalty. A penalty modified by the executive secretary may include a fine not to exceed \$100,000 [~~\$10,000~~], a suspension not to exceed five years [~~two years~~], or both a fine and a suspension.

(b) - (f) (No change.)

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

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

TRD-201304518

Mark Fenner

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 24, 2013

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



CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.3

The Texas Racing Commission proposes an amendment to 16 TAC §319.3. The section relates to medications that are restricted in horses and greyhounds. The proposed amendment would enable the executive director to conform the agency's medication thresholds to standards established by the Association of Racing Commissioners International by permitting thresholds in excess of "trace" levels for the non-steroidal anti-inflammatory drugs flunixin and ketoprofen. The amendment would also delete the reference to phenylbutazone in the rule so that the threshold for this drug could also be established by the executive director.

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

Mr. Trout has determined that for each year of the first five years that the amendment is in effect the anticipated public benefit will

be additional regulatory flexibility and consistency among racing jurisdictions.

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

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

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

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

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §3.16, which requires the Commission to adopt rules relating to the use of prohibited substances at a racetrack.

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

§319.3. *Medication Restricted.*

(a) Except as otherwise provided by this section, a horse or greyhound participating in a race may not carry in its body a prohibited drug, chemical, or other substance.

~~(b) The maximum permissible plasma or serum concentration of phenylbutazone in horses is 2.0 micrograms per milliliter.~~

~~(b) [(e)]~~ Furosemide at or below the approved tolerance level in a horse that has been admitted to the furosemide program is permissible. The approved tolerance level shall be published on the list of therapeutic drugs posted under subsection ~~(c) [(d)]~~ of this section.

~~(c) [(d)]~~ Levels [~~Trace~~ levels] of drugs which are therapeutic and necessary for treatment of illness or injury in race animals are permissible, provided:

(1) the therapeutic drug is on a written list approved by the executive secretary, maintained by the commission veterinarian, and posted in the commission veterinarians' office; and

(2) the maximum permissible urine or blood concentration of the drug does not exceed the published limit, if any, on the written list of therapeutic drugs.

~~(d) [(e)]~~ Except as otherwise provided by this chapter, a person may not administer or cause to be administered to a horse or greyhound a prohibited drug, chemical, or other substance, by injection, by oral or topical administration, by rectal infusion or suppository, by nasogastric intubation, or by inhalation, and any other means during the 24-hour period before the post time for the race in which the animal is entered.

~~(e) [(f)]~~ A positive finding by a chemist of a prohibited drug, chemical, or other substance in a test specimen of a horse or greyhound collected before or after the running of a race, subject to the rules of the commission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race.

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

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

TRD-201304519

Mark Fenner

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 24, 2013

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



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

22 TAC §192.1

The Texas Medical Board (Board) proposes an amendment to §192.1, concerning Definitions.

Elsewhere in this issue of the *Texas Register* the Board contemporaneously withdraws an amendment to §192.1, which was published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6494).

The amendment to §192.1 adds language providing that the administration of certain local anesthesia, peripheral nerve blocks, or both in a total dosage amount that exceeds 50 percent of the recommended maximum safe dosage per outpatient visit is a Level II service, in accordance with Senate Bill 978 (83rd Regular Session).

Scott Freshour, General Counsel for the Board, has determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Mr. Freshour has also determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to have a rule that is clear, comports with statute, and better enables the Board to protect the public in the regulation of office-based anesthesia as well as to have a rule that is clear as it relates to understanding the standards and exceptions for providing certain levels of anesthesia.

Comments on the proposal may be submitted to Sarah Tuthill, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: sarah.tuthill@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §162.102, Texas Occupations Code.

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

§192.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents indicate otherwise.

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

(15) Level II services--

(A) The administration of tumescent anesthesia;

(B) The [or the] delivery of analgesics or anxiolytics by mouth in dosages greater than allowed at Level I, as prescribed for the patient on order of a physician; or[-]

(C) The administration of local anesthesia, peripheral nerve blocks, or both in a total dosage amount that exceeds 50 percent of the recommended maximum safe dosage per outpatient visit.

(16) - (19) (No change.)

(20) Outpatient setting--Any facility, clinic, center, office, or other setting that is not a part of a licensed hospital or a licensed ambulatory surgical center with the exception of the following:

(A) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. §479-1 or as listed under a successor federal statute or regulation;

(B) a facility maintained or operated by a state or governmental entity;

(C) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(D) an outpatient setting where the facility itself is accredited by either The [the] Joint Commission [on Accreditation of Healthcare Organizations] relating to ambulatory surgical centers, the American Association for [the] Accreditation of Ambulatory Surgery Facilities, or the Accreditation Association for Ambulatory Health Care.

(21) - (26) (No change.)

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

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

TRD-201304493

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 305-7016



PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §651.2

The Executive Council of Physical Therapy and Occupation Therapy Examiners proposes amendments to §651.2, regarding Physical Therapy Board Fees. The amendment changes the late renewal and license restoration fee for individuals.

John P. Maline, Executive Director, has determined that for the first five-year period these amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering these amendments.

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be fewer hurdles for PTs and PTAs who wish to return to the profession. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment.

There are no anticipated costs to individuals who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Act to carry out its duties in administering the Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by these amendments.

§651.2. *Physical Therapy Board Fees.*

- (a) Application/Permanent License.
 - (1) PT--\$190.
 - (2) PTA--\$125.
- (b) Application to Retake the Examination.
 - (1) PT--\$25.
 - (2) PTA--\$25.
- (c) Temporary License.
 - (1) PT--\$80.
 - (2) PTA--\$60.
- (d) Provisional License.
 - (1) PT--\$80.
 - (2) PTA--\$75.
- (e) Active to Inactive License.
 - (1) PT--a fee equal to one-half of the renewal fee.
 - (2) PTA--a fee equal to one-half of the renewal fee.
- (f) License Renewal.
 - (1) Active license.
 - (A) PT--\$242.
 - (B) PTA--\$180.

- (2) Inactive License.
 - (A) PT--a fee equal to one-half of the renewal fee.
 - (B) PTA--a fee equal to one half of the renewal fee.
- (g) Inactive to Active License (Reactivation).
 - (1) PT--a fee equal to the renewal fee.
 - (2) PTA--a fee equal to the renewal fee.
- (h) Retired Status.
 - (1) Application--\$25.
 - (2) Renewal--\$25.
- (i) Late Fees--Renewal (all licensees).
 - (1) Late 90 days or less--the renewal fee plus a late fee equal to one-half of the renewal [examination] fee.
 - (2) Late more than 90 days, but less than one year--the renewal fee plus a fee equal to the renewal [examination] fee.
- (j) License Restoration (all licensees, under the conditions set out in §341.6 of the Physical Therapy Board Rules)--a fee equal to the renewal [examination] fee.
 - (k) Facility Registration, All Facilities--\$215.
 - (l) Facility Renewal, All Facilities--\$215.
 - (m) Late Fees--All Facilities.
 - (1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.
 - (2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.
 - (n) Facility Restoration--Late one year or more--a restoration fee:
 - (1) Cancelled registration--a fee equal to the facility renewal fee.
 - (2) Expired registration--a fee that is double the facility renewal fee.

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

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

TRD-201304491

John Maline

Executive Director

Executive Council of Physical Therapy and Occupation Therapy Examiners

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 305-6900

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code §34.5, concerning the safe stor-

age, handling, and use of flammable liquids at retail service stations, and §§34.401, 34.403, and 34.407, concerning approval of testing laboratories.

The amendments to §34.5 are necessary to incorporate updates to the National Fire Protection Association (NFPA) Flammable and Combustible Liquids Code 30-2012 and NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A-2012. Health and Safety Code §753.003 directs TDI, through the state fire marshal, to adopt rules for the standards for safe storage, handling, and use of flammable liquids at retail service stations. TDI last updated the adopted Flammable and Combustible Liquids Code and NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages (formerly the Automotive and Marine Service Station Code) in 1990.

Proposed amendments to §34.5 adopt the most recent version of the NFPA Flammable and Combustible Liquids Code 30 and Code for Motor Fuel Dispensing Facilities and Repair Garages 30A for retail service stations. The new NFPA codes would become effective September 1, 2014. The NFPA is a nationally recognized standards-making organization. The intent of the Flammable and Combustible Liquids Code 30-2012 is to reduce hazards to a degree consistent with reasonable public safety, without undue interference with public convenience and necessity of operations that require the use of flammable and combustible liquids. The intent of NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A-2012 is to reduce the hazards of motor fuels to a degree consistent with reasonable public safety, without undue interference with public convenience and necessity. In compliance with Health and Safety Code §753.003(d), a rule adopted under this chapter does not prohibit or permit the prohibition of an unattended self-service gasoline station operation.

NFPA Flammable and Combustible Liquids Code 30-2012 incorporates requirements previously found in NFPA 11A, Standard for Medium- and High-Expansion Foam and adds a new chapter to address compressed air foam systems. The updated standard revises some chapters to accommodate the incorporation of medium- and high-expansion foam systems previously regulated by NFPA 11A. The code also modifies and updates other requirements for purposes of providing safeguards to reduce the hazards associated with the storage, handling, and use of flammable and combustible liquids.

NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A-2010 includes revised safety requirements. Many of the chapters have been renumbered. The code includes many updates and revisions since the 1990 edition and provides specialized guidelines to avoid serious hazards at service stations.

The proposed revised standards, to the extent they are in conflict with sections of this subchapter or any Texas statutes or federal law, will not apply. The following chapters of the proposed revised standards do not apply to retail service stations: (i) NFPA Flammable and Combustible Liquids Code 30, Chapter 22.4.1, relating to the Location of Aboveground Storage Tanks; (ii) NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A, Chapter 22.4.1, related to the Location of Aboveground Storage Tanks; (iii) NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A, Chapter 4.3.2.3, relating to Tank Size & Aggregate Capacity; (iv) NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A, Chapter 6.2.1, relating to Dispensing Device set backs; and (v) NFPA Code for Mo-

tor Fuel Dispensing Facilities and Repair Garages 30A, Chapter 11, related to Marine Fueling.

Copies of both standards are available for public inspection in the State Fire Marshal's Office. The NFPA also makes available codes for read-only inspection online through their website at www.nfpa.org. To view the NFPA codes, creation of a free account is required and users must agree to certain terms and conditions.

The amendments to Subchapter D, Testing Laboratory Rules, are necessary to include the former substantive functions of Subchapter B, Flammable Liquids Equipment Testing Laboratory rules, with Subchapter D, proposed for repeal in a companion rule proposal also published in this issue of the *Texas Register*. The two testing laboratory rules impose similar requirements for approval by the state fire marshal. Adding testing laboratories that conduct testing for flammable liquids will simplify and condense rules under Chapter 34.

Amendments to §34.407 in this rule proposal, and the related repeal of sections within Subchapter D in the companion rule repeal, made substantive changes to the testing laboratory approval process. Previously, testing laboratories could apply to the state fire marshal directly for approval of certification programs. The existing rule has always extended approval to testing laboratories approved by the Occupational Safety and Health Administration (OSHA), as nationally recognized testing laboratories. The existing Subchapter B, Flammable Liquids Equipment Testing Laboratory, and Subchapter D, Testing Laboratory Rules, provide a means to become an approved testing laboratory outside of the OSHA testing laboratory certification process. However, in practice no laboratory has applied to the state fire marshal, nor does the State Fire Marshal's Office have the staff expertise to adequately and fairly review an application. For these reasons, TDI proposes to delete the option to apply directly to the state fire marshal to obtain approval as a testing laboratory. Further, the three testing laboratories specified in §34.407(f) are all OSHA certified, nationally recognized testing laboratories.

Finally, the proposed amendments update obsolete statutory references and make nonsubstantive editorial changes to improve readability and consistency and conform to current agency style.

FISCAL NOTE. Mark Lockerman, director of State Fire Marshal's Office, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state governments, and only a small impact to local governments, as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Lockerman also determined that for each year of the first five years the proposal is in effect, there is an anticipated public benefit through reducing the risk of harm due to the safe storage, handling, and use of flammable liquids at retail service stations. Mr. Lockerman also has determined that for each year of the first five years the proposal is in effect, there is no anticipated impact on the public due to the proposed changes in the testing laboratory certification process.

The proposal adopts NFPA Flammable and Combustible Liquids Code 30-2012 and NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A-2012 as the standards for safe storage, handling, and use of flammable liquids at retail service stations. The adopted revised safety standards in the two codes may affect owners and operators of retail service stations.

Under Health and Safety Code §753.001, a retail service station means that portion of a property where a flammable liquid used as motor fuel is stored and dispensed as an act of retail sale from fixed equipment into the fuel tank of a motor vehicle. The term does not include a marina.

Due to revisions in the updated Flammable and Combustible Liquids Code and Code for Motor Fuel Dispensing Facilities and Repair Garages, retail service station owners and operators may be required to meet more stringent or altered code requirements, and facility owners and operators may have higher costs to comply with the more recent version of the codes. Actual cost of compliance will vary based on the existing condition of the building and the number of buildings affected by the updated standards.

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

The North American Industrial Classification System sets forth categories of business types. Operators of retail service stations fall within the general category of gasoline stations. Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" lists this category as business type 447 (Gasoline Stations). For this category, there are 4960 businesses listed in Texas, of which 4715 (95 percent) are identified as small businesses or micro businesses, as those terms are defined in Texas Government Code §2006.001.

The proposed requirements do not vary between large businesses and small or micro businesses, and TDI's cost analysis and resulting estimated costs for a retail service station in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro businesses. The costs attributable to the rule vary with the individual circumstances of each facility. TDI anticipates that the proposal is likely to have a smaller cost impact on small or micro businesses because such businesses are likely to have fewer storage devices or fewer retail service stations under common management.

The proposed amendments to §34.407 will limit testing laboratories seeking approval from the state fire marshal under Subchapter D to obtaining OSHA laboratory approval. The elimination of the direct application process would not substantially affect the costs for actual laboratory equipment or training for a testing laboratory for seeking approval. However, OSHA testing certification does require mandatory fees, including an initial application fee of \$17,750 for laboratories with new applications. These fees do not vary between large businesses and small or

micro businesses. OSHA requires testing laboratories to periodically renew their certification as nationally recognized testing laboratories, and also may audit the laboratories. This additional oversight of testing laboratories and heightened experience with the monitoring and review of testing laboratories will protect the health and safety of Texas citizens.

The proposal adopts NFPA Flammable and Combustible Liquids Code 30-2011 and NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A-2011 as the standards for the safe storage, handling, and use of flammable liquids at retail service stations under Health and Safety Code §753.003. In enacting Health and Safety Code §753.003, TDI presumes that the Legislature was aware that the vast majority of businesses subject to the standards would be small or micro businesses. Health and Safety Code §753.003 and the updated standards are necessary to better protect the health and safety of the public. Reducing or minimizing the standards for 95 percent of the applicable businesses would not fulfill Health and Safety Code §753.003.

In compliance with Government Code §2006.002(c-1), TDI has determined that the proposal substantially contributes to the health and safety of Texas citizens by incorporating more current safety standards and testing laboratory certification oversight by OSHA. There are no regulatory alternatives to the adoption of the updated standard in this proposal that will sufficiently protect the health and safety of Texas citizens utilizing or being near a retail service station, or that uses or relies on flammable liquids equipment or fire protection equipment to have been subject to testing by an approved testing laboratory.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and so does not constitute a taking or require a takings impact assessment under 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. on November 25, 2013, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comments to Mark Lockerman, Director, State Fire Marshal's Office, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must submit any request for a public hearing separately to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, you may submit written and oral comments for consideration at the hearing.

SUBCHAPTER A. FLAMMABLE LIQUIDS

28 TAC §34.5

STATUTORY AUTHORITY. The amendments are proposed under Government Code §417.005, Health and Safety Code §753.003, and Insurance Code §36.001. Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Health and Safety Code §753.003 provides that the department of insurance, through the state fire marshal, shall adopt rules for the safe storage, handling, and use of flammable liquids at retail service stations. Insurance Code §6001.054 provides that the department shall evaluate the qualifications

of a firm seeking approval as a testing laboratory for fire extinguishers. Insurance Code Chapter 6002 provides that fire alarm and fire detection devices must carry a label of approval or listing by a testing laboratory approved by the department. Insurance Code §6003.054 provides that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Health and Safety Code §753.003, Texas Insurance Code Chapters 6001, 6002, and 6003.

§34.5. *Adopted Standards.*

(a) The commissioner [~~commission~~] adopts by reference the following copyrighted standards and recommendations in this subsection, except to the extent they are in conflict with sections of this subchapter or any Texas statutes or federal law for use through August 31, 2014. Copies of the standards are available for public inspection in the State Fire Marshal's Office. The standards are published by and are available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts [02269]:

(1) NFPA 30-1990, Flammable and Combustible Liquids Code;

(2) NFPA 30A-1990, Automotive and Marine Service Station Code, including the Tentative Interim Amendment (TIA Log Number 312R) adopted by the NFPA in 1991, except for §2-4.2 of the Tentative Interim Amendment concerning tank location and capacity.

(b) The commissioner adopts by reference the following copyrighted standards and recommendations in this subsection, except to the extent they are in conflict with sections of this subchapter or any Texas statutes or federal law, for use on and after September 1, 2014. Copies of the standards are available for public inspection in the State Fire Marshal's Office. The standards are published by and are available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts:

(1) NFPA 30-2012, Flammable and Combustible Liquids Code;

(2) NFPA 30A-2012, Code for Motor Fuel Dispensing Facilities and Repair Garages.

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

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

TRD-201304498

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 463-6327



SUBCHAPTER D. TESTING LABORATORY RULES

28 TAC §§34.401, 34.403, 34.407

STATUTORY AUTHORITY. The amendments are proposed under Government Code §417.005, Health and Safety Code §753.003, and Insurance Code §36.001. Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Health and Safety Code §753.003 provides that the department of insurance, through the state fire marshal, shall adopt rules for the safe storage, handling, and use of flammable liquids at retail service stations. Insurance Code §6001.054 provides that the department shall evaluate the qualifications of a firm seeking approval as a testing laboratory for fire extinguishers. Insurance Code Chapter 6002 provides that fire alarm and fire detection devices must carry a label of approval or listing by a testing laboratory approved by the department. Insurance Code §6003.054 provides that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Health and Safety Code §753.003, Texas Insurance Code Chapter 6001, 6002, and 6003.

§34.401. *Purpose.*

The purpose of this subchapter is to administer through the state fire marshal the law set forth in the Insurance Code, Chapters 6001, 6002, and 6003, and Health and Safety Code Chapter 753 [Articles 5.43-1, 5.43-2, and 5.43-3,] regarding approval of testing laboratories that [which] perform standardized tests on fire protection equipment or flammable liquids equipment in the interest of safeguarding lives and property.

§34.403. *Applicability and Scope [of Subchapter].*

This subchapter applies [shall apply] to persons and laboratories engaged in testing fire protection equipment or flammable liquids equipment and not to the general public.

§34.407. *Approved Testing Laboratories [Applications].*

[(a) Application scope. A testing laboratory seeking approval of its certification program(s) for fire extinguishers, fixed fire extinguishing, fire detection, fire alarm, or fire protection sprinkler systems must submit an application on forms obtained from the state fire marshal's office. The application must include complete documentation of the information needed to demonstrate the capability of the organization to carry out the programs and must specify all programs for which approval is sought.]

[(b) Review. The application will be reviewed and the applicant advised of its disposition.]

[(e) Approval. Approval shall be for an indefinite period, contingent upon results of periodic inspections of the laboratory by the state fire marshal and may be limited to specific certification programs.]

[(d) Denials. If the application is denied, the applicant shall be notified in writing stating the conditions for nonapproval. The applicant may submit revisions which are needed to obtain approval, without prejudice.]

[(e) Application changes. If at any time during the approval period there are changes in products tested, new programs added, a

change of ownership or corporate officers, or an address change, the laboratory must advise the state fire marshal of the changes by submitting revisions to the previous application or submitting a new application, so that the laboratory files in the state fire marshal's office will be up-to-date.]

[(f) Approved laboratories. Notwithstanding the requirements of these sections, the following organizations will be approved as testing laboratories from the effective date of these sections:]

[(1) Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062;]

[(2) Underwriters Laboratories, Incorporated, 333 Pfingston Road, Northbrook, Illinois 60032;]

[(3) United States Testing Company, Incorporated, 1415 Park Avenue, Hoboken, New Jersey 07030.]

[(g) Within two years from the effective date of these sections, the laboratories approved by this section must submit to the state fire marshal a completed application form containing updated information and supporting documentation required by these sections on all certification programs being conducted.]

[(h) An [Other approved testing laboratories. Notwithstanding the requirements of these sections, an] organization will be considered an approved testing laboratory, if it is currently accredited as a Nationally Recognized Testing Laboratory (NRTL) by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) in accord [aeoordanee] with the requirements of 29 CFR 1910.7 for that specific product or category of products.

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

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

TRD-201304499

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 463-6327



CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance proposes the repeal of 28 TAC §§34.201 - 34.208, 34.404 - 34.406, and 34.524. The repeal of §§34.201 - 34.208, concerning the flammable liquids equipment testing laboratory rules, is necessary to consolidate testing laboratory rules under one subchapter. The repeal of §§34.404 - 34.406, concerning the testing laboratory certification process, is necessary to simplify the process for becoming an approved testing laboratory and to eliminate unnecessary provisions. The repeal of §34.524, concerning yellow tags for fire extinguisher inspections for commercial cooking areas, is necessary because the section became obsolete after January 1, 2008. In compliance with Government Code §2001.039, Chapter 34 was subject to a rule review published in the *Texas Register* (37 TexReg 10259). In this notice, the General Counsel division reviewed and considered all the sections in Chapter 34 for readoption, revision, or repeal. The finding of the review was that repeal is necessary because the rules in Chapter 34 are obsolete

or no longer consistent with current procedures and practices of TDI. In conjunction with this proposed repeal, TDI is amending §34.401 and §34.403, also published in this issue of the *Texas Register*. The amendments to §34.401 and §34.403 will include flammable liquids equipment testing as part of the Subchapter D testing laboratory rules.

FISCAL NOTE. Mark Lockerman, director of the State Fire Marshal's Office, has determined that during each year of the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Lockerman has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of repealing these sections will be elimination of obsolete provisions. There is no anticipated economic cost to persons who are affected by or required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In compliance with Government Code §2006.002(c), TDI has determined that this proposed repeal will not have an adverse economic effect on small or micro businesses because it is a repeal of an obsolete rule. Because there are no adverse economic effects, TDI is not required to prepare a regulatory flexibility analysis.

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

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5:00 p.m. on November 25, 2013. Send comments to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comments to Mark Lockerman, Director, State Fire Marshal's Office, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must submit any request for a public hearing separately to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, you may submit written and oral comments for consideration at the hearing.

SUBCHAPTER B. FLAMMABLE LIQUIDS EQUIPMENT TESTING LABORATORY RULES

28 TAC §§34.201 - 34.208

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

STATUTORY AUTHORITY. TDI proposes the repeal of §§34.201 - 34.208 to comply with Health and Safety Code §753.003, Government Code §417.005, and Insurance Code §36.001.

Health and Safety Code §753.003 provides that the department, through the state fire marshal, shall adopt rules for the safe storage, handling, and use of flammable liquids at retail service stations. Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed repeal affects the following statutes: Health and Safety Code Chapter 753.

§34.201. *Purpose.*

§34.202. *Title.*

§34.203. *Applicability of Chapter.*

§34.204. *Definitions.*

§34.205. *Testing Laboratory Approval.*

§34.206. *Alternate Method for Approval.*

§34.207. *Applications.*

§34.208. *Severability.*

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

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

TRD-201304495

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 463-6327



SUBCHAPTER D. TESTING LABORATORY RULES

28 TAC §§34.404 - 34.406

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

STATUTORY AUTHORITY. TDI proposes the repeal of §§34.404 - 34.406 to comply with Government Code §417.005 and Insurance Code §36.001, §6001.054, Chapter 6002, and §6003.054.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state. Insurance Code Chapter 6002 provides that fire alarm and fire

detection devices must carry a label of approval or listing by a testing laboratory approved by the department. Insurance Code §6003.054 provides that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property.

CROSS REFERENCE TO STATUTE. The proposed repeal affects the following statutes: Insurance Code Chapters 6001, 6002, and 6003.

§34.404. *Notice.*

§34.405. *Definitions.*

§34.406. *Requirements for Approval.*

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

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

TRD-201304496

Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6327



SUBCHAPTER E. FIRE EXTINGUISHER AND INSTALLATION

28 TAC §34.524

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

STATUTORY AUTHORITY. TDI proposes the repeal of §34.524 to comply with Government Code §417.005 and Insurance Code §36.001 and §6001.052(b).

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems.

CROSS REFERENCE TO STATUTE. The proposed repeal affects the following statutes: Insurance Code Chapter 6001.

§34.524. *Yellow Tags.*

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

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

TRD-201304497

Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6327



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 13. UNCLAIMED PROPERTY REPORTING AND COMPLIANCE

34 TAC §13.20

The Comptroller of Public Accounts proposes new §13.20, concerning disposition of delivered property. The new section is necessary to establish procedural guidelines for public sales of personal property, other than money and marketable securities. The new section specifies the length of time personal property is held in trust for the rightful owners before being sold and establishes the comptroller as the party responsible for determining when the sale occurs and what items of property are included in the sale.

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 comptroller's procedures for the administration of unclaimed property. The proposed amendment would have no fiscal impact on 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 Marvin Palla, Research and Correspondence Section Supervisor, Unclaimed Property Division, at marvin.palla@cpa.state.tx.us, or at P.O. Box 12019, Austin, Texas 78711-2019. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new rule is authorized under Property Code, §74.701, which allows the comptroller to adopt rules necessary to carry out the disposition of delivered property.

The new rule implements Property Code, §74.401.

§13.20. Disposition of Delivered Property.

(a) Personal property, other than money and marketable securities, delivered to the comptroller in accordance with Property Code, §74.301, will be held in trust for the rightful owner(s) by the comptrol-

ler for at least one year after the due date of the holder report associated with said property.

(b) Personal property, other than money and marketable securities, becomes eligible for public sale one year after the due date of the holder report associated with the property.

(c) For each public sale of property, the comptroller will determine:

(1) when the sale occurs; and

(2) what items of property are included in the sale.

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

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304541

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 475-0387



34 TAC §13.21

The Comptroller of Public Accounts proposes new §13.21, concerning property report format. The new section is necessary to better enable the comptroller's office to efficiently process reported property information and identify persons who are entitled to unclaimed property in a timely manner. The section establishes requirements for the submission method, accessibility and format of property reports and defines consequences for non-compliance.

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 comptroller's procedures for the disposition of unclaimed property. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposals may be submitted to Bryant Clayton, Holder Reporting Section Supervisor, Unclaimed Property Division, at bryant.clayton@cpa.state.tx.us, or at P.O. Box 12019, Austin, Texas 78711-2019. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new rule is authorized under Property Code, §74.701, which allows the comptroller to adopt rules necessary to carry out the property report process.

The new rule implements Property Code, §§74.101(a), 74.709(f), and 74.710(a)(1); (b).

§13.21. Property Report Format.

(a) Property report(s) filed by a holder pursuant to Property Code, Chapters 72-75, shall be submitted to the comptroller in the

NAUPA2 format via one of the online submission methods specified in the Comptroller's Unclaimed Property Reporting Instructions.

(b) Information contained in property report(s) shall comply with the data entry standards for property type, securities delivery and country codes, owner name and property description fields, and abbreviations of owner title and common terms as specified in the Unclaimed Property Reporting Instructions.

(c) Incomplete reports and reports not meeting the format specifications described above will be rejected by the comptroller and returned to the holder for correction. The comptroller will keep a copy of any report that is returned for correction.

(d) Information shall be submitted in a format that is accessible by the comptroller's office. Reports that are encrypted, corrupted, or otherwise inaccessible will be rejected by the comptroller and returned to the holder for correction. The comptroller will keep a copy of any report that is returned for correction.

(e) When a report is rejected, the responsible holder shall submit a revised, complete, accessible and properly formatted report to the comptroller no later than 10 business days after notification of the rejection.

(f) If a complete, accessible, and properly formatted report is not resubmitted within 10 business days after notification of the rejection, the holder will be considered delinquent and subject to interest and civil penalties and criminal charges in Property Code, Chapter 74, Subchapter H, until a complete and properly formatted report is submitted to the comptroller.

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

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304542

Ashley Harden

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 123. ACTUARIAL TABLES AND BENEFIT REQUIREMENTS

34 TAC §123.1

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") proposes amendments to 34 TAC §123.1, concerning Actuarial Tables. The section contains rules relating to the calculation of service retirement and disability retirement benefits and the mortality tables currently in effect for purposes of such calculations. The proposed amendments would modify §123.1(a) and (b) and add new subsections (c) and (d).

The proposed amendments to subsections (a) and (b) are to specify that the current mortality tables named in such existing rule provisions would continue to be used for purposes of

calculating service retirement and disability retirement benefits through December 31, 2014.

The proposed amendment to add new subsection (c) is to specify the new mortality table to be used for purposes of calculating service retirement and disability retirement benefits effective beginning January 1, 2015. This amendment would adjust the tables upon which service retirement benefits and disability retirement benefits are calculated to more closely reflect the anticipated future mortality experience of future retirees.

The proposed amendment to add new subsection (d) is to clarify and codify that the Board may, by Board resolution, elect to phase in the impact on annuity purchase rates that may result from any changes in mortality tables, other actuarial tables, or actuarial equivalents adopted by the Board from time to time.

Title 8, Subtitle G, Chapters 851 - 855 of the Texas Government Code (the "TMRS Act") applies to TMRS. Texas Government Code §855.102 of the TMRS Act allows the Board to adopt rules it finds necessary or desirable for the efficient administration of TMRS. Additionally, Texas Government Code §855.110 of the TMRS Act authorizes the Board to adopt rates and tables that the Board considers necessary for TMRS after considering the results of the actuary's investigation of the mortality and service experience of the System's members and annuitants. Further, Texas Government Code §855.607 of the TMRS Act provides that the TMRS Act is to be construed and administered in a manner that the TMRS retirement benefit plan will be considered a tax-qualified plan under IRC §401(a) and allows the Board to adopt rules that modify the plan to the extent the Board considers necessary for TMRS to be considered a qualified plan.

Gabriel, Roeder, Smith & Company, TMRS' consulting actuary, recently conducted a retiree mortality study for TMRS. The proposed amendments to 34 TAC §123.1 implement the authority granted to the Board in Texas Government Code §§855.102, 855.110, and 855.607 to adopt rules as described above. Pursuant to Texas Government Code §855.607, rules adopted by the Board relating to plan qualifications issues are considered a part of the plan.

At its meeting on September 20, 2013, the Board approved the publication of the rule amendments proposal for comment. At its meeting on October 9, 2013, the Board adopted the new mortality table set forth in the proposed rule amendments for purposes of calculating service and disability retirement benefits. The Board also approved phasing in the impact on annuity purchase rates that may result from such change in the mortality tables over a 13-year period, such phase-in beginning effective January 1, 2015.

David Gavia, Executive Director of TMRS, estimates that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state government, and only potential immaterial fiscal implications for local governments participating in TMRS, as a result of enforcing or administering the amendments as proposed. The amendments to §123.1(a) and (b) provide that the existing mortality tables would continue to be used for calculating service and retirement benefits through December 31, 2014, and thus these amendments would have no new fiscal implications. The amendment to add subsection (d) clarifies and codifies the Board's authority to elect, if desired, to phase in the impact on annuity purchase rates of any changes in mortality tables or other actuarial tables, and so would have no new fiscal implications. With respect to the proposed amendment to add new §123.1(c), it is estimated that, looking solely at

the impact of the change in mortality tables used for calculating service and disability retirement benefits, the potential fiscal implications for local governments participating in TMRS would be a positive impact on their city contribution rates; however, it is noted that many additional factors also impact a city's contribution rate, such that in the first five-year period it is possible that participating cities may experience decreases, increases, or no changes in their city contribution rates due to the combined effect of such other factors on contribution rates.

Mr. Gavia also has determined that for each year of the first five years that the proposed amendments would be in effect the public benefit anticipated as a result of enforcing and administering the amended rule would be the improved correlation of benefits paid to retirees to the anticipated experience of the retirement system. Individuals who might be affected by the amendments are TMRS members who retire in the future. With respect to individuals affected by the proposed changes to the mortality tables, since TMRS is a hybrid cash-balance defined benefit plan, their retirement benefit calculated using the new mortality tables will continue to be the actuarial equivalent of the retirement benefit that would have been calculated using existing tables, but the monthly payment amount will be less due to the tables' longer life expectancies, which means that the calculations project that the monthly payments are expected to continue over a longer period of time after retirement. Mr. Gavia has determined that there will be no effect on a local economy because of the proposed amendments to the rule, and therefore no local employment impact statement is required under §2001.022 of the Texas Government Code. Mr. Gavia has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TMRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Texas Government Code.

Comments may be submitted in writing to Christine M. Sweeney, General Counsel, TMRS, P.O. Box 149153, Austin, Texas 78714-9153, faxed to (512) 225-3786, or submitted electronically to Ms. Sweeney at csweeney@tmrs.com. Written comments must be received by TMRS no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

Statutory Authority. The amendments are proposed under Texas Government Code §855.110, which authorizes the Board to adopt rates and tables that the Board considers necessary for TMRS after considering the results of the actuary's investigation of the mortality and service experience of the System's members and annuitants; under Texas Government Code §855.102, which grants the Board authority to adopt rules necessary or desirable for the efficient administration of the retirement system; and under Texas Government Code §855.607, which authorizes the Board to adopt rules that modify the plan to the extent the Board considers necessary for TMRS to be considered a tax-qualified plan.

Cross-reference to Statutes. The proposed amendments implement: (i) Texas Government Code §855.110, which provides that the Board shall adopt rules and tables that the Board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality and service experience of the system's members and annuitants; (ii) Texas Government Code §855.607, which provides that the TMRS Act is to be construed and administered in a manner that the TMRS benefit plan will be considered a tax-qualified plan under IRC §401(a),

and allows the Board to adopt rules that modify the plan to the extent the Board considers necessary for TMRS to be considered a qualified plan; and (iii) Texas Government Code §855.102 which provides that the Board shall adopt rules and perform reasonable activities it finds necessary or desirable for the efficient administration of the retirement system.

§123.1. Actuarial Tables.

(a) For the period from the January 22, 2001 original initial effective date of this section through December 31, 2014, service [Service] retirement benefits shall be calculated on the basis of the UP-1984 table with an age set back of two years for retired members and an age set back of eight years for beneficiaries of retired members.

(b) For the period from the January 22, 2001 original initial effective date of this section through December 31, 2014, disability [Disability] retirement benefits on disability retirements shall be calculated on the basis of the UP-1984 table with an age set back of two years for disabled annuitants and an age set back of eight years for beneficiaries of disabled annuitants.

(c) Effective beginning January 1, 2015, service retirement benefits for retired members and for beneficiaries of retired members, and disability retirement benefits on disability retirements for disabled annuitants and for beneficiaries of disabled annuitants, shall be calculated on the basis of a 70%/30% male/female blend of the RP-2000 Blue Collar Table with 107.5% load, and with a fully generational Scale BB projection.

(d) After consultation with the retirement system's actuary, the Board may elect by Board resolution to phase in over a reasonable period of time the impact on annuity purchase rates that may result from any changes in mortality tables, other actuarial tables, or actuarial equivalents adopted by the Board from time to time.

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

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

TRD-201304532

David Gavia

Executive Director

Texas Municipal Retirement System

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For further information, please call: (512) 225-3754



CHAPTER 129. DOMESTIC RELATIONS ORDERS

34 TAC §129.12

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") proposes amendments to 34 TAC §129.12, concerning Payments to Alternate Payees. The section contains rules which specify, among other things, the mortality assumptions to be used for determining the payments to alternate payees pursuant to qualified domestic relations orders. Section 129.12 provides that the mortality assumptions to be used are those set forth in 34 TAC §123.1(a) and (b), as applicable. In general, 34 TAC §123.1 specifies the mortality tables currently in effect for purposes of calculating service and

disability retirement benefits. The proposed amendments would modify §129.12(b).

The proposed amendments to subsection (b) provide that: (i) the current mortality assumption for alternate payees for determining the payment to the alternate payee would continue to be the same as the mortality assumptions for the beneficiaries as set forth in 34 TAC §123.1(a) and (b), as applicable, through December 31, 2014, and (ii) effective beginning January 1, 2015, the mortality assumption for alternate payees for determining the payment to the alternate payee would be the same as the mortality assumption for the beneficiaries as set forth in 34 TAC §123.1(c), taking into account the applicable phase-in period, if any, adopted by the Board pursuant to 34 TAC §123.1(d). Section 123.1(c) and (d) are new subsections that would be added by the proposed amendments to 34 TAC §123.1, which are published in this issue of the *Texas Register* contemporaneously with the publication of this proposal. The proposed amendments to §129.12 would conform the rule to reflect the proposed amendments to §123.1.

Title 8, Subtitle G, Chapters 851 - 855 of the Texas Government Code (the "TMRS Act") applies to TMRS. Texas Government Code §855.102 of the TMRS Act allows the Board to adopt rules it finds necessary or desirable for the efficient administration of TMRS. Additionally, Texas Government Code §804.003 authorizes the Board to adopt rules as necessary for the administration of domestic relations orders. Further, Texas Government Code §855.607 of the TMRS Act provides that the TMRS Act is to be construed and administered in a manner that the TMRS retirement benefit plan will be considered a tax-qualified plan under IRC §401(a), and allows the Board to adopt rules that modify the plan to the extent the Board considers necessary for TMRS to be considered a qualified plan.

The proposed amendments of 34 TAC §129.12 implement the authority granted to the Board in Texas Government Code §§804.003, 855.102, and 855.607 to adopt rules as described above. Pursuant to Texas Government Code §855.607, rules adopted by the Board relating to plan qualifications issues are considered a part of the plan.

At its meeting on September 20, 2013, the Board approved the publication of the rule amendments proposal for comment. At its meeting on October 9, 2013, the Board adopted the new mortality table set forth in the proposed rule amendments to 34 TAC §123.1 for purposes of calculating service and disability retirement benefits. The Board also approved phasing in the impact on annuity purchase rates that may result from such change in the mortality tables over a 13-year period, such phase-in beginning effective January 1, 2015. If 34 TAC §123.1 is amended, the existing §129.12 also needs to be amended to conform to the 34 TAC §123.1 amendments.

David Gavia, Executive Director of TMRS, estimates that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state government or local governments participating in TMRS, as a result of enforcing or administering the amendments to §129.12 as proposed.

Mr. Gavia also has determined that for each year of the first five years that the proposed amendments would be in effect the public benefit anticipated as a result of enforcing and administering the amended rule would be to ensure that the mortality assumptions used for determining payments to alternate payees continue to conform to the applicable mortality assumptions set forth in 34 TAC §123.1 (which is also proposed for amendment in this

issue of the *Texas Register*). Individuals who might be affected by the amendments are individuals who may be designated as alternate payees under the terms of a qualified domestic relations order (QDRO) that affects a TMRS member who retires in January 2015 or later. With respect to individuals affected by the proposed changes to the mortality assumptions, since TMRS is a hybrid cash-balance defined benefit plan, the TMRS member's retirement benefit calculated using the new mortality tables will continue to be the actuarial equivalent of the retirement benefit that would have been calculated using existing tables, but the monthly payment amount will be less due to the tables' longer life expectancies, which means that the calculations project that the monthly payments are expected to continue over a longer period of time after retirement. Therefore, since benefits to an alternate payee under a QDRO affecting a TMRS member who retires in January 2015 or later would be calculated using the same new mortality assumptions, the monthly payment amount payable to such alternate payee will also be less due to the tables' longer life expectancies. There are no known anticipated economic costs to persons who are required to comply with the rule amendments as proposed. Mr. Gavia has determined that, to his knowledge, there will be no effect on a local economy because of the proposed amendments to the rule, and therefore no local employment impact statement is required under §2001.022 of the Texas Government Code. Mr. Gavia has also determined that, to his knowledge, there should be no direct adverse economic effect on small businesses or micro-businesses within TMRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Texas Government Code.

Comments may be submitted in writing to Christine M. Sweeney, General Counsel, TMRS, P.O. Box 149153, Austin, Texas 78714-9153; faxed to (512) 225-3786; or submitted electronically to Ms. Sweeney at csweeney@tmrs.com. Written comments must be received by TMRS no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

Statutory Authority. The amendments are proposed under Texas Government Code §804.003, which authorizes the Board to adopt rules as necessary for the administration of domestic relations orders; under Texas Government Code §855.102, which grants the Board authority to adopt rules necessary or desirable for the efficient administration of the retirement system; and under Texas Government Code §855.607, which authorizes the Board to adopt rules that modify the plan to the extent the Board considers necessary for TMRS to be considered a tax-qualified plan.

Cross-reference to Statutes. The proposed amendments implement: (i) Texas Government Code §804.003, which provides that the Board may promulgate rules it deems necessary to implement the provisions of §804.003; (ii) Texas Government Code §855.607, which provides that the TMRS Act is to be construed and administered in a manner that the TMRS benefit plan will be considered a tax-qualified plan under IRC §401(a), and allows the Board to adopt rules that modify the plan to the extent the Board considers necessary for TMRS to be considered a qualified plan; and (iii) Texas Government Code §855.102 which provides that the Board shall adopt rules and perform reasonable activities it finds necessary or desirable for the efficient administration of the retirement system.

§129.12. *Payments to Alternate Payees.*

(a) In the event that the participant terminates membership in the system and applies for a refund of the participant's accumulated deposits and interest, the system will make a lump-sum payment to the alternate payee if the domestic relations order so provides and the order has been determined to be a qualified domestic relations order.

(b) In the event that the participant (or the participant's designated beneficiary or estate) begins receiving an annuity after the date that a qualified domestic relations order is received by the system, and the order provides for a division of the annuity in that event, the payment to the alternate payee will be a monthly allowance payable during the lifetime of the alternate payee, which payment is the actuarial equivalent of the portion of the participant's benefit that was awarded to the alternate payee under the domestic relations order. For the period from the January 22, 2001 original initial effective date of §123.1 of this title (relating to Actuarial Tables) through December 31, 2014, the [The] mortality assumption for alternate payees for determining the payment to the alternate payee shall be the same as the mortality assumption for the beneficiaries as set forth in §123.1(a) of this title [~~relating to Actuarial Tables~~] with regard to service retirements and as set forth in §123.1(b) of this title with regard to disability retirements. Effective beginning January 1, 2015, the mortality assumption for alternate payees for determining the payment to the alternate payee shall be the same as the mortality assumption for the beneficiaries as set forth in §123.1(c) of this title with regard to service retirements and with regard to disability retirements, and shall take into account the applicable phase in period, if any, that may be adopted by the Board pursuant to §123.1(d) of this title.

(c) Subsection (b) of this section will apply to all domestic relations orders approved in accordance with this chapter after September 9, 1989, and to such domestic relations orders approved prior to that date as are construed to provide for such an annuity.

(d) In the event that the total reserves upon which an annuity (otherwise payable to an alternate payee under a qualified domestic relations order) would be calculated are \$10,000 or less, then the system is authorized to make a single lump-sum payment to the alternate payee in the amount of those reserves instead of paying an annuity to the alternate payee. No such payment shall be made by the system until such point in time as the system begins paying an annuity to the participant or the participant's designated beneficiary, surviving spouse, or estate.

(e) The suspension of a disability retirement benefit under the Act does not suspend payment of a benefit to an alternate payee under a qualified domestic relations order.

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

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

TRD-201304533

David Gavia

Executive Director

Texas Municipal Retirement System

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 225-3754



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.12

The Texas Department of Public Safety (the department) proposes amendments to §4.12, concerning Exemptions and Exceptions. The proposed amendments are necessary to ensure this section is consistent with interstate hours of service rules promulgated pursuant to Title 49, Code of Federal Regulations, Part 395.

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 this rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has 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 is maximum efficiency of the Motor Carrier Safety Assistance Program.

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 rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §2001.001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, November 12, 2013, at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to 37 TAC §4.12 regarding Exemptions and Exceptions, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051, is affected by this proposal.

§4.12. Exemptions and Exceptions.

(a) Exemptions. Exemptions to the adoptions in §4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, §§644.052 - 644.054, and are adopted as follows:

(1) (No change.)

(2) Drivers in intrastate commerce will be permitted to drive 12 hours following 8 [eight] consecutive hours off duty. Drivers in intrastate commerce may not drive after having been on duty 15 hours, following 8 [eight] consecutive hours off duty. Drivers in intrastate commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for 8 [eight] consecutive hours. Drivers of vehicles operating in intrastate commerce shall be permitted to accumulate the equivalent of 8 [eight] consecutive hours off duty by taking a combination of at least 8 [eight] consecutive hours off duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(A) neither rest period in the sleeper berth is shorter than 2 [two] hours duration;

(B) - (D) (No change.)

(3) - (7) (No change.)

(b) Exceptions. Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are as follows:

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

(3) For drivers of commercial motor vehicles operating in intrastate transportation and used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(4) For drivers of a commercial motor vehicle operating in intrastate transportation and used primarily in the transportation and

operations of a ground water well drilling rig, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. "Ground water well drilling rig" has the meaning assigned by Title 49, Code of Federal Regulations, Part 395.2.

(5) For drivers of a commercial motor vehicle operating in intrastate transportation and used primarily in the transportation of construction materials and equipment, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. "Transportation of construction materials and equipment" has the meaning assigned by Title 49, Code of Federal Regulations, Part 395.2.

(6) [(3)] Drivers of vehicles operating in intrastate transportation claiming the 150 air mile radius exemption in subsection (a)(4) of this section must return to the work reporting location; be released from work within 12 consecutive hours; and have at least 8 consecutive hours off-duty separating each 12 hours on-duty.

(7) [(4)] Title 49, Code of Federal Regulations, Part 391.11(b)(1), is not adopted for intrastate drivers. The minimum age for an intrastate driver shall be 18 years of age. Intrastate drivers in violation of this paragraph shall be placed out-of-service until no longer in violation.

(8) [(5)] Title 49, Code of Federal Regulations, Part 391.11(b)(2), is not adopted for intrastate drivers. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(9) [(6)] Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (Title 49, Code of Federal Regulations 571.121) applicable to the vehicle at the time it was manufactured.

(10) [(7)] Title 49, Code of Federal Regulations, Part 390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the following exceptions:

(A) Title 49, Code of Federal Regulations, Part 390.23(a)(2) is not applicable to intrastate motor carriers making emergency residential deliveries of heating fuels or responding to a pipeline emergency, provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months. An emergency under this paragraph is one that if left unattended would result in immediate serious bodily harm, death or substantial property damage but does not include routine requests to re-fill empty propane gas tanks.

(B) The requirements of Title 49, Code of Federal Regulations, Parts 390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has had at least 34 consecutive hours off duty when the driver has been on duty for more than 70 hours in seven consecutive days.

(11) [(8)] Title 49, Code of Federal Regulations, Part 380, (Subparts A - D), is not adopted for intrastate motor carriers and drivers.

Title 49, Code of Federal Regulations, Part 380 (Subpart E) is adopted for intrastate motor carriers and drivers. Intrastate motor carriers and drivers must complete the requirements of Title 49, Code of Federal Regulations, Part 380.500 on or before July 31, 2005.

(12) [(9)] In accordance with §4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) (Pub. L. 109-59), the hours of service regulations in this subchapter are not applicable to utility service vehicles that operate in either interstate or intrastate commerce. Utility service vehicles are those vehicles operated by public utilities, as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, the Texas Water Code, Title 49, Code of Federal Regulations, Part 395.2, or other applicable regulations, and charged with the responsibility for maintaining essential services to the public to protect health and safety.

(13) [(10)] The United States Department of Transportation number requirements in Texas Transportation Code, Chapter 643 do not apply to vehicles/motor carriers operating exclusively in intrastate commerce and that are exempted from the requirements by Texas Transportation Code, §643.002.

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

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

TRD-201304494

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 424-5848



PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.43

The Texas Board of Criminal Justice proposes amendments to §163.43, concerning Funding and Financial Management. The proposed amendments are necessary to revise language; clarify mileage and per diem reimbursements standards for community supervision and corrections department employees; and to make grammatical and formatting updates.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit as a result of enforcing the rule will be to update and clarify the existing rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code, §509.003 and §509.004.

Cross Reference to Statutes: Texas Government Code §§76.004, 76.008, 76.009, 76.010, 492.013 and Chapter 551; and Texas Local Government Code §140.003 and §140.004.

§163.43. *Funding and Financial Management.*

(a) Funding.

(1) Qualifying for Texas Department of Criminal Justice Community [Justice-Community] Justice Assistance Division (TDCJ CJAD) [(TDCJ-CJAD)] Formula and Grant Funding. Community supervision [Supervision] and corrections departments [Corrections Departments] (CSCDs or departments) qualify for TDCJ CJAD [(TDCJ-CJAD)] state aid by:

(A) Being in substantial compliance with TDCJ CJAD [(TDCJ-CJAD)] standards;

(B) Having a community justice council that serves the jurisdiction as required by law;

(C) Having a TDCJ CJAD [(TDCJ-CJAD)] approved community justice plan with related budgets;

(D) Having a director, appointed as described in Texas Government Code §76.004, to administer all CSCD funds;

(E) Having a fiscal officer appointed by the district judge(s) manage the CSCD as set forth in sub (b) of this rule; and

(F) Complying with the *Open Meetings Act*, [Chapter 551,] Texas Government Code Chapter 551[-] when meeting to finalize the CSCD budget as required by Texas Local Government Code §140.004.

(2) Other Entities Qualifying for TDCJ CJAD [(TDCJ-CJAD)] Grant Funding. In addition to CSCDs, counties, municipalities and nonprofit organizations qualify for TDCJ CJAD [(TDCJ-CJAD)] grant funding by:

(A) Being in substantial compliance with TDCJ CJAD [(TDCJ-CJAD)] grant conditions;

(B) Having budgets related to the program proposal; and

(C) Designating a chief fiscal officer to account for, protect, disburse, and report on all TDCJ CJAD [(TDCJ-CJAD)] grant funding, and to prescribe [prescribing to] the accounting procedures related thereto.

(3) Allocating State Aid. State aid shall be made available to eligible funding recipients in accordance with the applicable statutory requirements and items set forth in the *Financial Management Manual for TDCJ CJAD [(TDCJ-CJAD)] Funding* issued by TDCJ CJAD [(TDCJ-CJAD)].

(4) Awarding TDCJ CJAD [(TDCJ-CJAD)] Grant Funding. CSCDs, counties, municipalities and nonprofit organizations that [who] are eligible to receive grant funding shall meet requirements as set forth in the *Financial Management Manual for TDCJ CJAD [(TDCJ-CJAD)] Funding* and be approved by the TDCJ CJAD [(TDCJ-CJAD)] director to receive such funds. Grant funding shall be made available in accordance with statutory requirements and items

as set forth in the *Financial Management Manual for TDCJ CJAD [TDCJ-CJAD] Funding*.

(b) Financial Procedures.

(1) Requested Information from CSCDs and Other Potentially Eligible TDCJ CJAD [TDCJ-CJAD] Funding Recipients. Each funding recipient shall present data, documents, and information requested by the TDCJ CJAD [TDCJ-CJAD] as necessary to determine the amount of state financial aid to be allocated to the recipient. A funding recipient receiving TDCJ CJAD [TDCJ-CJAD] funding shall submit such reports, records, and other documentation as required by the TDCJ CJAD [TDCJ-CJAD].

(2) Deposit of TDCJ CJAD [TDCJ-CJAD] Funding. In accordance with Texas Local Government Code §140.003, each CSCD, county or municipality shall deposit all TDCJ CJAD [TDCJ-CJAD] funding received in [a special fund of] the county treasury or municipal treasury, as appropriate, to be used on behalf of the department and as the CSCD directs. Nonprofit organizations shall deposit all TDCJ CJAD [TDCJ-CJAD] funding received in a separate fund, to be used solely for the provision of services, programs, and facilities approved by TDCJ CJAD [TDCJ-CJAD].

(3) Fee Deposit. Community supervision fees and payments by offenders shall be deposited into the same special fund of the county treasury receiving state financial aid, to be used for community supervision and correction services.

(4) Restrictions on CSCD Generated Revenue. CSCD generated revenue shall be used in accordance with statutory requirements and items set forth in the *Financial Management Manual for TDCJ CJAD [TDCJ-CJAD] Funding*.

(5) Available Records. The funding recipient and [and/or] the fiscal officer accounting for, disbursing, and reporting on the TDCJ CJAD [TDCJ-CJAD] funding shall make financial, transaction, contract, computer, and other records available to TDCJ CJAD [TDCJ-CJAD]. Funding recipients shall provide financial reports and other records to TDCJ CJAD [TDCJ-CJAD] as set forth in the [referenced] *Financial Management Manual for TDCJ CJAD [TDCJ-CJAD] Funding*.

(6) Budgets. Funding recipients shall prepare and operate from a budget(s) developed and approved within the guidelines set forth in the [referenced] *Financial Management Manual for TDCJ CJAD [TDCJ-CJAD] Funding*.

(7) Funding Recipient Obligations. Funding recipients shall comply with all funding provisions as set forth in the *Financial Management Manual for TDCJ CJAD [TDCJ-CJAD] Funding* and any special conditions associated with the respective funding awards.

(8) Honesty Bond. CSCD directors shall ensure that all public monies are protected by requiring that all employees with access to monies are covered by honesty bonds and all funds maintained on CSCD premises are protected by appropriate insurance or bonding.

(9) Travel Reimbursements. Mileage and per diem reimbursements to CSCD employees shall be in accordance with the *Financial Management Manual for TDCJ CJAD Funding*. [shall not be less than the state rates and no higher than the county rates if the county rates are higher than the state rates.]

(c) Determination and Recovery of Unexpended Monies. Determination and return by the CSCD of unexpended funds shall be in accordance with the *Financial Management Manual for TDCJ CJAD [TDCJ-CJAD] Funding*.

(d) Facilities, Utilities, and Equipment.

(1) CSCDs. In accordance with Texas Government Code §76.008, the county or counties served by a CSCD shall provide, at a minimum, [the following] facilities, equipment, and utilities for the department as follows: [-]

(A) Minimum Facilities for CSCDs. Each community supervision officer (CSO) shall be provided a private office. Each office shall have the necessary lighting, air conditioning, equipment, privacy, and environment to provide and promote the delivery of professional community corrections services.

(B) Minimum Utilities for CSCDs. Each CSCD office shall be provided adequate utilities necessary to provide efficient and professional community corrections services.

(C) Minimum Equipment for CSCDs. Each CSO shall be furnished adequate furniture, telephone, and other equipment as necessary and consistent with efficient office operations. Adequate insurance, maintenance, and repair of the CSCD's equipment shall be maintained.

(D) Location. Each CSCD office providing direct court services shall be located in the courthouse or as near to the courthouse as practically possible to promote prompt and efficient services to the court.

(E) Satellite Offices. Satellite CSCD offices shall be established in the appropriate areas [area] of the judicial district to provide efficient supervision of and service to offenders as dictated by population, caseload size, or geographical distance.

(2) Inventory. Inventory and disposal of equipment, furniture, and [and/or] vehicles purchased with program funds shall follow the guidelines in the *Financial Management Manual for TDCJ CJAD [TDCJ-CJAD] Funding*. In addition:

(A) All equipment, furniture, and vehicles purchased with program funds shall be inventoried with TDCJ CJAD [TDCJ-CJAD] in accordance with procedures set forth in the [referenced] *Financial Management Manual for TDCJ CJAD [TDCJ-CJAD] Funding*.

(B) Any CSCD or other entity wanting to dispose of equipment, furniture, and [and/or] vehicles purchased with program funds shall adhere to procedures set forth in the [referenced] *Financial Management Manual for TDCJ CJAD [TDCJ-CJAD] Funding*.

(c) Certification of Facilities, Utilities, and Equipment for CSCDs [CSCDS]. Certification of facilities, utilities, and equipment for CSCDs shall be in accordance with Texas Government Code §76.009 [and §76.010], and as provided in the [referenced] *Financial Management Manual for TDCJ CJAD [TDCJ-CJAD] Funding*.

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

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

TRD-201304513
Sharon Felfe Howell
General Counsel

Texas Department of Criminal Justice
Earliest possible date of adoption: November 24, 2013
For further information, please call: (512) 463-9693



TITLE 43. TRANSPORTATION
PART 10. TEXAS DEPARTMENT OF
MOTOR VEHICLES

CHAPTER 219. OVERSIZE AND
OVERWEIGHT VEHICLES AND LOADS
SUBCHAPTER C. PERMITS FOR OVER AXLE
AND OVER GROSS WEIGHT TOLERANCES

43 TAC §219.31

The Texas Department of Motor Vehicles (department) proposes new §219.31, concerning Timber Permits.

EXPLANATION OF PROPOSED NEW SECTION

House Bill 2741, 83rd Legislature, Regular Session, 2013, added new Transportation Code, Chapter 623, Subchapter Q, §§623.321 - 623.325, authorizing the department to issue a permit to a person to operate a vehicle or combination of vehicles to transport unrefined timber, wood chips, or woody biomass in certain counties. This permit is an alternative to a permit issued under Transportation Code, §623.011.

New §219.31 implements this new permit by establishing the procedures for the application and issuance of the permit. In addition, §219.31 establishes the process by which the financially responsible party shall electronically file the notification document with the department, as required by Transportation Code, §623.323. Further, §219.31 establishes certain restrictions and requirements regarding the permit.

FISCAL NOTE

Ms. Linda Flores, Chief Financial Officer, has determined that for each of the first five years the new rule as proposed is in effect, there will be no significant fiscal implications for state or local governments as a result of enforcing or administering the new section. Although the sale of the timber permit is anticipated to generate revenue for the state and certain counties in the state, the estimated increase in revenue cannot be determined at this time due to a lack of data on the number of applicants for the timber permit authorized by this new section.

Mr. Jimmy Archer, Director of the Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT AND COST

Mr. Archer has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing or administering the section will be an alternative permit, which may increase commerce. There are no anticipated economic costs for persons required to comply with the section as proposed, other than the \$1,500 fee for this alternative permit and the cost to obtain the security for the permit. There will be no adverse economic effect on small businesses or individuals.

SUBMITTAL OF COMMENTS

Written comments on the proposed new section may be submitted to Aline Aucoin, Interim General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731.

The deadline for receipt of comments is 5:00 p.m. on November 25, 2013.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §623.002, which authorizes the board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; and more specifically, Transportation Code, §623.323(c), which authorizes the department to establish by rule the method by which a financially responsible party shall electronically file the notification document described by Transportation Code, §623.323(b).

CROSS REFERENCE TO STATUTE

Transportation Code, §§623.012 and 623.321 - 623.325.

§219.31. Timber Permits.

(a) Purpose. This section prescribes the requirements and procedures regarding the annual permit for the operation of a vehicle or combination of vehicles that will be used to transport unrefined timber, wood chips, or woody biomass, under the provisions of Transportation Code, Chapter 623, Subchapter Q.

(b) Application for permit.

(1) To qualify for a timber permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name and address of the applicant;

(B) name of contact person and telephone number or email address;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; and

(D) a list of timber producing counties described in Transportation Code, §623.321(a), in which the vehicle or combination of vehicles will be operated.

(3) The application shall be accompanied by:

(A) the total annual permit fee of \$1,500; and

(B) a blanket bond or irrevocable letter of credit as required by Transportation Code, §623.012, unless the applicant has a current blanket bond or irrevocable letter of credit on file with the department that complies with Transportation Code, §623.012.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision

of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(d) Notification. The financially responsible party as defined in Transportation Code, §623.323(a), shall electronically file the notification document described by §623.323(b) with the department via the form on the department's website.

(e) Transfer of permit. An annual permit issued under this section is not transferable between vehicles.

(f) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(g) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued;

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued; or

(5) if the permittee fails to timely replenish the bond or letter of credit as required Transportation Code, §623.012.

(h) Restrictions. Permits issued under this section are subject to the restrictions in §219.11(l) of this title (relating to General Over-size/Overweight Permit Requirements and Procedures).

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

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304547

Aline Aucoin

Interim General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: November 24, 2013

For further information, please call: (512) 467-3853





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 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER Q. TWO-YEAR COLLEGE STAKEHOLDER COMMITTEE

19 TAC §§1.199 - 1.205

The Texas Higher Education Coordinating Board withdraws the proposed new §§1.199 - 1.205 which appeared in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6134).

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

TRD-201304521

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: October 11, 2013

For further information, please call: (512) 427-6114

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

22 TAC §192.1

The Texas Medical Board withdraws the proposed amendment to §192.1 which appeared in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6494).

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

TRD-201304492

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: October 9, 2013

For further information, please call: (512) 305-7016



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§5.2, 5.3, 5.8, 5.10, 5.12, 5.13, 5.17, 5.19, 5.20

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter A, §§5.2, 5.3, and 5.20, concerning General Provisions, with changes to the proposed text as published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4966). Sections 5.8, 5.10, 5.12, 5.13, 5.17, and 5.19 are adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that the Subchapter A, General Provision rules, need revisions to align across all Community Affairs programs and updates to remain in compliance with federal rules and regulations. Accordingly, the amended rules clarify and simplify definitions, remove cost reimbursement procedures, modify the minimum acquisition cost requiring Department approval, clarify income calculation requirements, and affect grammatical and capitalization matters.

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).

§5.2(b)(5) Definitions - Community Action Agencies.

COMMENT SUMMARY: Commenter suggests that staff edit the definition of Community Action Agencies (CAA) to remain consistent with the CSBG Act.

STAFF RESPONSE: Staff agrees with commenter and will remove "at least" to remain consistent with the CSBG Act.

BOARD RESPONSE: The Board accepted Staff's recommendation.

§5.2(b)(13) Definitions - Discretionary Funds.

COMMENT SUMMARY: Commenter suggests a citation correction for the CSBG Act.

STAFF RESPONSE: Historically, for CSBG, the Department has adopted the federal citation method. In the future, the Department may decide to change all references to the U.S.C., but to remain consistent at this time staff does not propose a change.

BOARD RESPONSE: The Board accepted Staff's recommendation.

§5.2(b)(40) Definitions - OMB Circulars.

COMMENT SUMMARY: Commenter suggests that staff made a clerical error in the abbreviation of Office of Management and Budget (OMB).

STAFF RESPONSE: Staff thanks the commenter for clerical corrections. OMB is defined in the previous definition and will be abbreviated throughout the section.

BOARD RESPONSE: The Board accepted Staff's recommendation.

§5.3(a) Cost Principles and Administrative Requirements.

COMMENT SUMMARY: Commenter requested that staff spell out NOFA.

STAFF RESPONSE: As NOFA is not defined either in the Community Affairs rules or in the Department's Administrative rules, staff will include and spell out the acronym for Notice of Funding Availability in §5.3.

BOARD RESPONSE: The Board accepted Staff's recommendation.

§5.10(e)(5)(E)(ii) Procurement Standards.

COMMENT SUMMARY: Commenter suggested that language specific to the Department's monitoring of a Subrecipient's procurement records be deleted and that reference be added to Chapter 5, Subchapter L, Compliance Monitoring.

STAFF RESPONSE: At this time, staff declines to delete language specific to compliance monitoring activities from Subchapter A, General Provisions. Proposed new Subchapter L, Compliance Monitoring, remains out for public comment and will not be adopted in its final form before adopted amendments to Subchapter A are published in the *Texas Register*. Staff intends to revise Subchapter A to accommodate the new Subchapter L, after Subchapter L is adopted and at a time that Subchapter A warrants revisions.

BOARD RESPONSE: The Board accepted Staff's recommendation.

§5.19(b)(1)(D) Client Income Guidelines.

COMMENT SUMMARY: Commenter states that, unless the U.S. Department of Health and Human Services specifically requires Subrecipients to include SSI and SSDI income for purposes of determining eligibility, the income from these two sources should be excluded. The vulnerable population is in dire need of assistance.

STAFF RESPONSE: Staff thanks commenter for this comment. To maintain consistency within TDHCA programs and to be in

compliance with the U.S. Department of Health and Human Services (USDHHS), staff recommends no changes to the income guidelines related to Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) at this time.

BOARD RESPONSE: The Board accepted Staff's recommendation.

§5.20(b) Determining Income Eligibility.

COMMENT SUMMARY: Commenter suggests that "part-time, temporary, self-employed" be added to §5.20(b), in order to remain consistent with §5.20(e) and Subchapter D, §5.407.

STAFF RESPONSE: Staff agrees and will add language to the rule.

BOARD RESPONSE: The Board accepted Staff's recommendation.

The Board adopted these amendments at the October 10, 2013, meeting of the Board.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

§5.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the Community Affairs Programs, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(1) Affiliate--If, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways the Department may determine control include, but are not limited to:

- (A) Interlocking management or ownership;
- (B) Identity of interests among family members;
- (C) Shared facilities and equipment;
- (D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(2) CFR--Code of Federal Regulations.

(3) Children--Household dependents not exceeding eighteen (18) years of age.

(4) Collaborative Application--An application from two or more organizations to provide services to the target population. If a unit of general local government applies for only one organization, this will not be considered a Collaborative Application. Partners in the Collaborative Application must coordinate services and prevent duplication of services.

(5) Community Action Agencies (CAAs)--Local private and public nonprofit organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. Each CAA must have a board consisting of one-third elected public officials, not fewer than one-third representatives of low-income individuals and families, chosen in accordance with democratic selection procedures, and the remainder are members of business,

industry, labor, religious, law enforcement, education, or other major groups and interests in the community.

(6) Community Action Plan--A plan required by the Community Services Block Grant (CSBG) Act which describes the local (Subrecipient) service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant.

(7) Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.

(8) The Community Services Block Grant (CSBG)--A grant which provides U.S. federal funding for CAAs and other Eligible Entities that seek to address poverty at the community level. Like other block grants, CSBG funds are allocated to the states and other jurisdictions through a formula.

(9) Comprehensive Energy Assistance Program (CEAP)--A LIHEAP funded program to assist low-income Households, particularly those with the lowest incomes, that pay a high proportion of Household income for home energy, primarily in meeting their immediate home energy needs.

(10) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §9901, et seq. The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(11) Declaration of Income Statement (DIS)--A Department approved form for use when an applicant has no documented proof of income.

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

(13) Discretionary Funds--Those CSBG funds maintained in reserve by a state, at its discretion, for CSBG allowable uses as authorized by §675C of the CSBG Act, and not designated for distribution on a statewide basis to CSBG Eligible Entities and not held in reserve for state administrative purposes.

(14) DOE WAP Rules--10 CFR Part 440 describes the Weatherization Assistance for Low Income Persons as administered through the Department of Energy.

(15) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

(16) Equipment--A tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit. If the unit acquisition cost exceeds \$5,000, approval from the Department's Community Affairs Division must be obtained before the purchase takes place.

(17) Elderly Person--A person who is sixty (60) years of age or older, except for ESG.

(18) Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(19) Eligible Entity--Those local organizations in existence and designated by the federal government to administer programs created under the federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(20) Emergency--Defined by the LIHEAP Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. §8622):

- (A) natural disaster;
- (B) a significant home energy supply shortage or disruption;
- (C) significant increase in the cost of home energy, as determined by the Secretary;
- (D) a significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;
- (E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;
- (F) a significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or
- (G) an event meeting such criteria as the Secretary, at the discretion of the Secretary, may determine to be appropriate.
- (H) This definition does not apply to ESG or HHSP.

(21) Emergency Solutions Grants (ESG)--A federal grant program authorized in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act). ESG is funded through HUD.

(22) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of weatherization measures to be installed in a Dwelling Unit.

(23) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular weatherization energy efficiency measures.

(24) Families with Young Children--A family that includes a child age five (5) or younger.

(25) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income. Determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(26) High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures, by way of example, at the time of this rulemaking, that amount is \$1,000, but is subject to change.

(27) Homeless or homeless individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.

(28) Homeless and Housing Services Program (HHSP)--A state funded program established by the State Legislature during the 81st Legislative session with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.

(29) Household--Any individual or group of individuals who are living together as one economic unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.

(30) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(31) Local Unit of Government--City, county, council of governments, and housing authorities.

(32) Low Income--Income in relation to family size and that governs eligibility for a program:

(A) For DOE WAP, at or below 200% of the DOE Income guidelines;

(B) For CEAP, CSBG, and LIHEAP WAP at or below 125% of the HHS Poverty Income guidelines;

(C) For ESG, 30% of the Area Median Income (AMI) as defined by HUD's Section 8 Income Limits for persons receiving prevention assistance; and

(D) For HHSP, 30% of the AMI as defined by HUD's Section 8 Income Limits for all clients assisted.

(33) Low Income Home Energy Assistance Program (LIHEAP)--A federally funded block grant program that is implemented to serve low income Households who seek assistance for their home energy bills and/or weatherization services.

(34) Migrant Farm worker--An individual or family that is employed in agricultural labor or related industry and is required to be absent overnight from their permanent place of residence.

(35) Modified Cost Reimbursement--A contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.

(36) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit. This definition does not apply to ESG or HHSP.

(37) National Performance Indicator--An individual measure of performance within the Department's reporting system for measuring performance and results of Subrecipients of funds.

(38) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.

(39) OMB--Office of Management and Budget, a federal agency.

(40) OMB Circulars--OMB circulars set forth principles and standards for determining costs for federal awards and establishes consistency in the management of grants for federal funds. Cost principles for local governments are set forth in OMB Circular A-87, and for nonprofit organizations in OMB Circular A-122. Uniform administrative requirements for local governments are set forth in OMB Circular A-102, and for nonprofits in OMB Circular A-110. OMB Circular A-133 "Audits of States, Local Governments, and Nonprofit Organi-

zations," provides audit standards for governmental organizations and other organizations expending federal funds.

(41) Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

(42) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(43) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in §7(9) of the Rehabilitation Act of 1973;

(B) under a disability as defined in §1614(a)(3)(A) or §223(d)(1) of the Social Security Act or in §102(7) of the Developmental Disabilities Services and Facilities Construction Act; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(44) Population Density--The number of persons residing within a given geographic area of the state.

(45) Poverty Income Guidelines--The official poverty income guidelines as issued by the U.S. Department of Health and Human Services (HHS) annually.

(46) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.

(47) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(48) Referral--The process of providing information to a client Household about an agency, program, or professional person that can provide the service(s) needed by the client.

(49) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.

(50) Renter--A person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.

(51) Seasonal Farm Worker--An individual or family that is employed in seasonal or temporary agricultural labor or related industry and is not required to be absent overnight from their permanent place of residence. In addition, at least 20% of the Household annualized income must be derived from the agricultural labor or related industry.

(52) Shelter--Defined by the Department as a Dwelling Unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities. This definition does not apply to ESG or HHSP.

(53) Single Audit--As defined in the Single Audit Act of 1984 (as amended).

(54) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit. This definition does not apply to ESG or HHSP.

(55) Social Security Act--As defined in 42 U.S.C. §§601, et seq.

(56) State--The State of Texas or the Texas Department of Housing and Community Affairs.

(57) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(58) Subgrant--An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(59) Subgrantee--The legal entity to which a subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(60) Subrecipient--Generally, an organization with whom the Department contracts and provides CSBG, CEAP, ESG, HHSP, DOE WAP, or LIHEAP funds. (Refer to Subchapters B, D - G, J, and K of this chapter for program specific definitions.)

(61) Supplies--All personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(62) TAC--Texas Administrative Code.

(63) Targeting--Focusing assistance to Households with the highest program applicable needs.

(64) Terms and Conditions--Binding provisions provided by a funding organization to grantees accepting a grant award for a specified amount of time.

(65) Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.

(66) Unit of General Local Government--A unit of local government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(67) U.S.C.--United States Code.

(68) USDHHS/HHS--U.S. Department of Health and Human Services.

(69) USDOE/DOE--U.S. Department of Energy.

(70) USHUD/HUD--U.S. Department of Housing and Urban Development.

(71) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving ESG and LIHEAP beneficiaries.

(72) WAP--Weatherization Assistance Program.

(73) WAP PAC--Weatherization Assistance Program Policy Advisory Council. The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the WAP program.

(74) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(75) Weatherization Project--A project conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

§5.3. Cost Principles and Administrative Requirements.

(a) Except as expressly modified by the terms of a contract, Subrecipients shall comply with the cost principles and uniform administrative requirements set forth in the Uniform Grant and Contract Management Standards, 34 TAC §§20.421, et seq. (the "Uniform Grant Management Standards") provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. Private nonprofit Subrecipients of ESG and DOE WAP do not have to comply with UGMS unless otherwise required by Notice of Funding Availability (NOFA) or contract. For federal funds, Subrecipients will follow OMB Circulars as interpreted by the federal funding agency.

(b) In order to maintain adequate separation of duties, no more than two of the functions described in paragraphs (1) - (5) of this subsection are to be performed by a single individual:

- (1) Requisition authorization;
- (2) Encumbrance into software;
- (3) Check creation and/or automated payment disbursement;
- (4) Authorized signature/electronic signature; and
- (5) Distribution of paper check.

§5.20. Determining Income Eligibility.

(a) To determine income eligibility for USDHHS and DOE funded programs, Subrecipients must base annualized eligibility determinations on Household income from thirty (30) days prior to the date of application for assistance. Each Subrecipient must maintain documentation of included and excluded cash income from all sources for all Household members for the entire thirty (30) day period prior to the date of application and multiply the monthly amount by twelve (12) to annualize income.

(b) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each Subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. The DIS must be notarized. In developing the policy and procedure, Subrecipients shall limit the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory, part-time, temporary, self-employed, or seasonal in nature. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits.

(c) To determine income for ESG, Subrecipients must use HUD's Section 8 Income Limits for persons receiving prevention assistance.

(d) To determine income for HHSP, Subrecipients may select either the method described in §5.19(b) of this chapter (relating to

Client Income Guidelines) or used by ESG, but must be consistent throughout the contract term.

(e) Except for ESG, in the case of migrant, seasonal, part-time, temporary, or self-employed workers a longer period than thirty (30) days may be used for annualizing income. However, the same method must be used for all similarly situated workers.

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 14, 2013.

TRD-201304553

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: November 3, 2013

Proposal publication date: August 9, 2013

For further information, please call: (512) 475-3974



SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT (CSBG)

10 TAC §§5.202, 5.210, 5.212, 5.217

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter B, §§5.202, 5.210, 5.212, and 5.217, concerning Community Services Block Grant (CSBG), without changes to the proposed text as published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4974) and will not be republished.

REASONED JUSTIFICATION. The Department finds that language in the amended sections lacks clarity. Accordingly, the amendments include local government entities where that term had been omitted; clarify the due dates of Community Action Plans and community needs assessments; separate state requirements for boards from federal requirements; and clarify board meeting requirements.

The Department accepted public comments between August 9, 2013, and September 9, 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304554

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 3, 2013
Proposal publication date: August 9, 2013
For further information, please call: (512) 475-3974



10 TAC §5.209

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 5, Subchapter B, §5.209, concerning State Application and Plan, without changes to the proposal as published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4976). The rule will not be republished.

REASONED JUSTIFICATION. The Department finds that the rule was informational only and did not need to be published in the Texas Administrative Code. Accordingly, the repeal removes references to the Department's submission of the State Application and Plan.

The Department accepted public comments between August 9, 2013, and September 9, 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201304556
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3974



SUBCHAPTER J. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §§5.1003, 5.1004, 5.1006

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter J, §§5.1003, 5.1004, and 5.1006, concerning the Homeless Housing and Services Program (HHSP), without changes to the proposed text as published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4976). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds that program administration and reporting requirements for HHSP need

clarification and strengthening. Accordingly, the amended rules strengthen program reporting, update formula source data, and improve program administration.

The Department accepted public comments between August 9, 2013, and September 9, 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304558
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 3, 2013
Proposal publication date: August 9, 2013
For further information, please call: (512) 475-3974



10 TAC §§5.1007, §5.1008

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 5, Subchapter J, §5.1007 and §5.1008, concerning Subrecipient Reporting Requirements and Subrecipient Data Collection, without changes to the proposed text as published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4978) and will not be republished.

REASONED JUSTIFICATION. The Department finds that program reporting requirements lack specific metrics needed for adequate program administration. Accordingly, the new sections add reporting and data collection requirements.

The Department accepted public comments between August 9, 2013 and September 9, 2013. Comments regarding the new sections were accepted in writing and by fax. No comments were received concerning the new sections.

The Board approved the final order adopting the new sections on October 10, 2013.

STATUTORY AUTHORITY. The new sections are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304559

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 3, 2013
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For further information, please call: (512) 475-3974



SUBCHAPTER K. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§5.2001, 5.2004, 5.2006, 5.2008, 5.2012

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter K, §§5.2001, 5.2004, 5.2006, 5.2008, and 5.2012 concerning Background; Eligible Applicants; Contract Execution; Program Income; and Redistribution/Reallocation of Additional Grant Funds and Unexpended Funds, without changes to the proposed text as published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4979) and will not be republished.

REASONED JUSTIFICATION. The Department finds that language in the ESG rules did not align with language in other Community Affairs Division rules. Accordingly, the amended rules provide clear definition of ESG program participants as Subrecipients, align ESG with other Community Affairs programs, and allow the Department greater flexibility in the redistribution or reallocation of additional grant funds and unexpended funds.

The Department accepted public comments between August 9, 2013, and September 9, 2013. Comments regarding the amendments were accepted in writing and by fax. No comments were received concerning the amended sections.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304560
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 3, 2013
Proposal publication date: August 9, 2013
For further information, please call: (512) 475-3974



TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

13 TAC §121.6

The Office of the Governor, Texas Film Commission (Commission) adopts the amendment to Chapter 121, §121.6, concerning Texas Moving Image Industry Incentive Program grant awards, without changes to the proposed text as published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 5970).

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

No comments were received regarding the amendment.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2013.

TRD-201304562
David Zimmerman
Assistant General Counsel
Texas Film Commission
Effective date: November 3, 2013
Proposal publication date: September 13, 2013
For further information, please call: (512) 463-9200



TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.5

The Texas Racing Commission adopts amendments to 16 TAC §319.5, relating to the treatment records of veterinarians who treat race animals, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5648) and will not be republished.

The amendments clarify that the Commission's veterinarians may request and inspect the veterinary records of race animals. The amendments also clarify that any veterinary records provided under the rule would become part of the Commission's confidential investigatory files.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §3.07, which requires the Commission to adopt rules specifying the authority and duties of each racing official.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201304520

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: October 31, 2013

Proposal publication date: August 30, 2013

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

The commissioner of insurance adopts amendments to 28 TAC §9.1 and §9.401, which adopt by reference amendments to the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas*, and to the *Texas Title Insurance Statistical Plan*. The adopted amendments revise the *Basic Manual* to reflect a change from multiple title agent licenses to single licenses with appointments for each underwriter. The amendments update the requirements for minimum capitalization to comply with Insurance Code §2651.012. The amendments also make numerous nonsubstantive editorial changes, revise the effective dates of the *Basic Manual* and *Statistical Plan*, update TDI's address, and add the TDI website address in both sections.

The commissioner adopts the amendments with changes to the proposed text published in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2475). TDI made changes in response to comment, and made nonsubstantive editorial changes to the proposed text to correct grammar and typographical errors.

Dates: To give title agents time to prepare for the new requirements, the rules adopted by this order will be effective on January 3, 2014. Additionally, Administrative Rule S.1 gives title agents until July 3, 2014, to comply with the new minimum capitalization requirements.

REASONED JUSTIFICATION. At the 2012 Texas Title Insurance Periodic Hearing on February 28, 2012, Docket Number 2732, the commissioner considered the items submitted by the title industry and by TDI staff. The commissioner called the hearing under Insurance Code §2703.202 and §2703.206. This adoption order, which adopts by reference new and amended rules and forms in the *Basic Manual* and *Statistical Plan*, is necessary to facilitate the administration and regulation of title insurance

and to update, correct, clarify, or harmonize title insurance rules and forms.

The adopted amendments are identified by the item numbers used for the original submissions at the February 28, 2012, hearing. Items 2012-10, 2012-15, 2012-34, 2012-43, 2012-44, 2012-46, 2012-60, 2012-61, and 2012-68 were withdrawn from consideration during the February 28, 2012, hearing at the request of the original petitioners. As explained in Commissioner's Order No. 12-0217, dated March 19, 2012, TDI elected not to propose the following items: 2012-7, 2012-40, 2012-48, 2012-49, 2012-53, 2012-56, 2012-58, 2012-59, 2012-72 (as revised by Stewart Title Guaranty Company), and 2012-91. Additionally, TDI withdrew Item 2012-19 in response to a comment.

The commissioner adopts the 71 attached exhibits, each identified by the unique item number used at the February 28, 2012, hearing. They are agenda items 2012-1 through 2012-6, 2012-8, 2012-9, 2012-11 through 2012-13, 2012-14, 2012-16 through 2012-18, 2012-20 through 2012-33, 2012-35 through 2012-39, 2012-41, 2012-42, 2012-45, 2012-47, 2012-50 through 2012-52, 2012-54, 2012-55, 2012-57, 2012-62 through 2012-67, 2012-69 through 2012-71, and 2012-73 through 2012-90. These agenda items are discussed below.

For this adoption, TDI made nonsubstantive editorial changes to the following items as proposed: 2012-22, 2012-25, 2012-26, 2012-27, 2012-29, 2012-30, 2012-36, 2012-62, 2012-63, 2012-64, 2012-65, 2012-66, 2012-71, 2012-73, 2012-76, 2012-79, 2012-81, 2012-85, 2012-88, and 2012-90. None of these changes materially alter the issues raised in the proposal nor do they introduce new subject matter or affect people who have not already had notice of this rule.

The following items, adopted as originally submitted, make only nonsubstantive editorial changes to conform the language in the rule or form to other rules and forms in the *Basic Manual*:

Item 2012-4: Form T-43, Texas Reverse Mortgage Endorsement,

Item 2012-5: Form T-42, Equity Loan Mortgage Endorsement,

Item 2012-6: Form T-42.1, Supplemental Coverage Equity Loan Mortgage Endorsement,

Item 2012-9: Form T-46, Texas Residential Limited Coverage Junior Mortgagee Policy Home Equity Line of Credit/Variable Rate Endorsement,

Item 2012-12: Rate Rule R-17, Policy Forms for Use by United States Government,

Item 2012-13: Rate Rule R-22, Owner and Leasehold Policies, and

Item 2012-18: Form T-14, First Loss Endorsement.

The following items adopt changes made solely to correct typographical errors:

Item 2012-8: Form T-98, Limited Pre-Foreclosure Policy,

Item 2012-14: Procedural Rule P-1.w, Definitions, and

Item 2012-17: Procedural Rule P-70(b), Cancellation Fees; Fees for Services Rendered.

The remaining adopted agenda items are described below:

Item 2012-1: Amends Form T-7, Commitment for Title Insurance, to correct typographical errors and conform the language in the form to other rules and forms in the *Basic Manual*. After

proposal, TDI removed the first two paragraphs of Form T-7. These two paragraphs contain general information about Texas title insurance forms and were inadvertently inserted onto Form T-7, which was the first exhibit in the proposal. These paragraphs do not contain any information specifically related to Form T-7.

Item 2012-2: Amends Form T-1, Owner's Policy of Title Insurance, to correct margins and conform the language in the form to other rules and forms in the Basic Manual.

Item 2012-3: Amends Form T-2, Loan Policy of Title Insurance, to correct margins.

Item 2012-11: Amends Rate Rule R-15, Owner Policy Endorsement, to correct typographical errors and conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-16: Amends Form T-56, Owner Policy Rejection Form, to correct typographical errors and conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-20: Amends Form T-53, Texas Limited Coverage Residential Chain of Title Policy Combined Schedule, to conform the language in the form to other rules and forms in the *Basic Manual*, to correct margins, and to change a period from 12 months to the correct period of not more than 60 months.

Item 2012-21: Adopts Administrative Rule S.1, Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158, to include the timetables and capitalization amounts in Insurance Code §2651.012. In the adoption, TDI restored a modified version of paragraph II.C., in response to comment. In the original submission, the minimum capitalization requirements were to take effect six months from adoption. To provide certainty, TDI changed that effective date to July 3, 2014. See the Comments section for justification of these changes.

Item 2012-22: Adopts Form T-S1, Title Agent's Unencumbered Assets Certification Form. The form specifies the title agent's method of meeting the required minimum capitalization under Insurance Code §2651.158. Form T-S1 will normally accompany the annual audit of escrow accounts submitted to TDI unless the agent makes a deposit under Insurance Code §2651.012(f).

Item 2012-23: Adopts Administrative Rule S.2, Solvency Account for Capitalization Standards, to meet the requirements of Insurance Code §2651.012.

Item 2012-24: Adopts Form T-S2, Tripartite Agreement, to enable a title agent to establish a solvency account to comply with capitalization requirements. The form authorizes release of funds from a solvency account in limited circumstances.

Item 2012-25: Adopts Administrative Rule S.3, Title Agent Requirements, Procedures, and Forms for Obtaining Release of Assets in Accordance with Insurance Code §2651.012(b) or §2651.0121, to provide procedures for an agent to request and obtain the release of assets, including funds held in a solvency account.

Item 2012-26: Adopts Form T-S3, Solvency Account Release Request, to meet the Insurance Code §2651.0121(i) requirement to provide a form for an agent to use to request the release of funds held in a solvency account under §2651.0121. The form provides a checklist for the actions required to request the release.

Item 2012-27: Adopts Administrative Rule S.7, Surety Bond for Title Agents to Comply with Minimum Capitalization Standards, to enable title agents to comply with capitalization requirements by using a surety bond.

Item 2012-28: Adopts Texas Title Insurance Agent's Minimum Capitalization Bond form to enable a title agent to use a surety bond to meet capitalization requirements.

Item 2012-29: Adopts Administrative Rule S.4, Title Company Requirements, Procedures, and Forms for Providing Privileged Title Agent Financial Solvency Information to the Department Pursuant to §2651.011, to enable an underwriter to provide information to TDI about a financial matter that may relate to the solvency of a title agent.

Item 2012-30: Adopts Form T-S4, Annual Report of Title Company's Officers Authorized to Provide Information on Agent Financial Matters, to provide a form for title companies to identify to TDI the officers of the title company who are authorized to provide privileged financial information to TDI regarding title agents.

Item 2012-31: Adopts Form T-S4-A, Financial Matter Disclosure Report, to enable a designated officer of a title company to provide information to TDI under Insurance Code §2651.011. Section 2651.011 declares that financial information that a title insurance company provides to TDI regarding a title agent is not public information.

Item 2012-32: Adopts Administrative Rule S.5, Filing of Title Agent's Quarterly Withholding Tax Report. The rule provides TDI with an early warning tool to monitor the financial condition of title agents. It requires agents to file with TDI copies of their quarterly withholding tax reports or their equivalent.

Item 2012-33: Adopts Form T-S5, Title Agent Certification Form of Agent's Quarterly Tax Reports, to provide a method for a title agent to certify that the agent had no employees during a calendar quarter and did not file a quarterly withholding tax report.

Item 2012-35: Adopts Administrative Rule S.6, Requirements for Title Agent Examination Reports Pursuant to §2651.206, to incorporate statutory changes resulting from HB 4338, 81st Legislature, Regular Session (2009). Under Insurance Code §2651.206, the rule establishes requirements and procedures for an examination report. The procedures allow the title agent to respond to the contents and conclusions of the report and allow for an appeal under 28 TAC §7.83.

For the proposal, TDI changed the 10-day response period to 14 days. In the adoption, TDI also added language to Rule S.6 to allow TDI the discretion to lengthen the period in which a title agent has to respond to an examination report, if it is reasonable to do so. See the Comments section for justification of this change.

Item 2012-36: Amends Procedural Rules P-1, Definitions, and P-12, Abstract Plants. The rule amends the P-1 definition of abstract plant to be consistent with Insurance Code §2501.004(b). The rule amends P-12 to be consistent with §2501.004 and to update certain statutory references.

In the proposal, TDI inadvertently removed subsection z of Rule P-1 from the original agenda item. For adoption, TDI restored subsection z to Procedural Rule P-1, which reads:

"z. Furnishing title evidence - Providing information regarding instruments affecting title to a tract of land, covering a period beginning not later than January 1, 1979, or such greater period of time as is necessary to determine the ownership and appropriate

liens, encumbrances upon, or defects in the title. The information must include, at a minimum, the following:

1. Grantor of each instrument;
2. Grantee of each instrument;
3. Type of each instrument;
4. Recording information of each instrument; and
5. Copy of each instrument as needed by the examiner.

It is not required that the information include:

1. Following the title to a right of way or easement, or showing instruments executed by the grantee in such right of way or easement, other than amendments to such right of way or easement; or
2. Following the title to an oil, gas, or mineral lease or interest.

In considering the necessary length of time to determine ownership and search the title, the searcher may be authorized by the title insurance company to accept what it considers prior indicia of title. Prior indicia of title include, for example, a prior title policy, a final order of a court of competent jurisdiction determining the entire title, or, on subdivision tracts, the base title of the dedicated subdivision."

Item 2012-37: Amends Form T-57, Agreement to Furnish Title Evidence, to be consistent with Insurance Code §2501.004(b).

Item 2012-38: Amends Procedural Rule P-5.1, Exception or Exclusion Regarding Minerals. Insurance Code §2703.0515 and §2703.055, enacted in HB 2408, 82nd Legislature, Regular Session (2011), provide that a title insurance company is not required to issue a minerals endorsement after January 1, 2012.

Item 2012-39: Amends Procedural Rule P-50.1, Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3). Insurance Code §2703.0515 and §2703.055, enacted in HB 2408, provide that a title insurance company is not required to issue a minerals endorsement after January 1, 2012.

Item 2012-41: Repeals Rate Rule R-36, Credit for Exclusion of or General Exception for Minerals. HB 2408 enacted §2703.056(b), which prohibits premium credits for minerals, effective January 1, 2012.

Item 2012-42: Amends Rate Rule R-29.1, Premium for Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3). As a result of HB 2408, which enacted Insurance Code §2703.0515 and §2703.055, a title company may not charge for either endorsement to a Loan Policy issued after January 1, 2012.

Item 2012-45: Changes the Texas Title Insurance Guaranty Association's address on the Policy Guaranty Fee Remittance Form to "[current address]" to update the form and provide more flexibility for future changes to information without a rule amendment.

Item 2012-47: Amends Specific Areas and Procedures No. 5 to update disclosure requirements for third party notaries to conform the rule to Insurance Code §2501.008.

Item 2012-50: Amends Procedural Rule P-57, Additional Insured Endorsement (T-26), to include "Fairway language" for an optional coverage. In *Fairway Dev. Co. v. Title Ins. Co. of Minn.*, 621 F. Supp. 120 (N.D. Ohio 1985), the court held that the assignment of partnership interests from two partners to the

remaining partner and a new third-party purchaser resulted in the termination of the title-insured partnership and the creation of a new partnership. The new partnership lacked standing to bring an action under the title policy issued to the original partnership. The coverage in the amended endorsement provides that the transfer of an interest in a limited liability company insured under an owner's policy would not be deemed to create a new entity that is not entitled to the benefits of the policy.

Item 2012-51: Amends Form T-26, Additional Insured Endorsement, to include "Fairway language" for an optional coverage. The coverage would provide that the transfer of an interest in a limited liability company insured under an owner's policy would not be deemed to create a new entity that is not entitled to the benefits of the policy. TDI has restored the last paragraph of Form T-26. See the Comments section for justification of this change.

Item 2012-52: Amends Procedural Rule P-58, Report on Directly Issued Policy, to add an Out of County Status Code to conform the rule to Form T-00, which contains three Directly Issued Policy Status Codes, rather than only the two currently listed in P-58.

Item 2012-54: Amends Form T-11, Policy of Title Insurance (USA), to add a creditors' rights exclusion relating to the transaction, to comply with Insurance Code §2502.006, which prohibits certain extra hazardous coverages.

Item 2012-55: Amends Form T-38, Mortgagee Policy of Title Insurance P-9.b.(e) Endorsement, to add a creditors' rights exclusion relating to the transaction, to comply with Insurance Code §2502.006, which prohibits certain extra hazardous coverages.

Item 2012-57: Amends Form T-16, Mortgagee Policy Aggregation Endorsement, to provide optional language that could provide a separate lower limit of liability for the policy in identified states to conform to single risk limits. The amendment also conforms the language in the form to the current text of American Land Title Association Endorsement 12-06.

Item 2012-62: Amends Form T-19, Restrictions, Encroachments, Minerals Endorsement, to ensure that a recorded document clearly identifies the terms of a covenant, condition, or restriction. This endorsement separately insures against loss of priority of the lien for the Insured Mortgage, or loss of title because of the provisions of the covenant, condition, or restriction in paragraph 2 of the endorsement, and insures against current violations in paragraph 1.b of the endorsement. In the adoption, TDI restored paragraph 5.e. to the form in response to comment. See the Comments section for justification of this change.

Item 2012-63: Amends Form T-19.1, Restrictions, Encroachments, Minerals Endorsement - Owner Policy, to ensure that a recorded document clearly identifies the terms of a covenant, condition, or restriction. This endorsement in paragraph 3.a separately insures against covenant violations.

In the adoption, TDI restored paragraph 5.e. to the form in response to comment. See the Comments section for justification of this change.

Item 2012-64: Amends Form T-4, Leasehold Owner's Policy Endorsement, to conform Form T-4 to American Land Title Association (ALTA) Endorsement 13-06 (Leasehold - Owner's).

Item 2012-65: Amends Form T-4R, Residential Leasehold Endorsement, to conform Form T-4R to ALTA Endorsement 13-06 (Leasehold - Owner's).

Item 2012-66: Amends Form T-5, Leasehold Loan Policy Endorsement, to conform Form T-5 to ALTA Endorsement 13.1-06 (Leasehold - Loan).

Item 2012-67: Adopts Form T-36.1, Commercial Environmental Protection Lien Endorsement, to give Texas title companies a way to conform to commercial loan transaction practices in other jurisdictions. This endorsement conforms to ALTA Endorsement 8.2-06. In commercial loan transactions in other jurisdictions, an ALTA 8.2-06 Endorsement is commonly requested and issued.

Item 2012-69: Adopts Form T-54, Severable Improvements Endorsement, to address situations in which an item's status as real or personal property is disputed. This endorsement affects the measure of damages available if there are title defects that cause diminution of value or result in certain costs.

Item 2012-70: Adopts Procedural Rule P-72, Severable Improvements Endorsement, to address situations in which an item's status as real or personal property is disputed. This rule allows a title company to issue Form T-54 if the rule requirements are met. TDI has removed paragraph (b) from new Rule P-72. See the Comments section for justification of this change.

Item 2012-71: Amends Rate Rule R-11, Loan Policy Endorsements, to update references. This item incorporates changes suggested by the Texas Land Title Association in withdrawn Agenda Item 2012-10 re: R-11(D).

Item 2012-73: Amends Form T-1R, Residential Owner's Policy of Title Insurance One-to-Four Family Residences, to make the continuation of coverage language conform to Insurance Code §2703.101(g), enacted by HB 3768, 81st Legislature, Regular Session (2009).

Item 2012-74: Amends Rate Rule R-5, Simultaneous Issuance of Owner's and Loan Policies, to correct references as a result of paragraph rearrangement and renumbering in Agenda Item 2008-57, adopted in the 2008 Texas Title Insurance Periodic Hearing.

Item 2012-75: Amends Rate Rule R-21, Multiple Owner's Policies on Same Land, to update the reference to Rate Rule R-3, which changed to Procedural Rule P-66 as a result of Agenda Item 2008-65, and to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-76: Rescinds Rate Rule R-10, Owner's Policies--- City Subdivision, Acreage Subdivisions, Industrial Tracts, as obsolete. Rate Rule R-10 provided that no new contracts could be made under Rate Rule R-10 after September 1, 1975.

Item 2012-77: Amends Rate Rule R-32, Premium for Contiguity Endorsement (Form T-25, Form T-25.1), to include the reference to Form T-25.1 (Agenda Item 2008-39) adopted for Procedural Rule P-56 (Agenda Item 2008-56) and to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-78: Amends Procedural Rule P-16, Loan Title Policy on Interim Construction Loan (Interim Binder), to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-79: Amends Procedural Rule P-11, Insuring Around, to conform to changes made to Property Code §12.017 by HB 3945, 81st Legislature, Regular Session (2009).

Item 2012-80: Amends Form T-2R and T-2R Addendum, Texas Short Form Residential Loan Policy of Title Insurance and Form T-2R Addendum, to incorporate previous changes implemented

by Agenda Item 2008-40, adopted in the 2008 Texas Title Insurance Periodic Hearing, and to correct references.

Item 2012-81: Amends Rate Rule R-2, Rebates and Discounts, to correct a typographical error and to conform to the changes made to R-5 in Agenda Item 2008-57, adopted in the 2008 Texas Title Insurance Periodic Hearing.

Item 2012-82: Amends Rate Rule R-20, Owner's Policy After Construction Period, to conform to the changes made to Rate Rule R-5 in Agenda Item 2008-57.

Item 2012-83: Amends Form T-48, Co-Insurance Endorsement, to modify signature lines.

Item 2012-84: Amends Form T-31, Manufactured Housing Endorsement, to update language and references.

Item 2012-85: Amends Administrative Rule L-1, Title Insurance Agent, to include requirements that when a title insurance agent changes its abstract plant provider, or buys or sells an abstract plant, it must notify TDI. The amendments also update definitions, streamline the licensing process, and conform the requirements to Procedural Rule P-28. The amendments allow title agents to operate under a single license, rather than requiring a separate license for each underwriter with which the title agent does business. The title agent must possess an appointment from at least one title company to obtain a license. The agent's license must be renewed every two years, and will be suspended during any period during which the agent does not possess a valid appointment.

TDI made the following change to Administrative Rule L-1 (Item 2012-85), in response to comment. Certain sections of Rule L-1 require "Certificates of Account Status" to obtain, renew, or change a Texas Title Insurance Agent License. The comptroller historically issued Certificates of Account Status in response to inquiries about the status of an entity's franchise tax account. As of May 2013, however, Certificates of Account Status are no longer available from the Texas Comptroller of Public Accounts. Instead, users may print a taxpayer's Franchise Tax Account Status page from the comptroller's website to accomplish the same purpose.

In response to this change by the comptroller, Administrative Rule L-1 will now require a printed copy of the webpage displaying the title agent's Franchise Tax Account Status, available on the Texas comptroller's website at www.window.state.tx.us/tax-info/coasintr.html.

Item 2012-86: Amends Administrative Rule L-3, Direct Operations License, to include requirements when a Direct Operation changes its abstract plant provider, or buys or sells an abstract plant. The amendments conform the requirements in Administrative Rule L-3 to the requirements in Administrative Rule L-1, where possible, to enhance consistency and efficiency.

Item 2012-87: Amends Administrative Rule L-2, Title Insurance Escrow Officer, to incorporate the changes in HB 652, 81st Legislature, Regular Session (2009) regarding escrow officer schedule bonds, and to standardize formatting and references.

Item 2012-88: Amends Procedural Rule P-28, Requirements for Continuing Education for Title Agents and Escrow Officers and Professional Training Program for Title Agent Management Personnel, to implement provisions for the Professional Training Program required by Insurance Code §2651.002(d) and §2651.0021, enacted in HB 4338, 81st Legislature, Regular Session (2009).

Item 2012-89: Amends Form T-3 instructions to better clarify the use of the form and to conform the language in the instructions to the rules and forms in the *Basic Manual*. The amendments also include language from disapproved Agenda Item 2012-56 regarding the creditors' rights exception and the conditions relating to the delivery of the promissory note, to be consistent with the exception in the ALTA Assignment Endorsements.

Item 2012-90: Amends the *Statistical Plan* to conform the language in the plan to other rules and forms in the *Basic Manual*. The amendments also include codes for items adopted at the February 28, 2012, hearing. Additionally, in the proposal, TDI modified Table 3 of the original submission by deleting the reference to the Credit for Exclusion of or General Exception for Minerals. TDI proposed deleting the credit because the repeal of Rate Rule R-36 makes the code obsolete. However, to show that the credit previously existed but is no longer valid, TDI restored the credit into Table 3 with strikethrough text.

Statistical Plan, Table 2: In response to comments, TDI also made changes to Table 2 of the Statistical Plan, editing some of the descriptions and rate rules associated with simultaneous-issue rates.

There are two types of simultaneous-issue situations: the normal situation and the pay-as-you-go situation. Rate Rule R-5.A. states, "when an Owner's Policy and Loan Policy(ies) are issued simultaneously, bearing the same date, and covering the same land, or a portion [of it]...and covering no other land,..." the premium for the owner's policy is the Basic Rate, and the premium for the loan policy is \$100. If the liability amount of the loan policy is greater than that of the owner's policy, a formula in R-5.B. is used to calculate an additional premium for the loan policy, which is then added to the \$100 simultaneous-issue rate. This is the normal simultaneous-issue situation.

The other simultaneous-issue situation is pay-as-you-go. Pay-as-you-go policies are used in multi-phase construction projects costing \$5 million or more. In the pay-as-you-go simultaneous-issue situation, the rules are reversed from the normal simultaneous-issue situation. In pay-as-you-go, the premium for the loan policy is the Basic Rate, and the premium for the owner's policy is \$100. If the liability amount of the owner's policy is greater than that of the loan policy, a formula in R-5.E is used to calculate an additional premium for the owner's policy, which is then added to the \$100 simultaneous-issue rate.

In the Statistical Plan, the descriptions for codes 1215, 3255, and 3345 reflected the normal simultaneous-issue situation, but they should have reflected the pay-as-you-go simultaneous-issue situation. In other words, the descriptions for these three codes were reversed. In discussions with title industry representatives, TDI learned that agents are nonetheless reporting the correct data because the codes are correctly described in the software they use. So, TDI edited these descriptions to properly reflect the rules of the pay-as-you-go simultaneous-issue situation.

TDI also made changes to the descriptions and rate rules associated with codes 1230 and 3280 of Table 2 of the Statistical Code. Both codes 1230 and 3280 involve a credit for a surrendered owner's policy. The rate rules associated with a credit for surrendered policies are R-5.C., R-5.D., and R-5.E. Additionally, codes 1230 and 3280 involve the normal simultaneous-issue situation rather than the pay-as-you-go situation.

Rule R-5.C. states that when a prior owner's policy is surrendered for credit in a normal simultaneous-issue situation, a credit is applied to the premium for the owner's policy. Rule R-5.E.

states that when a prior owner's policy is surrendered for credit in a pay-as-you-go simultaneous-issue situation, a credit is applied to the premium for the *loan* policy, rather than to the premium for the *owner's* policy. So, the descriptions for codes 1230 and 3280 should refer to Rule R-5.C., not Rule R-5.E. because these are normal simultaneous-issue situations. In the proposed Statistical Plan, these two descriptions refer to Rule R-5.E. TDI corrected the reference in both line items by deleting Rule R-5.E. and adding Rule R-5.C.

A commenter also noted that there are no loan policy code numbers to represent the scenario that Rule R-5.E. addresses. This scenario occurs when an owner's policy is surrendered in a pay-as-you-go transaction. As stated in the above paragraph, Rule R-5.E. applies the credit to the premium for the loan policy. Currently, the Statistical Plan does not have a special pay-as-you-go loan policy code for a transaction in which credit is given for a surrendered owner's policy. TDI may add a loan policy code for this scenario in a separate rulemaking action.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General

Comment: The commenters ask that the commissioner set an implementation period to allow time to comply with the new and amended rules and forms. The commenters state that if the adoption date and the compliance date are simultaneous, or if there is not enough time between adoption and compliance, it will be difficult to implement and adhere to the revised rules and forms.

Agency Response: TDI agrees that it is reasonable to allow additional time to comply with the new and revised rules and forms. To give title agents time to comply, the effective date of these rules will be January 3, 2014.

Additionally, paragraph II.D. of new Administrative Rule S.1, Minimum Capitalization Standards (Item 2012-21), as originally submitted, made the minimum capitalization standards effective six months after the surety bond requirements were adopted, to provide sufficient time to implement the new minimum capitalization standards. To provide certainty, TDI set July 3, 2014, six months after the effective date of these rules, as the date that requirement takes effect.

Items 2012-19 and 2012-57

One commenter notes that both Items 2012-19 and 2012-57 amend Form T-16, the Mortgage Policy Aggregation Endorsement. The commenter submitted Item 2012-19. All of the amendments to the form in Item 2012-19 are also in Item 2012-57. The commenter asks TDI to withdraw Item 2012-19.

Agency Response: TDI agrees, and withdrew Item 2012-19 because the amendments in Item 2012-19 are also in Item 2012-57.

Item 2012-21

Comment: Commenters ask that TDI reconsider a proposed change to Item 2012-21, new Administrative Rule S.1, Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158.

Specifically, the commenters ask that TDI restore paragraph II.C. This section of Rule S.1 deals with whether existing title agents should be grandfathered when an agency is sold - either because it is distressed or because the current owner retires - or

when an agency is inherited. In its proposal, TDI removed paragraph II.C. based on concerns that an acquiring agent should be sufficiently capitalized to take over a distressed company, and to clarify that a change in a company's operations does not change the date used to calculate the minimum capitalization requirement.

The commenters state that paragraph II.C. serves two important functions. First, the paragraph contains a series of deadline dates for compliance with the minimum capital requirements for title insurance agents. These minimum capital requirements relate to the number of years in which a title insurance agent has been in business, and paragraph II.C. is the operative paragraph for establishing the start date.

Second, the commenters assert that paragraph II.C is important because it provides some assurances of rehabilitation and recapitalization for a financially distressed title insurance agency in a situation in which investors ("white knights") are sought to contribute the necessary operating funds and capital to continue the business as a going concern. The commenters' rationale is that since the funds in a minimum capitalization account are sequestered and are thus unavailable for use in operating the business, not allowing grandfathering would encourage asset-only purchases of distressed companies, putting the distressed agent out of business with no assets to pay liabilities. This would disrupt consumers awaiting closings and cause problems for the distressed agent's former customers if they have claims or require other services.

The commenters also assert that it would be a disservice to consumers if those who inherit title agencies are required to increase capitalization. Heirs would have to choose whether to contribute additional capital to the business or shut it down. In geographical areas where there are few title agents, closing the business could substantially affect the availability of title insurance services for area residents.

Agency Response: After TDI considered the commenters' arguments and staff's concerns, TDI revised the rule. The rule now allows grandfathering for the minimum capitalization start date for inherited title agents and gives the commissioner discretion to allow grandfathering when a distressed title agent is acquired.

TDI did not use the suggested language in paragraph II.C. because it does not encourage complete mergers over asset-only purchases. It only lessened a potential disincentive for acquiring a distressed title agent's liabilities along with its assets. Additionally, TDI wants to ensure that acquiring title agents have ample funds to rehabilitate distressed agents, giving the resulting company the best chance of success.

In inheritance situations, TDI will allow grandfathering on the presumption that, in those situations, the transferred agency would not necessarily be distressed. Also, title agents are frequently family businesses, so the heir may have experience operating a title agency responsibly, and the heir should not necessarily present a greater risk of insolvency than the transferor.

TDI also concluded that it is reasonable to give the commissioner the discretion to allow "white knight" title agents who acquire financially distressed title agents to continue using the acquired title agent's license start date. Allowing this option for acquisitions of distressed title agents, as well as keeping the provision allowing mergers to be grandfathered, may encourage complete mergers and help ensure that acquiring agents are able and qualified to keep the acquired agent as a going concern.

Acquiring agents would have to petition the commissioner to allow grandfathering for the acquired agent's required minimum capitalization start date. The petition must support the following assertions: (1) the title agent being acquired is financially distressed or is likely to be so, and (2) the acquiring title agent has the means to rehabilitate the distressed title agent and is worthy of the public trust to accomplish that goal. Support for this provision would include evidence that the acquiring title agent has ample funds and experience, and has never before owned or operated a failed title agent.

In the event of a merger, consolidation, or other combination of two or more title agents, the start date of the surviving agent or new entity is the date on which the agent or oldest entity was first assigned a Title Agent Company Identification Number in connection with the issuance of the survivor's or oldest entity's initial license before the merger, consolidation, or other combination. The adopted language for paragraph II.C. is as follows:

"C. With respect to the schedule for compliance with the minimum capitalization amounts, the start date for the time that a title agent has been licensed is the date on which the title agent was first assigned a Title Agent Company Identification Number by the Department in connection with the issuance of the title agent's initial license.

(1) When a person acquires a title agent by inheritance, resulting in a change of ownership or control of a title agent as specified in Administrative Rule L-1 V, Change in Operations, paragraph B, which requires a new license, the start date of the new license is the date of the Title Agent Company Identification Number of the acquired title agent.

(2) In a non-inheritance transfer, when there is a change of ownership or control of a title agent as specified in Administrative Rule L-1 V, Change in Operations, paragraph B, and a new license is issued, the commissioner may, upon petition of the acquiring title agent, order that the start date of the new license be the date of the Title Agent Company Identification Number of the acquired title agent. The acquiring agent's petition must make and support the following assertions:

(i) that the title agent to be acquired is financially distressed or reasonably likely to become financially distressed; and

(ii) that the acquiring title agent has the means to rehabilitate the distressed title agent and is worthy of the public trust to accomplish that goal. Support for this provision includes evidence that the acquiring title agent has ample funds and experience to accomplish the rehabilitation, and that the acquiring title agent has never before owned or operated a failed title agent.

(3) In the event of the merger, consolidation, or other combination of two or more title agents, the start date of the survivor or of new entity resulting from the combination is the date on which the survivor or oldest entity was first assigned a Title Agent Company Identification Number by the Department in connection with the issuance of the survivor's or oldest entity's initial license before the consummation of the merger, consolidation, or other combination."

Item 2012-35

Comment: One commenter asks that TDI reconsider a proposed change to Item 2012-35, new Administrative Rule S.6, Requirements for Title Agent Examination Reports Pursuant to §2651.206.

The commenter's request relates to the period within which a title insurance agent or direct operation must respond to TDI after receiving a report from an examination, review, or audit. The length of time originally submitted was "a reasonable period of not less than 10 days" after the title insurance agent or direct operation receives a report. In its proposal, TDI changed this period to a fixed 14 days.

The commenter asserts that a fixed period does not fulfill the purpose of maximum flexibility expressed in the statute. Section 2651.206 states that the rules pertaining to this procedure must provide "... (2) a reasonable period of not less than 10 days after the title agent or direct operation receives the report and evidence from TDI for the title agent or direct operation to respond." The commenter asserts that the statute's language was chosen to provide TDI with the flexibility to grant a period longer than 10 days for a response if the report raises complex issues, or requires substantial research or investigation. The commenter reasons that by creating a fixed period of 14 days, TDI is limiting its discretion to grant a longer response time if needed, and this discretion and flexibility is what §2651.206 intended.

Agency Response: TDI considered the commenter's arguments and staff's concerns, and reached a compromise. In new Administrative Rule S.6, as proposed, a title insurance agent or direct operation must respond to TDI within 14 days after receiving a report. TDI added language to Rule S.6, giving TDI the discretion to extend the 14-day period if necessary. The new language adds: "The Department may extend this period if it is reasonable to do so."

The 14-day period, followed by this discretionary language, meets the concerns of the commenters. Fourteen days is a reasonable time not less than 10 days, and the rule allows discretion and flexibility. Thus, the rule meets the intentions of §2651.206.

Item 2012-51

Comment: Commenters ask that TDI reconsider a proposed change to Item 2012-51, Form T-26, Additional Insured Endorsement.

The commenters ask that TDI restore the last paragraph of Form T-26. The commenters state that the language in the deleted paragraph is a standard provision in endorsements and is common to a number of insuring forms, including Form T-25, the Contiguity Endorsement and Form T-27, the Assignment of Rents/Leases Endorsement. The commenters add that this paragraph does not duplicate any paragraph in Form T-26 and it should be retained as part of that form.

Agency Response: TDI restored the last paragraph of Form T-26. TDI deleted the paragraph because it contains language that is duplicative of part of another paragraph in the form. However, given that the last paragraph of Form T-26 is a standard provision in endorsements and does not completely duplicate any other paragraph on the form, TDI has restored the following language on Form T-26:

"This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject

to all of the terms and provisions of the policy and of any prior endorsements."

Items 2012-62 and 2012-63

Comment: Commenters ask that TDI reconsider removing an exclusion from Items 2012-62 and 2012-63, which amend Forms T-19, Restrictions, Encroachments, Minerals Endorsement and Form T-19.1, Restrictions, Encroachments, Minerals Endorsement - Owner Policy.

In both forms, this is the paragraph 5.e. exclusion for "negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances." TDI omitted this paragraph from both forms based on the reasoning that paragraph 5.e. could negate the coverage promised in paragraph 4.d. of the endorsements. Paragraph 4.d. insures against damage resulting from the exercise of "a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B."

Texas case law has long established that between the mineral estate and the surface estate, the mineral estate is dominant. Because the only access to the mineral estate is through the surface estate, the mineral owner has the right to make any use of the surface estate that is necessarily and reasonably incident to removing the minerals. See *Sun Oil Co. v. Whitaker*, 483 S.W.2d 808 (Tex. 1972). So, when the mineral estate has been severed from the surface estate, the surface owner must accommodate the mineral estate owner. However, it is also established in Texas law that a mineral lessee's use of the surface estate must be exercised with due regard for the rights of the surface estate's owner.

The commenters assert that paragraph 4.d. is designed to mitigate concerns of the insured surface owner, in that the insured would have coverage for damage to the surface estate. Paragraph 5.e. is designed to clarify that such coverage is strictly limited to the terms of paragraph 4.d. The commenters argue that omission of paragraph 5.e. suggests that the endorsement covers the negligent torts of any person or Entity exercising a right to extract or develop beneath the land. Insurance that provides reimbursement for damages caused by negligent torts is property and casualty insurance, not title insurance.

The commenters also assert that it is the omission of paragraph 5.e., not its inclusion, that could negate the coverage provided in paragraph 4.d. Procedural Rule P-50 provides that a title insurer "shall delete any insuring provision if it does not consider that risk acceptable." If paragraph 5.e. is omitted, the commenters argue, it is likely that title insurance companies will consider the coverage in paragraph 4.d. an unacceptable risk, causing the title insurance companies to delete paragraph 4.d. coverage from the endorsement entirely.

Agency Response: TDI agrees, and has restored paragraph 5.e. into Forms T-19 and T-19.1:

5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

Item 2012-70

Comment: Commenters ask that TDI reconsider a proposed change to Item 2012-70, new Procedural Rule P-72, Severable Improvements Endorsement.

As proposed, this item added a new paragraph (b) to proposed Rule P-72. New Rule P-72, paragraph (b) states that, "A Company may not charge a premium for Form T-54 unless and until an applicable rate rule is in effect. If an applicable rate rule is in effect, the Company must collect the prescribed rate, if any, before the Company may issue Form T-54."

The commenters state that proposed paragraph (b) conflicts with a portion of Rate Rule R-2, which states: "A company shall not issue or deliver a policy, binder or endorsement until a rate therefore has been adopted by the Commissioner." The commenters assert that proposed paragraph (b) may imply that it is permissible for a title insurance company to engage in the "imprudent issuance of the [endorsement] without collecting a premium for the liability risk assumed by the issuance of the endorsement."

Agency Response: TDI agrees with the comments above and has removed paragraph (b) from new Rule P-72.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For, With Changes: Alliant National Title Insurance Company, First American Title Insurance Company, Stewart Title Guaranty Company, and Texas Land Title Association.

Against: None.

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES, AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

STATUTORY AUTHORITY. TDI adopts the amended section under Insurance Code §§2551.003, 2703.153, 2703.202, 2703.203, 2703.204, 2703.206, 2703.208, and 36.001.

Section 2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued; that define risks that may not be assumed under a title insurance contract; and that the commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, which concerns the regulation of title insurance.

Section 2703.153 authorizes and requires the commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for fixing premium rates.

Section 2703.202(c) authorizes the commissioner to conduct a public hearing to fix premium rates in response to a qualifying request.

Section 2703.203 requires the commissioner to hold a periodic hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance upon request by an association, title insurance company, title insurance agent, or member of the public admitted as a party under §2703.204.

Section 2703.204 requires admission of certain persons as parties to the periodic hearing conducted under §2703.203.

Section 2703.206 authorizes the commissioner to order a public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance as the commissioner determines necessary or proper.

Section 2703.208 states that an addition or amendment to the *Basic Manual* may be proposed and adopted by reference by publishing notice of the proposal or adoption by reference in the *Texas Register*.

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

§9.1. *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.*

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas as amended, effective January 3, 2014. The document is available from and on file at the Texas Department of Insurance, Mail Code 104-PC, PO Box 149104, Austin, Texas 78714-9104. The document is also available on the TDI website at www.tdi.texas.gov.

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 14, 2013.

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Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: January 3, 2014

Proposal publication date: April 19, 2013

For further information, please call: (512) 463-6327



SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.401

STATUTORY AUTHORITY. TDI adopts the amended section under Insurance Code §§2551.003, 2703.153, 2703.202, 2703.203, 2703.204, 2703.206, 2703.208, and 36.001.

Section 2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued; that define risks that may not be assumed under a title insurance contract; and that the commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, which concerns the regulation of title insurance.

Section 2703.153 authorizes and requires the commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for fixing premium rates.

Section 2703.202(c) authorizes the commissioner to conduct a public hearing to fix premium rates in response to a qualifying request.

Section 2703.203 requires the commissioner to hold a periodic hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance upon request by an association, title insurance company, title insurance agent, or member of the public admitted as a party under §2703.204.

Section 2703.204 requires admission of certain persons as parties to the periodic hearing conducted under §2703.203.

Section 2703.206 authorizes the commissioner to order a public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance as the commissioner determines necessary or proper.

Section 2703.208 states that an addition or amendment to the *Basic Manual* may be proposed and adopted by reference by publishing notice of the proposal or adoption by reference in the *Texas Register*.

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

§9.401. *Texas Title Insurance Statistical Plan.*

The Texas Department of Insurance adopts by reference the rules in the Texas Title Insurance Statistical Plan as amended, effective January 3, 2014. This document is published by and is available from the Texas Department of Insurance, Mail Code 105-5D, PO Box 149104, Austin, Texas 78714-9104. The document is also available on the TDI website at www.tdi.texas.gov/title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2013.

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Texas Department of Insurance

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For further information, please call: (512) 463-6327



CHAPTER 19. AGENTS' LICENSING

SUBCHAPTER H. LICENSING OF PUBLIC INSURANCE ADJUSTERS

28 TAC §§19.701, 19.708, 19.713

The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §§19.701, 19.708, and 19.713, concerning contracts used by licensed public insurance adjusters and rules that govern the professional ethics of public insurance adjusters. The amendments are adopted with changes to the proposed text that was published in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2480).

The amendments primarily adopt changes necessary to clarify the provisions required in contracts used by licensed public insurance adjusters to disclose how fees or commissions paid by consumers will be calculated.

In accord with Government Code §2001.033(a)(1), the department's reasoned justification for the rules is set out in this order, which includes the preamble and rules. The preamble contains a summary of the factual bases of the rules, a summary of comments received from interested parties, names of the groups and associations that commented and whether they were in support of or in opposition to adopting the rules, the reasons why the department agrees or disagrees with some of the comments and recommendations, and all other department responses to the comments.

REASONED JUSTIFICATION. The amendments are necessary to clarify the provisions required in contracts used by licensed public insurance adjusters that disclose how fees or commissions paid by consumers will be calculated.

The legislative bill analysis for Senate Bill 127 (78th Legislature, 2003), provides that the legislation was created, in part, to add a structure to regulate the activities of public insurance adjusters. The adopted amendments to these rules are consistent with the statute's public protection goals by requiring provisions that disclose how fees or commissions paid by consumers will be calculated.

The adopted amendments to §§19.701, 19.708, and 19.713 contain nonsubstantive changes in the text to correct punctuation and grammar, add clarity, and conform to current agency writing style. The adoption also contains updated citations to conform with Insurance Code recodification, renumbered sections to accommodate adopted amendments, and repetitive recitation of proposed section numbers. These changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The adopted amendments to §§19.701, 19.708, and 19.713 also include changes from the amendments formally proposed on April 19, 2013. The department amends §19.701(b) and §19.708(b)(11) by reordering text. These changes are necessary to increase readability and to provide consistency for similar language in the provisions.

The department, in response to comment, amends §19.708(b)(12) and adds "if applicable" to the beginning of the sentence, replaces "whether" with "how," and adds "payments issued prior to the effective date of the contract will be used in determining compensation to the public insurance adjuster," and deletes "insurance settlement proceeds paid to the insured prior to the date of the contract between the insured and the public insurance adjuster will be included in calculating the amount payable to the public insurance adjuster." These changes are necessary to clarify that if a public insurance adjuster uses insurance settlement proceeds paid to the insured prior to the date of the contract to calculate the commission, the contract will include a statement explaining this application of the proceeds.

The department, in response to comment, amends §19.708(b)(13)(D), and adds "if based on an hourly rate, a provision that the public insurance adjuster will provide an invoice for services that includes" to the beginning of the sentence, adds "services provided and," and deletes "plus sales tax owed to the comptroller; and." This change is necessary to clarify that invoices for services that include a detailed list of services provided and separate amounts payable are used when the public insurance adjuster's commission is based on an hourly rate. The department, in response to comment, amends §19.708(b)(13)(E), by deleting the entire

provision. This change is necessary because some of the information in §19.708(b)(13)(E) repeated the requirements in §19.708(b)(13)(D). These changes are necessary to consolidate the requirements of the two provisions into one, in order to be more concise.

The department amends §19.708(d)(1) and deletes the provision "a standard language contract developed by the Texas Association of Public Insurance Adjusters and approved by the department." This change is necessary to reduce redundancy in available form contracts. This change does not affect the ability of public insurance adjusters to comply with Insurance Code requirements, as public insurance adjusters have the ability to use the standard form contract that is available on the department's website or to have contracts filed and approved by the department prior to use.

The department, in response to comment, amends §19.713(b)(11) and deletes the entire provision, which reads, "Licensees must fully disclose the method of calculation for commissions related to any contract with a member of the public." This change is necessary to ensure that the adopted amendments remain aligned with the purpose of the rules.

HOW THE SECTIONS WILL FUNCTION. The adopted amendments to §§19.701, 19.708, and 19.713 update the rules relating to public insurance adjusters. Changes to §19.701 include adopted amendments to definitions. Adopted §19.701(b)(1) is added to define the term "commission," and adds that a commission is "any amount received by a public insurance adjuster for service provided under Insurance Code Chapter 4102, consisting of an hourly fee, a flat rate, a percentage of the total amount paid by the insurer to resolve a claim, or another method of compensation, not to exceed 10 percent of the amount of the insurance settlement on the claim, including expenses, direct costs, or any other costs accrued by the public insurance adjuster."

Adopted §19.708(b)(1) adds the phrase, "with each page of the contract prominently displaying the license number(s)." Adopted §19.708(b)(10)(A) updates existing text for clarification and consistency with agency writing style. Adopted §19.708(b)(10)(B) makes the English and Spanish translations in §19.708(b)(10)(A) and (B) consistent with one another.

In order to clarify commission calculations for consumers, adopted §19.708(b)(11) adds, "a statement that under any method of compensation, the total commission payable to the public insurance adjuster must not exceed 10 percent of the amount of the insurance settlement, including expenses, direct costs, or any other costs accrued by the public insurance adjuster."

In order to clarify commission calculations for consumers, adopted §19.708(b)(12) adds, "if applicable, a statement disclosing how payments issued prior to the effective date of the contract will be used in determining compensation to the public insurance adjuster."

In order to clarify commission calculations for consumers, adopted §19.708(b)(13)(A)(i) - (iv) adds, "if an hourly rate, the contract must state the hourly rate and how it will be applied to hours of service provided by the public insurance adjuster to calculate the amount payable," "if a flat fee, the contract must state the amount that will be payable to the public insurance adjuster," "if a percentage, the contract must state the exact percentage that will be applied to the settlement on the claim to calculate the amount payable to the public insurance adjuster," and "if another method of calculation is chosen, the contract

must include a detailed explanation of how the amount payable will be determined based on services provided by the public insurance adjuster."

In order to clarify information that will assist consumers understand how commissions are calculated, adopted §19.708(b)(13)(B) adds, "a general description of services the public insurance adjuster will provide under the contract," and adopted §19.708(b)(13)(C) adds, "a description of the claim and property damage, location, and event date."

In order to clarify commission calculations for consumers, adopted §19.708(b)(13)(D) adds, "if based on an hourly rate, a provision that the public insurance adjuster will provide an invoice for services that includes a detailed listing of services provided and separate costs payable to the public insurance adjuster as part of the commission based on the claim settlement, including expenses, direct costs, and any other accrued costs."

In order to provide details about the contract submission process, adopted §19.708(d) adds, "All public insurance adjusters in Texas must use a written contract that is in the form prescribed by the department and that complies with all relevant Insurance Code requirements and department rules." The section provides that public insurance adjusters must use one of the form options in adopted §19.708(d)(1) - (2), which include, "(1) a standard language contract developed by the department, identified by FIN 535; or (2) a contract filed and approved by the department prior to use."

In order to provide details about the contract submission process, adopted §19.708(e) adds, "All contracts must be submitted with an original adjuster license application or an application for renewal to the department's Agent and Adjuster Licensing Office. Contracts also must be submitted to the office upon any modification or amendment of terms or conditions between license renewals."

In order to provide details about possible penalties and to reiterate current statutory authority, adopted §19.708(f) adds, "The failure by a public insurance adjuster or other individual to use a properly authorized and approved contract may result in suspension, nonrenewal, revocation of the adjuster's license, or other administrative penalty."

The adopted rule also amends the heading of §19.713 by adding the words "Code of" and deleting the words "Rules of Professional Conduct and." Adopted §19.713(a) is amended by deleting the word "certain." The adopted section is further amended by adding, "This section details requirements similar to the codes of ethics adopted by local and national public insurance adjusters' professional organizations," to clarify that the code of ethics is consistent with standards adopted locally and nationally, standards with which public insurance adjusters may currently be familiar.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

The public comment period closed on May 20, 2013, and the department received five comments.

§19.708(b)(12)

COMMENT: A commenter requests that the text in the new §19.708(b)(12) and related other provisions neither impose nor suggest imposing requirements that public insurance adjusters be required to issue statements regarding whether or not proceeds from prior payments under the policy should be included in the calculation of the public adjuster's fee. The commenter

states that this information is already clearly discussed with policyholders on many specific occasions and does not need to be inserted into the agreement. The commenter states that under SB 127, rulemaking authority was granted to the commissioner in several limited and specific areas of the statute. The commenter further states that the changes in §19.708(b)(12) are firmly outside the scope of the statutorily granted authority for rulemaking pursuant to SB 127 and should therefore be set aside.

AGENCY RESPONSE: The department disagrees. As explained in the legislative bill analysis for SB 127, the legislative intent of SB 127 was, in part, to add a structure to regulate the activities of public insurance adjusters. As further explained in the 2003 adoption order for these rules, the legislature's public protection goals in SB 127 included establishing requirements for prescribing contract terms. The changes in the adopted rules are consistent with the purpose of the legislation as well as the goals reflected in the original rules adopted by the commissioner. The adoption is also consistent with the general rulemaking authority granted by the statute. Section 29 of SB 127 states, "The commissioner may adopt reasonable and necessary rules to implement this article, including rules" covering several areas listed in the bill. The Texas Code Construction Act states that "including" is a "term of enlargement and not of limitation or exclusive enumeration," and its use "does not create a presumption that components not expressed are excluded" (See Texas Government Code §311.005(13)). The specific areas listed in Section 29 of SB 127 are not the only topics for which the commissioner may adopt rules to implement the law. Accordingly, the plain text of SB 127 supports the proposed amendment, and remains aligned with the purpose of the legislation.

However, the department recognizes that the requirement may be applicable only in certain instances, and thus changes the text to require public insurance adjusters to provide information about whether payments issued by insurers prior to the effective date of the contract will be included in commission calculations when applicable.

§19.708(b)(13)(B)

COMMENT: A commenter requests that this section be struck or modified based on the assertion that the section is not necessary and overly burdensome. The commenter states that this information is already discussed in many settings with consumers and therefore is not critical to the formation of a contract.

AGENCY RESPONSE: The department disagrees and declines to make a change. The section is consistent with the public protection goals for SB 127, which granted the commissioner authority to adopt these rules, by providing additional clarity for both parties entering into the contract. Also, the draft contract provided by the department under adopted §19.708(d) may decrease any perceived burden by providing standard language that may be used by licensed public insurance adjusters in order to comply with applicable laws of the Insurance Code and applicable rules of the Texas Administrative Code.

§19.708(b)(13)(D)

COMMENT: A commenter requests that this section be struck or modified. The commenter states that the section should only apply to hourly contracts and not contracts performed on a percentage basis. The commenter also states that the vast majority of contracts with insureds will not find this type of information applicable to their circumstances.

AGENCY RESPONSE: The department agrees that the proposed section can be modified to apply to hourly contracts, and has changed the section accordingly.

§19.708(b)(13)(E)(i) - (iv)

COMMENT: A commenter requests that this section be struck or modified. The commenter states that the section is overly burdensome and not possible in many instances since public adjusters are not privy to the amounts paid to consumers before the date of a public insurance adjuster's contract. The commenter also states that placing detailed information on the time spent for each service is not appropriate for claims that are being handled on a percentage basis.

AGENCY RESPONSE: The department agrees in part. The adopted section is modified so that it is not applicable to claims handled on a percentage basis.

§19.713(b)(11)

COMMENT: A commenter requests that this section be struck or modified. The commenter states the section is unfounded in law or statute. The commenter states that requiring a public adjuster to disclose the terms, conditions, and fees associated with the adjuster's contract to members of the public will expose confidential information privileged to a business and result in competitive harms.

AGENCY RESPONSE: The department agrees that the section can be deleted, on the grounds that it is unnecessary to the overall purpose of the proposed rules. The department has changed the section accordingly.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: None

For with changes: None

Against: Texas Association of Public Insurance Adjusters (TAPIA)

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§4102.004, 4102.005, 4102.103, 4102.104(a), 4102.104(b), and 36.001. Section 4102.004 provides that the commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 4102, including rules regarding: the qualification of license holders, in addition to those prescribed by Insurance Code Chapter 4102, that are necessary to promote and protect the public interest; the regulation of the conduct of license holders; the prescription of fees required by §4102.066; and the regulation of advertisements under §4102.113 and the definition of "advertisement" as the term is used in that section. Section 4102.005 provides that the commissioner by rule shall adopt: a code of ethics for public insurance adjusters that fosters the education of public insurance adjusters concerning the ethical, legal, and business principles that should govern their conduct; recommendations regarding the solicitation of the adjustment of losses by public insurance adjusters; and any other principles of conduct or procedures that the commissioner considers necessary and reasonable. Section 4102.103 provides that a license holder may not, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a contract, in writing, on a form approved by the commissioner, executed in duplicate by the license holder and the insured or the insured's duly authorized representative; and that a license holder may not use any form of contract that is not approved by the commis-

sioner. Section 4102.103 also provides that the contract must contain a provision allowing the client to rescind the contract by written notice to the license holder within 72 hours of signature, must include a prominently displayed notice in 12-point boldface type that states "WE REPRESENT THE INSURED ONLY," and that the commissioner by rule may require additional prominently displayed notice requirements in the contract as the commissioner considers necessary. Section 4102.103 also provides that one copy of the contract shall be kept on file in this state by the license holder and must be available at all times for inspection, without notice, by the commissioner or the commissioner's duly authorized representative. Section 4102.104(a) provides that, except as provided by §4102.104(b), a license holder may receive a commission for service provided under Chapter 4102 consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation, and the total commission received may not exceed 10 percent of the amount of the insurance settlement on the claim. Section 4102.104(b) provides that a license holder may not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim on which the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy under §862.053. Section 4102.104(b) also provides that the license holder is entitled to reasonable compensation from the insured for services provided by the license holder on behalf of the insured, based on the time spent on a claim that is subject to this subsection and expenses incurred by the license holder, until the claim is paid or the insured receives a written commitment to pay from the insurer. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§19.701. *Definitions.*

(a) Words and terms defined in Insurance Code Chapter 4001 shall have the same meaning when used in this subchapter.

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

(1) **Commission**--Any amount received by a public insurance adjuster for service provided under Insurance Code Chapter 4102, consisting of an hourly fee, a flat rate, a percentage of the total amount paid by the insurer to resolve a claim, or another method of compensation, including expenses, direct costs, or any other costs accrued by the public insurance adjuster, not to exceed 10 percent of the amount of the insurance settlement on the claim.

(2) **Corporation**--A legal entity that is organized under the business corporations laws or limited liability company laws of this state, another state, or a territory of the United States. The licensing and regulation of a limited liability company is subject to all provisions of this subchapter that apply to a corporation licensed under this subchapter.

(3) **Partnership**--An association of two or more persons organized under the partnership laws or limited liability partnership laws of this state, another state, or a territory of the United States. The term includes a general partnership, limited partnership, limited liability partnership, and limited liability limited partnership.

(4) **Public Insurance Adjuster**--A person licensed under Insurance Code Chapter 4102 or §19.704 of this subchapter (relating to

Public Insurance Adjuster Licensing). A licensed public insurance adjuster may be otherwise referred to as a "license holder" or "licensee" in this subchapter.

§19.708. *Public Insurance Adjuster Contracts.*

(a) A public insurance adjuster may not, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a written contract executed in duplicate by the licensee and the insured or the insured's duly authorized representative.

(b) A public insurance adjuster's written contract with an insured must contain:

(1) the name, address, and license number of the public insurance adjuster negotiating the contract and, if applicable, the name, address, and license number of the public insurance adjuster's employing public insurance adjuster, with each page of the contract prominently displaying the license number(s);

(2) the public insurance adjuster's telephone and fax number, including area code;

(3) the mailing and physical addresses to which notice of cancellation and all communications to the public insurance adjuster may be delivered;

(4) if any part of the contract or solicitation is made via the Internet, the email and website address to which notice of contract cancellation and all communications to the public insurance adjuster may be delivered;

(5) the date and time the contract was signed;

(6) for each nonresident public insurance adjuster named in the contract, the name and address of the nonresident public insurance adjuster's agent for service of process;

(7) the following separate statements in 12-point bold type on the signature page of the contract:

(A) "NOTICE: THE INSURED MAY CANCEL THIS CONTRACT BY WRITTEN NOTICE TO THE PUBLIC INSURANCE ADJUSTER WITHIN 72 HOURS OF SIGNATURE FOR ANY REASON.";

(B) "WE REPRESENT THE INSURED ONLY."; and

(C) "YOU ARE ENTERING INTO A SERVICE CONTRACT. YOU ARE BEING CHARGED A FEE FOR THIS SERVICE. YOU DO NOT HAVE TO ENTER INTO THIS CONTRACT TO MAKE A CLAIM FOR LOSS OR DAMAGE ON A POLICY OF INSURANCE.";

(8) the statement: "If the insurance carrier pays or commits in writing to pay to the insured the policy limits of the insurance policy under Insurance Code Article 6.13 or §862.053 within 72 hours of the loss being reported to the insurer, the public insurance adjuster is not entitled to compensation based on a percentage of the insurance settlement, but is entitled to reasonable compensation for the public insurance adjuster's time and expenses provided to the insured before the claim was paid or the written commitment to pay was received.";

(9) the statement: "NOTICE: A public insurance adjuster may not participate directly or indirectly in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the public insurance adjuster or engage in any other activities that may reasonably be construed as presenting a conflict of interest, including soliciting or accepting any remuneration from, or having a financial interest in, any salvage firm, repair firm, or other firm that obtains business in connection with any claim the public insurance adjuster has a contract or agreement to adjust.";

(10) on the first or second page of the contract, the following English and Spanish notices in 10-point bold type:

(A) "IMPORTANT NOTICE: You may contact the Texas Department of Insurance to get information about public insurance adjusters, your rights as a consumer, or information about how to file a complaint by calling 1-800-252-3439; or you may write the Texas Department of Insurance, at PO Box 149104, Austin, Texas 78714-9104, or contact the department via Fax 512-475-1771.";

(B) "ADVISOR IMPORTANTE: Puede comunicarse con el Departamento de Seguros de Texas para obtener información acerca de ajustadores públicos de seguros, sus derechos como consumidor, o información sobre cómo presentar una queja llamando 1-800-252-3439; o puede escribir al Departamento de Seguros de Texas, en PO Box 149104, Austin, Texas 78714-9104, o comunicarse con el departamento a través de Fax 512-475-1771.";

(11) a statement that under any method of compensation, the total commission payable to the public insurance adjuster, including expenses, direct costs, or any other costs accrued by the public insurance adjuster, must not exceed 10 percent of the amount of the insurance settlement;

(12) if applicable, a statement disclosing how payments issued prior to the effective date of the contract will be used in determining compensation to the public insurance adjuster; and

(13) a clear and prominent statement of the public insurance adjuster's commission including:

(A) the method of calculating the commission for the public insurance adjuster, whether an hourly rate, flat fee, percentage of settlement, or another method of compensation, specifically:

(i) if an hourly rate, the contract must state the hourly rate and how it will be applied to hours of service provided by the public insurance adjuster to calculate the amount payable;

(ii) if a flat fee, the contract must state the amount that will be payable to the public insurance adjuster;

(iii) if a percentage, the contract must state the exact percentage that will be applied to the settlement on the claim to calculate the amount payable to the public insurance adjuster; or

(iv) if another method of calculation is chosen, the contract must include a detailed explanation of how the amount payable will be determined based on services provided by the public insurance adjuster;

(B) a general description of services the public insurance adjuster will provide under the contract;

(C) a description of the claim and property damage, location, and event date;

(D) if based on an hourly rate, a provision that the public insurance adjuster will provide an invoice for services that includes a detailed listing of services provided and separate costs payable to the public insurance adjuster as part of the commission based on the claim settlement, including expenses, direct costs, and any other accrued costs.

(c) The contract must not contain any terms or conditions that have the effect of limiting or nullifying any requirements of the Insurance Code, this subchapter, or other rules of the department.

(d) All public insurance adjusters in Texas must use a written contract that is in the form prescribed by the department and that complies with all relevant Insurance Code requirements and department

rules. Public insurance adjusters must select from the following contract form options:

(1) a standard language contract developed by the department, identified by FIN 535; or

(2) a contract filed and approved by the department prior to use.

(e) All contracts must be submitted with an original adjuster license application or an application for renewal to the department's Agent and Adjuster Licensing Office. Contracts also must be submitted to the office upon any modification or amendment of terms or conditions between license renewals.

(f) The failure by a public insurance adjuster or other individual to use a properly authorized and approved contract may result in suspension, nonrenewal, revocation of the adjuster's license, or other administrative penalty.

§19.713. *Public Insurance Adjuster Code of Ethics.*

(a) This section states legal and ethical requirements that are of prime importance for public insurance adjusters' professional conduct. This section does not exhaust the legal or ethical requirements that govern public insurance adjusters. This section details requirements similar to the codes of ethics adopted by local and national public insurance adjusters' professional organizations.

(b) All public insurance adjuster licensees must comply with the following requirements:

(1) Licensees must conduct business fairly with their clients, insurance companies, and the public.

(2) Licensees must not employ any improper solicitation that would violate Insurance Code Chapter 4102 and applicable rules.

(3) Licensees must not make a misrepresentation, in violation of Insurance Code Chapter 4102, to an insured or to an insurance company in the conduct of their actions as public insurance adjusters.

(4) Licensees must charge only commissions that comply with the requirements set forth in Insurance Code Chapter 4102 and applicable rules.

(5) Licensees must complete continuing education as required by Insurance Code Chapter 4102 and this subchapter.

(6) Licensees must have appropriate knowledge and experience for the work they undertake and should obtain competent technical assistance, when necessary, to help handle claims and losses outside their area of expertise.

(7) Licensees must not engage in the unauthorized practice of law.

(8) Licensees must avoid conflicts of interest, including acquiring any interest in salvaged property or participating in any way, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee, except as allowed in Insurance Code Chapter 4102 and this subchapter.

(9) Licensees must not disseminate or use any form of agreement, advertising, or other communication, regardless of format or medium, in this state that is harmful to the profession of public insurance adjusting and that does not comply with Insurance Code Chapter 4102, this subchapter, or other provisions of the Insurance Code.

(10) Licensees must use only contracts that comply with Insurance Code Chapter 4102 and this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6327



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER C. VOLATILE ORGANIC

COMPOUND TRANSFER OPERATIONS

DIVISION 4. CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II) AT MOTOR VEHICLE FUEL DISPENSING FACILITIES

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendments to §§115.240, 115.242 - 115.246; new §115.241; and repeal of §§115.241, 115.247, and 115.249.

Sections 115.241, 115.245, and 115.246 are adopted *with changes* to the proposed text. Amended §115.240 and §§115.242 - 115.244 and the repeal of §§115.241, 115.247, and 115.249 are adopted *without changes* to the proposed text and, therefore, will not be republished. The proposal was published in the May 10, 2013, issue of the *Texas Register* (38 TexReg 2823).

The commission will submit the amendments, new section, and repeals to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The Federal Clean Air Act (CAA) amendments of 1990 require states to submit a revision to the SIP no later than November 15, 1992 that included a Stage II Vapor Recovery Program to control gasoline vapors from the refueling of motor vehicles for areas classified as moderate and above. A Stage II vapor recovery SIP was first approved for Texas on October 16, 1992 and later revised on November 10, 1993. The Stage II Vapor Recovery Program uses technology to prevent gasoline vapors from escaping during refueling. Gasoline vapors are volatile organic compounds (VOC) that can react with nitrogen oxides in

the presence of sunlight to form ozone. As part of the control strategy for ozone attainment, the EPA mandated that Stage II refueling requirements apply to all public and private gasoline dispensing facilities (GDFs) that dispense 10,000 gallons or more of gasoline per month. The TCEQ applied a more stringent throughput standard in the ozone nonattainment counties by requiring GDFs constructed after November 15, 1992 to install Stage II vapor recovery regardless of throughput. Diesel fuel dispensers were still exempt from the rule, and the rule also left in place exemptions for equipment used exclusively for the fueling of aircraft, watercraft, or implements of agriculture. The original Stage II vapor recovery rules relied on the California Air Resources Board (CARB) certification procedures for vapor recovery equipment. The Stage II SIP revision was revised again November 6, 2002, to require more frequent testing and more on-site evaluation of testing performed on vapor recovery systems at GDFs, as well as a phase-in schedule to retrofit or install onboard refueling vapor recovery (ORVR) compatible Stage II vapor recovery systems. Stage II vapor system efficiency was compromised by ORVR equipped vehicles unless the system had ORVR compatible hardware. The Stage II SIP revision was again revised on March 23, 2005, to offer an expanded definition for "ORVR compatible" that allowed for the use of other technologies for controlling gasoline vapors. On June 27, 2007, the commission adopted changes to 30 TAC Chapter 115 to add language exempting facilities from installing Stage II equipment if the facility could demonstrate that refueling at that facility involved a fleet of 95% or more ORVR-equipped vehicles. This rule change was submitted as a SIP revision with no change to the Stage II SIP narrative. The June 27, 2007, rule change is still under consideration by the EPA and has not been approved. The EPA expressed concerns that the language justifying the exemption needed to be more descriptive and explanatory. Upon the adoption of the this rulemaking concerning decommissioning, the commission will concurrently request withdrawal of the June 27, 2007, rule change, regarding exemptions for facilities that can demonstrate ORVR-equipped vehicle fleets that is currently pending EPA review, since that exemption will no longer be necessary.

CAA, §202(a)(6) also provides that the EPA may revise or waive the application of Stage II requirements if the EPA determines that ORVR is in widespread use through the motor vehicle fleet. In the May 16, 2012, issue of the *Federal Register* (77 FR 28772), the EPA published a final rulemaking for 40 Code of Federal Regulations (CFR) Part 51 determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. Vehicle ORVR systems are passive systems that force gasoline vapors displaced from a vehicle's fuel tank during refueling to be directed into a carbon canister holding system within the vehicle and ultimately to the engine where the vapors are consumed. The EPA required ORVR systems to be phased in beginning with 1998 model-year light-duty gasoline vehicles and as of 2006, all new light- and medium-duty gasoline vehicles are equipped with ORVR. An initial analysis using the EPA Motor Vehicle Emissions Simulator 2010a model shows that the benefits from ORVR alone will be greater than the benefits from Stage II alone by the year 2010 in the Houston-Galveston-Brazoria (HGB) area, 2012 in the Dallas-Fort Worth (DFW) area, 2013 in the Beaumont-Port Arthur (BPA) area, and 2014 in the El Paso area. Vehicle ORVR systems are monitored through a vehicle's on-board diagnostic system making the system much more cost-effective than the required monitoring and testing of Stage II systems.

The determination that ORVR technology is in widespread use allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as moderate and above for the ozone National Ambient Air Quality Standard (NAAQS). States that have implemented a Stage II program may revise their Stage II SIP demonstrating that the air quality will be maintained after removing the Stage II equipment. The adopted rule revision would revise Chapter 115, Subchapter C, Division 4 to specify that owners or operators of new GDFs are not required to install Stage II equipment and to require owners or operators of existing GDFs in the current program areas to properly decommission Stage II equipment. According to the EPA's guidance document: *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*, issued August 7, 2012, by the EPA's Office of Air Quality Planning and Standards (EPA-457/B-12-001), the commission will need to demonstrate under FCAA, §110(l) that air quality will not be affected by the decommissioning of, or failure to install, Stage II equipment. This demonstration will be incorporated into the corresponding SIP revision and is discussed further in the *Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)* portion of this preamble.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The Stage II program is a FCAA-specified VOC control strategy for ozone nonattainment areas designated as serious and above. Under FCAA, §110(l), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The EPA has to approve a SIP revision that removes or modifies Stage II gasoline refueling vapor control measures if the EPA concludes that a state's submittal provides that the removal of Stage II controls would not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the FCAA. The executive director has performed an assessment of the exact amount of benefit loss from removing Stage II and any effect on air quality programs in the four Texas Stage II areas using the method documented in the EPA's guidance referenced previously in this preamble. An analysis for years 2012 through 2030 found that for all years the losses represent less than one-half of one percent of the total VOC inventory. The benefit losses for removing Stage II are small in 2012 and decrease rapidly as the percentage of vehicles equipped with ORVR increase over time. The assessment found that small changes to the VOC inventories due to the removal of Stage II do not significantly change any of the results of the Texas air quality plans. The detailed analysis, which demonstrates that removal of Stage II requirements does not interfere with attainment or maintenance of the NAAQS, is included in the Stage II SIP revision, *Stage II Vapor Recovery Program State Implementation Plan Revision*, proposed April 23, 2013, that corresponds with this rule revision (Project Number 2013-002-SIP-NR).

Section by Section Discussion

§115.240, Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment

The commission adopts amendments to §115.240 by adding definitions for "decommission" and "gasoline dispensing facility." The term "decommission" is defined as the permanent removal of all Stage II vapor recovery controls at a GDF. The term "gasoline dispensing facility" is defined as a location that dispenses

gasoline to motor vehicles and includes retail outlets and private and commercial outlets. The definitions in this section have been re-numbered as needed.

§115.241, Emission Specifications

The commission adopts the repeal of existing §115.241. The emission specifications in §115.241 are no longer necessary because installation of Stage II equipment will not be required at any GDF upon adoption of this rulemaking. This section required that the transfer of gasoline from a stationary storage container to a motor vehicle fuel tank be allowed only if an approved Stage II vapor recovery system had been installed at the GDF.

§115.241, Decommissioning of Stage II Vapor Recovery Equipment

The commission adopts new §115.241 to provide requirements for the time line and process for decommissioning of Stage II vapor recovery controls at GDFs. The new section establishes that the decommissioning process may begin 30 calendar days after the effective date of the EPA's approval of the repeal of the Stage II vapor recovery requirement and the EPA's approval of the corresponding SIP revision. The 30-calendar day time frame allows TCEQ regional office staff, on-site supervisors, licensed contractors, and owners and operators of GDFs to coordinate decommissioning activities. The commission adopts this delayed implementation for decommissioning because the EPA has stipulated that Stage II controls cannot be removed until the EPA has approved a State's Stage II decommissioning rule and SIP revisions.

The new language includes several independent notification requirements and procedural activities that must occur during the decommissioning process. Owners and operators of GDFs that decommission their Stage II vapor recovery equipment are required to provide three different notifications to ensure that decommissioning activities may be appropriately enforced. First, owners and operators must notify the appropriate TCEQ regional office and local government with jurisdiction where the GDF is located of their intent to decommission at least 30-calendar days prior to the beginning of the decommissioning activity. The notification of intent to decommission provides information on the GDF location, the owner and operator of the GDF, the on-site supervisor who will be directing the decommissioning activities, the type of system installed at the GDF, as well as a projected start date for decommissioning activity. On-site supervisors are generally the responsible individuals involved in the Stage II vapor recover equipment installation and decommissioning and carry underground storage tank Class A or Class A/B licenses. If decommissioning activities are not initiated within 180 calendar days after the date the notice of intent to decommission is received by the TCEQ, the owner or operator of the GDF must re-file the notice of intent to decommission for the GDF location. This will provide additional flexibility for GDF locations that encounter problems with contractors or other logistical problems, while ensuring that TCEQ and local government staff are kept appropriately informed of decommissioning activity.

The second notification required by the section is a notification 24 - 72 hours prior to start of decommissioning activity to enable commission or local government staff to schedule site visits to ensure appropriate enforcement of decommissioning activity. The last notification owners and operators are required to submit to the TCEQ regional office and local government with jurisdiction where the GDF is located is a decommissioning completion notification required no later than 10 calendar days after

decommissioning activity is completed. This decommissioning completion notification provides for the submittal of information regarding appropriate certifications and license information for the on-site supervisor who supervised testing and required test results demonstrating that no leaks were detected. The adopted rules include additional detail as to the content of these notices to ensure compliance with the decommissioning requirements.

The section also describes requirements for decommissioning, including the proper procedures for disconnecting and capping parts of the system and a list of test procedures to ensure the prevention of leaking vapors and fluids. The TCEQ will develop a checklist: *Stage II Decommissioning Checklist and Submittal Form*, which will include all applicable decommissioning requirements included in this rulemaking. The requirements were developed using the Decommissioning Stage II Vapor Recovery Piping section in the Petroleum Equipment Institute's (PEI) publication, *Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle-Fueling Sites*, PEI/RP300-09, as a reference. PEI's practices are generally accepted and regarded by industry stakeholders as the appropriate methods for successfully decommissioning the equipment. The adopted rules revised proposed requirements to allow hanging hardware equipment to be replaced through attrition or by August 31, 2018, at the latest. The adopted rules also corrected the publication date from November 2002 to December 2002 of the *Vapor Recovery Test Procedures Hand Book*, RG-399, that is used for conducting the TXP-102 and TXP-103 test procedures.

Lastly, new subsection (c) establishes deadlines for the decommissioning processes. In response to comments, the commission adopts subsection (c)(1) that requires that all decommissioning activity at a specific GDF location be completed within 30-calendar days after the date decommissioning activity was initiated. Additionally, the commission adopts subsection (c)(2) requires that all GDFs in the state complete all decommissioning activity no later than August 31, 2018.

§115.242, Control Requirements

The commission adopts revisions to §115.242 providing that after May 16, 2012, the owner or operator of newly constructed GDF is no longer required to install Stage II vapor controls on its gasoline dispensing equipment. May 16, 2012, is the date the EPA issued its final rule determining that vehicle ORVR technology is in widespread use for purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. Since the commission is mandating decommissioning of all Stage II equipment by August 31, 2018, requiring owners or operators of new GDFs to install Stage II equipment would provide little to no measurable benefit for air quality. GDFs that did not have Stage II vapor controls as of May 16, 2012, due to a confirmed exemption because of low monthly throughput or low average monthly throughput are not subject to the requirements of this section. Owners and operators of GDFs with installed Stage II equipment have the option of decommissioning Stage II equipment in compliance with the requirements adopted in §115.241 or continuing to operate with the current Stage II equipment until the mandatory removal date of August 31, 2018. The mandatory removal date was established after stakeholders requested that the commission provide five to six years prior to decommissioning to allow for Stage II equipment installed at the time of the EPA's rule being finalized to be used through its expected life use. The mandatory date has also been established since finding compliant replacement equipment will be more difficult and the number of licensed testers will be reduced making it difficult for owners

and operators of GDFs with Stage II equipment to comply with existing requirements. The TCEQ requested comment on the mandatory decommissioning date of August 31, 2018, and comment was received supporting the end date by which all Stage II vapor control equipment must be appropriately removed.

The adopted language also states that if an owner or operator elects to retain the Stage II vapor controls, the GDF will continue to meet the requirements of this division until the Stage II vapor controls are properly removed from the GDF. To address the voluntary installation of Stage II equipment at GDFs not located in the affected counties, new language was incorporated requiring all owners of GDFs, regardless of location in the state, to remove all Stage II equipment by August 31, 2018. The adopted language replaces repealed language requiring all GDFs in the counties listed in §115.249 to comply with this division. This rule revision provides that no GDF in any county would have Stage II equipment installed or operational after August 31, 2018. Voluntary Stage II installations at GDFs outside of affected counties have not been included in any modeling for past SIP activities and have no impact on the SIP revision associated with this rulemaking.

The adopted revisions to §115.242 delete paragraphs (10) - (12), because GDFs no longer need to meet these requirements. Paragraph (10) corresponded to exemptions in §115.247, which was also repealed. Paragraph (11) related to the installation of approved systems if CARB certification of a previously installed system was revoked. Finally, paragraph (12) required facilities to notify the regional office with jurisdiction of any Stage II vapor recovery system installation.

§115.243, Alternate Control Requirements

The adopted revision to §115.243 updates references to §115.242, which was revised to authorize the decommissioning of Stage II vapor controls.

§115.244, Inspection Requirements

The adopted revision to §115.244 updates references to §115.242, which was revised to authorize the decommissioning of Stage II vapor controls and updates a reference to gasoline dispensing facilities to correspond to the new definition of this term.

§115.245, Testing Requirements

The commission adopts amended §115.245 to require that prior to the decommissioning deadline of August 31, 2018, owners or operators of GDFs that elect to install, repair, replace, or retain the Stage II vapor controls must comply with the requirements of this section. The adopted language clarifies that owners or operators of GDFs must continue to maintain and test the facility's Stage II vapor control equipment to ensure it is working properly and capturing gasoline vapors.

§115.246, Recordkeeping Requirements

The commission adopts amended §115.246 to update references to gasoline dispensing facilities, to correspond to the new definition of this term, and to provide that records sufficient to demonstrate compliance with decommissioning requirements be kept on site for five years following the completion of decommissioning activities. Although other recordkeeping requirements in this subchapter are required to be maintained for two years or indefinitely, the high level of decommissioning activity will likely require inspections and investigations beyond a two-year time frame.

In response to comments to clarify the recordkeeping requirements, adopted §115.246 is restructured and streamlined to avoid confusion. Records that must be maintained, proposed as §115.246(1) - (7), are provided under adopted subsection (a) and include the same content requirements as proposed. The records retention schedule and availability requirements, proposed as §115.246(8), are adopted as subsection (b). Adopted §115.246(b)(1) specifies that the records required under subsection (a)(1), (2), (5), and (7) must be maintained until five years following the date of completion of decommissioning. Records required under subsection (a)(7) are those records associated with the decommission process. The records specified under subsection (a)(1), (2), and (5) are existing record requirements that were previously required to be maintained indefinitely. However, in response to comments, the adopted rule is revised to require that the records under subsection (a)(1), (2), and (5) be maintained until five years following the date of completion of decommissioning. Adopted §115.246(b)(1) also specifies that records required under subsection (a)(3), (4), and (6) must be maintained for two years as was proposed. The records contained in §115.246(a)(3), (4), and (6) are existing record requirements that are tied to specific events, and records generated from these events will cease once decommissioning is completed. Therefore, owners or operators will only be required to maintain the records under §115.246(a)(3), (4), and (6) for two years following the most recent event preceding decommissioning.

The current records availability requirements, proposed as §115.246(8)(A) and (B), are adopted as §115.246(b)(2) and (3). The adopted records availability requirements are substantively unchanged from the proposed language.

§115.247, Exemptions

The commission repeals §115.247 because exemptions from the Stage II requirements are longer applicable to this division. Since Stage II is no longer required, the exemptions for GDFs that dispense gasoline to aircraft, watercraft, and agricultural equipment; GDFs that began construction before November 15, 1992 and dispense less than 10,000 gallons a month; and GDFs that refuel a motor fleet that is 95% ORVR equipped are no longer necessary. The adopted language in §115.242(a) makes clear that GDFs that did not have Stage II vapor controls installed as of May 16, 2012, are not subject to this division. Therefore, GDFs that qualified for these exemptions are not subject to the rule by the repeal of this exemption section.

§115.249, Counties and Compliance Schedules

The commission repeals §115.249 because upon EPA approval of the Stage II Vapor Recovery Program SIP Revision, *Stage II Vapor Recovery Program State Implementation Plan Revision*, proposed April 23, 2103, Stage II will no longer be required at GDFs in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties. Additionally, the compliance date of April 1, 2007, for GDFs to become ORVR compatible has passed.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce

risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rulemaking amends §§115.240, 115.242 - 115.246, creates new §115.241, and repeals §§115.241, 115.247, and 115.249. The revisions to Chapter 115 specify that new GDFs are not required to install Stage II equipment and allow existing GDFs in the current program areas to properly decommission Stage II equipment.

FCAA, §182(b)(3) provides that for ozone nonattainment areas classified as serious or above, states must revise their SIP to require all owners or operators of gasoline dispensing systems operating after November 15, 1990 to install a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. FCAA, §202(a)(6) requires the EPA to implement requirements for ORVR. Both Stage II and vehicle ORVR are types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. FCAA, §202(a)(6) also provides that the EPA may revise or waive the application of Stage II requirements if it determines that ORVR is in widespread use throughout the motor vehicle fleet. As mentioned previously in this preamble, the EPA published final rulemaking for 40 CFR Part 51 determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet on May 16, 2012 (77 FR 28772). This action allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS.

The adopted rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410.

States are not free to ignore the requirements of 42 USC, §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The adopted rulemaking implements the EPA's rulemaking that was published May 16, 2012 (77 FR 28772), for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet and waiving the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. Revisions to Chapter 115 specifying that owners of new GDFs are not required to install Stage II equipment and to allow existing owners of GDFs in the current program areas to properly decommission Stage II equipment is a necessary and required component of developing the SIP for nonattainment areas as required by 42 USC, §7410.

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

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

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

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

The specific intent of the adopted rulemaking allows owners of new GDFs not to install Stage II equipment and allows owners of existing GDFs in the current program areas to properly decommission Stage II equipment. The EPA may grant the removal and waiver of Stage II equipment due to the widespread use of ORVR in the overall vehicle fleet. The adopted rules permit these changes to occur in Texas. As explained previously in this preamble, vehicles equipped with ORVR technology provide greater pollution reduction benefits than Stage II vapor control systems and are more cost-effective. The adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because although the rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis and no changes were made.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the adopted rulemaking is to specify that new GDFs are not required to install Stage II equipment and to allow existing GDFs in the current program areas to properly decommission Stage II equipment as required by 42 USC, §7410. FCAA, §182(b)(3) provides that for certain nonattainment areas, states must revise their SIP to require all owners or operators of GDFs operating after November 15, 1990 to install a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. FCAA, §202(a)(6)

also required the EPA to implement requirements for vehicle ORVR. Both Stage II and vehicle ORVR are types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. FCAA, §202(a)(6) also provided that the EPA may revise or waive the application of Stage II requirements if it determined that ORVR was in widespread use throughout the motor vehicle fleet.

As mentioned previously in the preamble, the EPA finalized a rulemaking on May 16, 2012 (77 FR 28772), for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. This action allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. The EPA may grant the removal and waiver of Stage II equipment due to the widespread use of ORVR in the overall vehicle fleet. The adopted rulemaking and corresponding SIP revision permits these changes to occur in Texas. As explained previously in the preamble, vehicles equipped with ORVR technology provide greater pollution reduction benefits than Stage II control systems and are more cost-effective. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The adopted rules fulfill the FCAA requirement to decommission Stage II equipment in nonattainment areas. These revisions will result in VOC emission reductions in ozone nonattainment areas, which may contribute to the timely attainment of the ozone standard and reduced public exposure to VOC emissions. Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found it identified in the Coastal Coordination Act Implementation Rules 31 TAC §505.11(b)(2) or (4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. 31 TAC §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. 31 TAC §505.11(b)(4) applies to all other actions.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council Advisory Committee and determined that the revisions are consistent with CMP goals and policies, will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the revisions will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received and no changes were made to the assessment.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

Public Comment

The commission offered public hearings in: El Paso on May 28, 2013; Beaumont on May 30, 2013; Houston on May 31, 2013; Arlington on June 3, 2013; and Austin on June 4, 2013. The comment period closed on June 10, 2013. Oral comments were received from Tarrant County. The commission received written comments from Arid Technologies, Buc-ee's Ltd. (Buc-ee's), Texas Chemical Council (TCC), Texas Food and Fuel Association (TFFA), and Texas Oil and Gas Association (TxOGA).

TxOGA incorporated TFFA's comments by reference. Buc-ee's, TCC, TFFA, and TxOGA expressed overall support for the proposed rule change, and Arid Technologies submitted comments opposing the rule change. Changes to the rule were suggested by all six commenters.

General Comments

Arid Technologies questioned whether the TCEQ considered storage tank breathing loss in a non-Stage II environment.

The commission focused modeling in the associated SIP revision to the effects of Stage II decommissioning only in areas that have Stage II requirements in place in Texas as recommended in the EPA guidance document, *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*, August 7, 2012. Breathing losses from storage tanks are a separate source of emissions from refueling and are not included as of the assessment on the decommissioning of Stage II. The EPA guidance document did not include a requirement for including storage tank breathing losses. No change to the rule has been made in response to this comment.

Arid Technologies suggested that enhancing Stage II systems will provide better emission reductions from refueling and storage tank emissions.

The ORVR systems on vehicles are designed to replace Stage II vapor recovery systems for capturing the emissions during vehicle refueling and are already required by federal law, as discussed elsewhere in this preamble. Once ORVR systems are in widespread use, the Stage II systems become redundant and more costly to maintain. Any future improvements to emission control systems for vehicle refueling will involve improving the effectiveness of these ORVR systems currently found in vehicles. In addition, the commission did not include Stage II vapor control enhancement as part of the proposed Stage II decommissioning rule revision. Consideration of Stage II vapor recovery enhancements is outside the scope of this rulemaking. No change to the rule has been made in response to this comment.

TFFA expressed support for most aspects of the changes to the Stage II Vapor Recovery Program. TFFA offered assistance in developing an owner/operator checklist to facilitate compliance.

The commission appreciates TFFA's support and will continue to work with all stakeholders to ensure successful implementation of decommissioning activities.

TFFA commented that it supports the continued inspection and appropriate testing for Stage II vapor recovery systems that continue in service until the final decommissioning deadline and would like for the inspection and testing activities to be counted towards SIP credit until such time as those systems are finally removed.

The commission has developed the rule and SIP revisions for the implementation of decommissioning of Stage II vapor recovery to ensure that emission reduction plans are not affected in any area. Using the EPA's *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*, August 7, 2012, the commission determined that the inspection, testing, and maintenance of Stage II vapor recovery equipment that continues in service until August 31, 2018, will prevent a harmful gap in area-wide emissions control and will not affect compliance with the NAAQS. Neither the guidance nor the Stage II SIP provide for continuing of SIP credit once ORVR widespread use has been determined and decommissioning of Stage II vapor control equipment has begun. No changes have been made as a result of this comment.

TCC and TxOGA requested that TCEQ provide clarification as to when the reports required under §115.247(2) are no longer applicable to these exempt facilities, and in particular, whether the report required for 2013 is still required after the rule is finalized.

As stated in the EPA's final rulemaking (77 FR 28772), the EPA further evaluated Stage II exemptions for facilities with throughputs of less than 10,000 gallons per month and determined the exemption rate is still appropriate. To ensure the control requirements outlined in the Stage II SIP are not affected, the commission will require facilities to continue to submit reports until the rule revision becomes effective. No change was made in response to this comment.

Impact of Decommissioning

Arid Technologies stated that decommissioning Stage II vapor control equipment and relying solely on ORVR technology will increase VOC and hazardous air pollutants (HAP) emissions and that motorists in Environmental Justice areas will bear the brunt of increased emissions. The commenter provided a copy of a recent study conducted by Meszler Engineering and submitted to the Maryland Department of Environment that reviews the impact of removing Stage II vapor control equipment to support its claim.

The commission performed an assessment on the removal of Stage II vapor control equipment and included this assessment along with the calculations required by the EPA guidance for assessing the removal of Stage II vapor control programs in the Stage II SIP revision, Chapter 12: *Demonstrating Noninterference Under Federal Clean Air Act, Section 110(l)*. The SIP revision includes an assessment of the effects of decommissioning Stage II equipment on each nonattainment area with Stage II requirements in the state. The assessments were developed using local specific data from each affected area and local variables as required by EPA guidance. The assessment also included a de-

termination of the emissions benefits of both Stage II and ORVR systems, an assessment of widespread use of ORVR, and the effects on air quality plans in all areas with Stage II vapor equipment requirements. The TCEQ found that by 2018 ORVR rule penetration will range from 93 to 95% and from 97 to 98% by 2030 in the four affected areas in Texas.

Each HAP emitted by motor vehicles is a subset of the VOC emissions. Since the VOC emissions from vehicle refueling are effectively controlled by ORVR systems, HAP emissions are also controlled.

In reviewing the Maryland study and other information provided by the commenter, the commission has determined that there are substantial differences between the Maryland assessment and Texas specific data. Additionally, some elements of the EPA's guidance document addressing removal of Stage II programs discussed elsewhere in this preamble make the direct comparison of the Texas assessment and Maryland study ineffective. Differences include: Uncontrolled emission factors of 7.01 pounds (lbs)/100 gallons (gals) in the Maryland study versus a range of 7.47 to 8.51 lbs/100 gals for Texas; ORVR Penetration of 85% in 2013 in the Maryland study versus 85% to 89% in 2014, 94% to 96% for 2020, and 96% to 98% for 2030 for Texas; and, Stage II efficiency of 75% in the Maryland study versus 60% for Texas as recommended by EPA guidance. The results of the Texas specific analyses best assess the Stage II removal in the Texas.

In addition, and as stated earlier in this preamble, the EPA published finalized rulemaking for 40 CFR Part 51 determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet (77 FR 28772). The EPA provided in the final rulemaking for the Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver (77 FR 28781) that decommissioning of Stage II systems will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment under the EPA's NAAQS for ozone. Lastly, the study provided by the commenter did not provide specific information regarding the potential for emission increases in Texas from reliance on ORVR; nor did the study provide any information regarding increased impact to citizens in Environmental Justice areas other than an assertion regarding a lower population of ORVR equipped vehicles. No revision to the rule has been made in response to this comment.

Arid Technologies questioned whether the TCEQ considered the impact of emissions generated during fueling of tanks which do not have ORVR technology, such as motorcycles, boats, and gas cans.

The EPA guidance which includes analyses for ORVR widespread use requires the assessment to include an evaluation of vehicles that are not equipped with ORVR systems. The TCEQ assessment included: 1) the distribution of vehicles into categories of vehicles equipped and not equipped with ORVR including motorcycles; and, 2) the age distribution of ORVR-equipped vehicles to capture the percent of these vehicles that do not have ORVR systems. The percent of ORVR-equipped vehicles will increase for each future analysis year as the pre-ORVR vehicles are retired from the fleet. Data to assess the amount of fuel dispensed to non-road vehicles is not available, and the inclusion of non-road sources is not part of the Stage II vapor control system analysis and not included

in the EPA's guidance of the decommissioning of Stage II vapor control equipment. No revision to the rule has been made in response to this comment.

Decommissioning Requirements

TFFA comments that once a Stage II system has been removed they know of no reason an entity should maintain records relating to the decommissioned system. The commenter indicated that the TCEQ database will continue to show the facilities status as a former Stage II facility and asked if there is a purpose for the information beyond showing this history. TFFA expressed opposition to keeping any records on-site beyond an immediate use, or for an "indefinite period of time," as stated in the proposed rule. TFFA suggests amending §115.246 to clarify that the records, specifically CARB Executive Orders, must be kept on-site indefinitely or until such time as the system has been decommissioned in accordance with §115.242.

The commission agrees that §115.246 of the proposed rule requires clarification. Recordkeeping retention requirements in the existing section vary depending on the type of record. The commission has revised the proposal language within §115.246 by placing proposed §115.246(1) - (7) requirements under adopted subsection (a). The records retention schedule and availability requirements proposed as §115.246(8) are now adopted under adopted subsection (b). The records specified under subsection (a)(1), (2), and (5) are existing records that were required to be maintained indefinitely. The adopted rule will require these records be maintained for five years following the date of decommissioning. The records contained in §115.246(a)(3), (4), and (6) are existing records that must be maintained for two years; however, these records are related to events that will cease once decommissioning has been completed. The adopted rule will require that these records be maintained for two years following the most recent event preceding decommissioning.

Buc-ee's requested clarification whether the notification required by §115.241(b)(1) may be submitted prior to the 30 calendar day window between the EPA approval of the Stage II decommissioning rule and the effective date, if there is effectively a minimum 60-day waiting period from the date of EPA approval before decommissioning activities may commence.

The commission apologizes for confusion on this issue. There is not a 60-day waiting period from the effective date of the EPA's approval. Owners or operators of GDFs may begin submitting notices of intent to decommission on or after the EPA's effective date of their approval of the adopted rulemaking and SIP revision. Owners or operators of GDFs may begin decommissioning activities 30 calendar days after the submittal of notice of intent to decommission. These 30 calendar days will support planning and review activities and provide for adequate compliance oversight. As discussed in the Section by Section portion of the accompanying rulemaking preamble, the commission changed language in adopted §115.241(a) to make clear that owners and operators could begin decommissioning activities 30 calendar days after the effective date of EPA's effective date of their approval of the adopted rulemaking and SIP revision.

TCC and TXOGA commented that requiring operators to notify TCEQ: 1) 30 days before decommissioning; 2) 24 - 72 hours before decommissioning; and 3) ten days after decommissioning is excessive. TCC recommended that TCEQ streamline the notice requirements associated with decommissioning. Specifically, TCC and TXOGA recommended that TCEQ delete the electronic notice requirements.

The notification requirements are necessary to maintain communication between facilities, TCEQ regional staff, and the on-site supervisors and licensed contractors that will be performing the decommissioning and testing of equipment at the facilities. The notifications required prior to the commencement of decommissioning activities provide TCEQ notification that the facility plans to begin decommissioning activities. In addition, the 24 - 72 hour notification provides the facility an opportunity to extend or change decommissioning plans in the event of weather or equipment issues. The ten-day notification after the decommissioning is necessary to provide notice to the TCEQ that all Stage II equipment has been removed, that testing has occurred, and that the final close out activities have occurred. Notifications of these types and durations are typically seen during construction activities and are necessary not only to maintain communication but to promote and enhance compliance oversight. No changes have been made in response to this comment.

TCC and TXOGA commented that §115.241(b)(3)(E), which requires the owner/operator to provide "Stage II vapor recovery system information" is not sufficiently clear and requested that the requirement for "Stage II vapor recovery system information" be struck from the notice requirements.

The commission agrees with the commenter that this phrase could be unclear and has made a change to the rule to clarify that the "Stage II vapor recovery system information" as referenced in §115.241(b)(3)(E) includes the vapor recovery system manufacturer and the CARB Executive Order for that system or other information necessary to provide identifying system information.

TCC and TXOGA commented that proposed §115.241(b)(5)(A) states that notification after decommissioning must include "a certified and signed document with the name, address, and license number of the licensed contractor who performed the decommissioning," and requested clarification on the licensing credentials of the contractor required by this rule.

The commission has made a change to the proposed rule to clarify the licensing credentials of the contractor who performed the decommissioning. The commission changed "licensed contractor" to "on-site supervisor" and requested license numbers for their Class A or Class A/B licenses in §115.241(b)(3)(D) and (4)(D) and (E).

Decommissioning Process

Tarrant County suggested a transition period of relaxed enforcement while entities are in the process of decommissioning Stage II tanks.

The commission has determined that a relaxation of enforcement activity regarding compliance with the testing and inspection of Stage II vapor control equipment is not appropriate. The adopted rule provides for adequate notification and provides facilities a five-year period to plan for and implement decommissioning activities. The TCEQ is committed to working with facility owners to resolve unplanned issues on an individual basis. No revision to the rule has been made in response to this comment.

TFFA commented in support of the final date of decommissioning deadline of August 31, 2018, since this will allow those owners who wish to fully maximize Stage II equipment's useful life and minimize the cost to those companies that have multiple sites with Stage II equipment installed. This date should also allow a more orderly transition to the industry for other issues such as daily and weekly inspections, budgeting for decommissioning

costs, and other ancillary issues related to the use, maintenance, and operation of Stage II vapor recovery systems.

The commission appreciates TFFA's support. Section 115.245 of the adopted rulemaking has been modified to clarify that GDF owners and operators who elect to continue with Stage II systems until August 31, 2018, must also continue to repair, replace, and maintain Stage II vapor control equipment.

Buc-ee's urged the TCEQ to quickly implement the rule revisions necessary to allow for decommissioning of Stage II systems. Currently, facilities are delaying replacing existing dispensers because they do not want to purchase equipment that will need to be removed through the decommissioning process.

The commission appreciates Buc-ee's support and recognizes the difficulties inherent in transitioning from current Stage II requirements and testing. The commission will continue to work with all stakeholders to ensure that proper decommissioning activities are performed upon the EPA's approval. Additionally, the EPA has agreed to a parallel review process of this rulemaking change and accompanying Stage II SIP revision, which may expedite the EPA's approval and allow for entities to decommission as quickly as possible. In order to provide additional clarity and avoid a time gap between the EPA's effective date of the approval of the adopted rulemaking and SIP revision and the date that decommissioning activities may begin at GDFs, the commission revised language in proposed §115.241(a) to clarify the effective date of when GDF owners or operators could begin decommissioning Stage II vapor control equipment at their site. Additionally, §115.41(b)(1)(A) requires that notice of intent to decommission be submitted to the commission at least 30 days prior to the beginning of any decommissioning activity.

Buc-ee's questioned the time frame for when the various requirements of §115.241(b)(4)(A) - (P) should be completed. As currently written, the proposed rule did not stipulate when various components of the decommissioning process should be accomplished. Buc-ee's proposed that §115.241(b)(4) be modified to read as follows: "The owner or operator shall perform and complete all of the following decommissioning activities, as applicable, within 30 days of the initiation of decommissioning."

The commission agrees that the language in the proposed §115.241(b)(4)(A) - (P) requires clarification to provide for a deadline by which the decommissioning activities must be completed. In order to avoid the situation of owners or operators of GDFs partially decommissioning and being required to continue testing and inspection of remaining Stage II equipment at the site, the commission developed the rules requiring that owners and operators of GDFs would decommission entirely once the activity was begun. The commission revised proposed subsection (c) to establish deadlines for the decommissioning processes. The commission adopts subsection (c)(1), which requires all decommissioning activity at a specific GDF location be completed within 30 calendar days after the date decommissioning activity was initiated. Additionally, the commission adopts subsection (c)(2), which requires that all owners or operators of GDFs in the state complete all decommissioning activity no later than August 31, 2018.

Buc-ee's questioned why immediate replacement of the Stage II hanging hardware with conventional, industry-standard hanging hardware, required by §115.241(b)(4)(l), should be necessary if all other applicable portions of §115.241(b)(4) are met. Buc-ee's further commented that if the vacuum motors, vapor return lines, and other Stage II components are removed or plugged, the re-

placement of existing hanging hardware over time, through normal attrition, would not result in a negative environmental impact.

The commission agrees that if the system has been properly decommissioned in accordance with §115.241(b)(4) the continued use of hanging hardware equipment will not have an environmental impact. The commission has made a change to the rule requirement in §115.241(b)(4)(l) to allow owners or operators of GDFs to continue using existing hanging hardware equipment such as hoses, nozzles, swivels, and breakaway components until the equipment is replaced through attrition or by August 31, 2018, at the latest.

TCC and TXOGA commented that the proposed rule states that the "owner/operator of every gasoline dispensing facility that has installed Stage II vapor controls shall complete decommissioning of Stage II vapor controls no later than August 31, 2018." TCEQ's proposal also states that equipment could be removed 30 days after the EPA approves the rule but no later than August 31, 2018. However, 40 CFR §51.126(b) states, "States must submit and receive EPA approval of a revision to their approved State Implementation Plans before removing Stage II requirements that are contained therein." The commenters questioned how facilities could proceed with decommissioning and comply with both state and federal regulations in the event that the EPA does not act on the SIP revision incorporating this final rule prior to August 31, 2018.

As the EPA has indicated in its guidance document, *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*, August 7, 2012, and as the commission noted in the proposed preamble, the EPA may take up to 18 months to approve the SIP and rule submittal. However, the commission anticipates that approval will occur well before the August 31, 2018, deadline. The TCEQ will continue to work with stakeholders to ensure proper implementation of the decommissioning rules, in addition to working with the EPA, which has indicated its willingness to proceed with a parallel review process of the rulemaking and SIP revision. No change to the rule has been made in response to this comment.

30 TAC §§115.240 - 115.246

Statutory Authority

The amendments and new section are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission

to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The new section is also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The new section is also adopted under THSC, §382.019, concerning methods used to control and reduce emissions from land vehicles, which authorizes the commission to adopt Stage II rules in nonattainment areas if demonstrated as necessary for attainment of the ozone National Ambient Air Quality Standard (NAAQS) or upon a adopted under FCAA, 42 USC, §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

The amendments and new section implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.208 and FCAA, 42 USC, §§7401 *et seq.*

§115.241. *Decommissioning of Stage II Vapor Recovery Equipment.*

(a) The owner or operator of a gasoline dispensing facility may decommission Stage II vapor recovery equipment beginning 30-calendar days after the effective date of the United States Environmental Protection Agency's approval of the repeal of the Stage II vapor recovery requirement and adoption of decommissioning requirements, in compliance with the requirements of this section.

(b) Owners or operators of gasoline dispensing facilities decommissioning Stage II vapor recovery equipment shall comply with the following:

(1) Intent to decommission notification.

(A) The owner or operator of a gasoline dispensing facility shall submit written notification of intent to decommission the Stage II vapor recovery equipment at least 30-calendar days prior to the beginning of any decommissioning activity to the appropriate Texas Commission on Environmental Quality (TCEQ) regional office and local government with jurisdiction where the gasoline dispensing facility is located.

(B) The notice of intent to decommission must provide a projected start date for decommissioning activity at the gasoline dispensing facility location. If decommissioning activities are not initiated within 180 calendar days after the date the notice of intent to decommission is received by the TCEQ, the owner or operator of the gasoline dispensing facility shall re-file the notice of intent to decommission for the gasoline dispensing facility location.

(C) The notice of intent to decommission must include the following information:

- (i) gasoline dispensing facility name and location address;
- (ii) owner name, address, and phone number;
- (iii) operator name, address, and phone number;
- (iv) on-site supervisor contractor name, address, phone number, and Class A or Class A/B Underground Storage Contractor License number; and
- (v) Stage II vapor recovery system information including the vapor recovery system manufacturer, the California Air

Resources Board Executive Order for the system, or other information necessary to identify the system.

(2) Start of decommissioning notification. The owner or operator shall also provide notification 24 to 72 hours prior to the beginning of any decommissioning activity by either telephone, e-mail, or facsimile, to the appropriate TCEQ regional office and local government with jurisdiction. The notification must include:

- (A) the gasoline dispensing facility name and location address;
- (B) owner name, address, and phone number;
- (C) operator name, address, and phone number; and
- (D) planned decommissioning start date.

(3) Required decommissioning activities. The owner or operator of the gasoline dispensing facility shall perform and complete all of the following decommissioning activities, as applicable for the particular Stage II vapor recovery system equipment installed at the gasoline dispensing facility:

- (A) initiating safety procedures;
- (B) relieving pressure in the tank ullage by removing all pressure/vacuum vent valves;
- (C) draining all liquid collection points;
- (D) disconnecting all electrical components of the Stage II system so that no electrical hazards are created including but not limited to all vapor pumping or processing units and dispenser electronics;
- (E) reprogramming the dispenser electronics to reflect that Stage II Vapor Recovery is no longer in service;
- (F) securely sealing off the below-grade vapor piping at a height below the level of the base of the dispenser using only threaded plugs, threaded caps, or glued fittings;
- (G) disconnecting and sealing off the vapor piping at the tank top if this can be done without excavation and without interfering with the vent line using only threaded plugs, threaded caps, or glue fittings;
- (H) securely sealing the lower end of the vapor piping inside the dispenser cabinet using only threaded plugs, threaded caps, or glue fittings;
- (I) replace through attrition or by August 31, 2018, the Stage II hanging hardware including hoses, nozzles, swivels, and breakaway components with conventional, industry-standard hanging hardware;
- (J) installing appropriate pressure/vacuum vent valve(s);
- (K) removing any Stage II instructions from the dispenser cabinet;
- (L) visually inspecting and verifying that the visible components of the storage system are left in a condition that will reliably prevent the release of any vapors or liquids from any components of the storage system;
- (M) conducting the Texas test procedures TXP-102 (*Vapor Recovery Test Procedures Handbook*, RG-399, December 2002) and recording results on Form 102 indicating that the storage system is in a condition that will prevent leaking of vapors or liquids prior to restoring the facility to operating status;

(N) conducting the Texas test procedures TXP-103, Procedure 2, (*Vapor Recovery Test Procedures Hand Book*, RG-399, December 2002) recording results on Form 103 indicating that the vent lines are functioning in a condition that will prevent the leaking of vapors or liquids prior to restoring the facility to operating status;

(O) disconnecting the OPW VaporSavor or Arid Permeater vapor recovery systems if they are present on the Stage II system and sealing piping using only threaded plugs, threaded caps, or glue fittings; and

(P) disconnecting the central vacuum motor if present on the Stage II system and sealing piping using only threaded plugs, threaded caps, or glue fittings.

(4) Decommissioning completion notice. The owner or operator of the gasoline dispensing facility shall notify in writing the TCEQ regional office and local government with jurisdiction where the gasoline dispensing facility is located no later than ten calendar days after completion of all decommissioning activity at the gasoline dispensing facility. Notification must include:

(A) gasoline dispensing facility name and location address;

(B) owner name, address, and phone number;

(C) operator name, address, and phone number;

(D) a certified and signed document with the name, address, and the Class A or Class A/B license number of the on-site supervisor who directed the decommissioning;

(E) name, address, and the Class A or Class A/B license number of the on-site supervisor who directed the testing to ensure that no leaks have been detected; and

(F) copies TX-102 and TX-103 Procedure test results.

(c) The owner or operator shall comply with the following decommissioning deadlines.

(1) The owner or operator shall complete all decommissioning activity at a gasoline dispensing facility location within 30 calendar days after the date decommissioning activity was initiated.

(2) Owners or operators of all gasoline dispensing facilities, regardless of location in the state, shall have completed the decommissioning of all Stage II vapor recovery control equipment no later than August 31, 2018.

§115.245. Testing Requirements.

Prior to the decommissioning deadline of August 31, 2018, owners or operators of gasoline dispensing facilities that have not yet decommissioned Stage II vapor controls in compliance with the requirements of this division shall repair, replace, or retain Stage II vapor controls as follows.

(1) Within 30 days of installation, at least once every 36 months thereafter, and upon major system replacement or modification, Stage II vapor recovery systems must successfully meet the performance criteria proper to the system by successfully completing the following testing requirements using the test procedures as found in the commission's *Vapor Recovery Test Procedures Handbook*, (RG-399, November 2002).

(A) For balance and assist systems:

(i) the manifolding or interconnectivity of the vapor space must be consistent with the Executive Order or third-party certification requirements for the installed system (Texas test procedure TXP-101 or equivalent);

(ii) the sum of the vapor leaks in the system must not exceed acceptable limits for the system as defined in the pressure decay test (Texas test procedure TXP-102 or equivalent);

(iii) the maximum acceptable backpressure through a given vapor path must not exceed the limits as found in the backpressure/liquid blockage test applicable for the vapor path for the system (Texas test procedure TXP-103 or equivalent); and

(iv) the maximum gasoline flow rate through the nozzle must not exceed the limits found in the Executive Order or third-party certification for the system (Texas test procedure TXP-104 or equivalent).

(B) For bootless nozzle assist systems, the volume-to-liquid ratio (V/L ratio) or air-to-liquid ratio (A/L ratio) must be within acceptable limits (Texas test procedure TXP-106 or equivalent).

(C) Each system must meet minimum performance criteria specific to the individual system as defined in the CARB Executive Order or third-party certification. The criteria and test methods contained in the test procedures handbook specified in this paragraph must take precedence for applicable tests where performance criteria exist in both the Executive Order and the test procedures handbook; otherwise, the Executive Order specific criteria must take precedence.

(2) Verification of proper operation of the Stage II equipment must be performed in accordance with the test procedures referenced in this paragraph at least once every 12 months. The verification must include all functional tests that were required for the initial system test, except for TXP-101, Determination of Vapor Space Manifolding of Vapor Recovery Systems at Gasoline Dispensing Facilities, and TXP-103, Determination of Dynamic Pressure Performance (Dynamic Back-Pressure) of Vapor Recovery Systems at Gasoline Dispensing Facilities, which must be performed at least once every 36 months.

(3) The owner or operator, or his or her representative, shall provide written notification to the appropriate regional office and any local air pollution program with jurisdiction of the testing date and time and of whom will conduct the test. The notification must be received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days in advance of the test, and the notification must contain the information and be in the format as found in the test procedures handbook. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator, or his or her representative, shall give at least 24-hour notification to the appropriate regional office and any local air pollution program with jurisdiction if a scheduled test is cancelled. In the event that the test cancellation is not anticipated prior to 24 hours before the scheduled test, the owner or operator, or his or her representative, shall notify the appropriate regional office and any local air pollution program with jurisdiction as soon in advance of the scheduled test as is practicable.

(4) Minor modifications of these test methods may only be used if they have been approved by the executive director.

(5) All required tests must be conducted either in the presence of a Texas Commission on Environmental Quality or local program inspector with jurisdiction, or by a person who is registered with the executive director to conduct Stage II vapor recovery tests. The requirement to be registered begins on November 15, 1993, or 60 days after the executive director has established the registry, whichever occurs later. The executive director may remove an individual from the registry of testers for any of the following causes:

(A) the executive director can demonstrate that the individual has failed to conduct the test(s) properly in at least three separate instances; or

(B) the individual falsifies test results for tests conducted to fulfill the requirements of this section.

(6) The owner or operator, or his or her representative, shall submit the results of all tests required by this section to the appropriate regional office and any local air pollution control program with jurisdiction within ten working days of the completion of the test(s) using the format specified in the test procedures handbook. For purposes of on-site recordkeeping, the Test Procedures Results Cover Sheet, properly completed with the summary of the testing, is acceptable. The detailed results from each test conducted along with a properly completed summary sheet, as provided for in the test procedures handbook, must be submitted to the appropriate regional office and any local air pollution control program with jurisdiction.

§115.246. *Recordkeeping Requirements.*

(a) The owner or operator of any gasoline dispensing facility subject to the control requirements of this division shall maintain the following records:

(1) a copy of the California Air Resources Board (CARB) Executive Order(s) or third-party certification(s) for the Stage II vapor recovery system and any related components installed at the facility;

(2) a copy of any owner or operator request for executive director approval under §115.243 of this title (relating to Alternate Control Requirements) and any executive director approval issued under §115.243 of this title;

(3) a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, the date and time the equipment was taken out of service, the date of repair or replacement, the replacement part manufacturer's information, a general description of the part location in the system (e.g., pump or nozzle number, etc.), and a description of the problem;

(4) proof of attendance and completion of the training specified in §115.248 of this title (relating to Training Requirements), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility;

(5) a record of the results of testing conducted at the gasoline dispensing facility in accordance with the provisions specified in §115.245 of this title (relating to Testing Requirements);

(6) a record of the results of the daily inspections conducted at the gasoline dispensing facility in accordance with the provisions specified in §115.244 of this title (relating to Inspection Requirements);

(7) copies of all notifications and records sufficient to demonstrate compliance with the applicable decommissioning steps listed in §115.241 of this title (relating to Decommissioning of Stage II Vapor Recovery Equipment), including all required test results, kept on site for five years following the completion of the decommissioning activity.

(b) All records required under subsection (a) of this section must be maintained and made available as follows.

(1) Records required under subsection (a)(1), (2), (5), and (7) of this section must be maintained until five years following the date of decommissioning completion. Records required under subsection (a)(3), (4), and (6) of this section must be maintained for at least two years.

(2) Records must be kept on site at facilities ordinarily manned during business hours and made immediately available for review upon request by authorized representatives of the executive director, United States Environmental Protection Agency (EPA) or any local air pollution control program with jurisdiction; or

(3) Records for gasoline dispensing facilities unmanned at the time of inspection, must be made available at the site within 48 hours after being requested by authorized representatives of the executive director, EPA, or any local air pollution control program with jurisdiction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201304509

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: October 31, 2013

Proposal publication date: May 10, 2013

For further information, please call: (512) 239-2141

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30 TAC §§115.241, 115.247, 115.249

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under the Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The repeal implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.208, and FCAA, 42 USC, §§7401, *et seq.*

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201304510

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER KK. SCHOOL FUND BENEFIT FEE

34 TAC §3.1251

The Comptroller of Public Accounts adopts an amendment to §3.1251, concerning school fund benefit fee, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5229).

The amendment removes subsection (e)(5), which refers to due dates in 1999, as that information is obsolete. The amendment to subsection (e)(1) removes a reference to subsection (e)(5). The amendment is a result of a rules review of Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter KK, conducted by the comptroller. The rule review was performed under Government Code, §2001.039.

No comments were received regarding adoption of the amendment.

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

This amendment implements Transportation Code, §20.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201304489

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: October 29, 2013

Proposal publication date: August 16, 2013

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.51

The Texas Board of Criminal Justice adopts amendments to §151.51, concerning Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines, without changes to the proposed text as published in the July 12, 2013, issue of the *Texas Register* (38 TexReg 4502).

The adopted amendments are necessary to clarify and update custodial officer certification and hazardous duty pay eligibility.

Written comments were received from one citizen regarding the amendments. The citizen suggested that TDCJ cease permitting employees to continue to receive hazardous duty pay after their position was reclassified to be ineligible for hazardous duty pay in 1995. The senate bill responsible for the change in law required that employees in the affected positions continue to be classified as custodial officers so long as they remained in their positions. Act of May 26, 1995, 74th Leg., R.S., ch. 586, §8 and §50, 1995 Texas General Laws 3385, 3388, and 3401. The citizen also suggested that TDCJ employees associated with executions should not get hazardous duty pay because executions are nothing out of the ordinary. State law mandates that custodial officer designated jobs in TDCJ have routine offender contact or require response to emergency situations involving offenders. Texas Government Code §813.506. Executions are clearly covered by the routine offender contact language of the statute. Because the citizen's suggestions are controlled by state law, TDCJ declines to incorporate those suggestions into the rule.

The amendments are adopted under Texas Government Code Chapter 659, Subchapter L and §813.506.

Cross Reference to Statutes: Texas Government Code §§492.013, 508.001, 615.006, 811.001, 815.505 and the *General Appropriations Act*.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201304514

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Effective date: October 31, 2013

Proposal publication date: July 12, 2013

For further information, please call: (512) 463-9693



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Ser-

vices (DADS), adopts amendments to §19.101, concerning definitions; §19.502, concerning transfer and discharge in Medicaid-certified facilities; §19.602, concerning incidents of abuse and neglect reportable to the Texas Department of Human Services (DHS) and law enforcement agencies by facilities; §19.1920, concerning operating policies and procedures; §19.1921, concerning general requirements for a nursing facility; §19.2006, concerning reporting incidents and complaints; §19.2008, concerning investigations of incidents and complaints; and §19.2310, concerning when a nursing facility ceases to participate, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. The amendments to §19.101 and §19.502 are adopted with changes to the proposed text published in the April 12, 2013, issue of the *Texas Register* (38 TexReg 2286). The amendments to §§19.602, 19.1920, 19.1921, 19.2006, 19.2008, and 19.2310 are adopted without changes to the proposed text.

The amendments are adopted to implement portions of Senate Bill (SB) 7, 82nd Legislature, First Called Session, 2011, and portions of the Patient Protection and Affordable Care Act (ACA) (Pub. L. 111-148), enacted on March 23, 2010. SB 7 amends Texas Health and Safety Code (THSC), Chapter 242, deleting Subchapter E, and moving provisions related to reports of abuse, neglect, and exploitation, including definitions of abuse, neglect, and exploitation, to THSC, Chapter 260A. Additionally, SB 7 requires a notice to be posted in a facility regarding reporting suspected abuse, neglect, and exploitation.

The ACA requires an administrator to provide written notice of facility closure or termination from Medicaid or Medicare to residents and DADS 60 days before the closure date or by the date set by Centers for Medicare and Medicaid Services (CMS) or DADS when CMS or DADS terminates the facility from Medicaid or Medicare. The notice must include a relocation plan approved by DADS.

DADS heard oral testimony from Texas Legal Service Center at a public hearing held in the John H. Winters Public Hearing Room at 701 W. 51st St. Austin, Texas 78751 on July 9, 2013.

DADS received written comments from Disability Rights Texas and Texas Legal Service Center. A summary of the comments and the responses follows.

Comment: Concerning §19.101(1), one commenter stated that the definition of abuse is significantly weaker because the language limits the definition of abuse to "licensing standard or action" or "Medicaid or Medicare requirement or action" therefore, if DADS or CMS does not cite a violation or does not take action then no "abuse" occurred making DADS surveyors the gatekeepers of "abuse" determinations. The commenter also stated the definition was significantly weaker because the terms "verbal," "mental," and "psychological" abuse are not included in the definition of "abuse" when used in a licensing standard or action.

Response: The agency agrees with the comment in part. The agency has changed the definition of "abuse" to combine the state licensing definition in THSC, §260A.001, and the federal Medicaid and Medicare definition in 42 Code of Federal Regulation §488.301, neither of which includes the categories addressed in the comment. It is not necessary to include those categories in rule because the focus is on conduct that results in physical or emotional harm or pain, regardless of whether the conduct is physical, verbal, mental, or psychological. In addition, the agency notes that the federal State Operations Manual includes a description of the categories of abuse as guidance

to Medicaid nursing facility surveyors. For state licensing purposes, the agency notes that the definition of "abuse" in THSC, §260A.001(1), is limited to conduct by a resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

Comment: Concerning §19.101(1), one commenter stated that the definition of abuse is significantly weaker because the term "sexual abuse" in the proposed rules is associated with the Penal Code and will open the door to "beyond a reasonable doubt" standard of proof. Therefore if there is unwelcome touching or other acts that do not fall under the penal and are not cited by the police then the conclusion is no sexual abuse occurred.

Response: The agency disagrees with the comment. The references to the Penal Code are to incorporate the elements of the offenses, but do not require the level of proof necessary for conviction in a criminal matter. Additionally, these offenses are given only as examples and are not an exhaustive list of actions that would be considered sexual abuse. No changes were made in response to the comment.

Comment: Concerning §19.101(1), one commenter stated that the definition of abuse is significantly weaker because the term "involuntary seclusion" is changed to "unreasonable confinement" which gives the impression that there is "reasonable confinement" although currently in the rules it is not permissible to keep someone away from others for punishment reasons. There is also no definition for "unreasonable confinement."

Response: The agency agrees in part with the comment. The term "unreasonable confinement" is used in the definition of "abuse" in THSC, Chapter 260A, which governs the reporting and investigation of abuse, neglect, and exploitation. The agency has added a definition for "unreasonable confinement," defining it as synonymous with "involuntary seclusion," a term that is used in other places in Chapter 19. The agency reformatted the definitions because of the added definitions.

Comment: Concerning §19.101(1), one commenter stated that the definition of abuse is significantly weaker because under the Medicaid and Medicare abuse requirements the phrase "including but not limited to" was changed to the term "including" making the list of abusive actions final and excluding some behaviors and activities that in the current rule are included as abuse.

Response: The agency does not agree with the comment. The term "including" is not a term of limitation and the actions listed are only examples, not an exhaustive list.

Comment: Concerning §19.101(1), one commenter stated that the definition of abuse is significantly weaker because the term "ongoing relationship" used in the definition for sexual abuse and exploitation is not an important distinction for residents in a nursing facility. In addition, the term "caregiver" is not defined and should apply to all nursing facility personnel.

Response: The agency agrees with the comment and has revised the definition to remove the specific reference to "caregiver, family member, or other individual with an ongoing relationship" making the definition consistent with the reporting requirement in §19.2006, which requires reporting abuse allegedly committed by any person. This change is also consistent with the federal definition of abuse. The agency notes, however, that in THSC, Chapter 260A, the definition of abuse is limited to actions by "the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident."

Comment: Concerning §19.101(38), one commenter stated that the definition for "exploitation" is weakened by the addition of the phrase "without informed consent" because a facility or caregiver is always in a suspect position of power over a resident and can easily get "consent" from a resident or patient especially residents with cognitive impairments that have not been legally adjudicated or incapacitated and can be easily persuaded. In addition the commenter stated the term "informed consent" is not defined.

Response: The agency disagrees with the comment. The definition of "exploitation" is consistent with the definition in the THSC, Chapter 260A, which governs the reporting and investigation of abuse, neglect, and exploitation. "Informed consent" is a generally understood term and no definition has been added. No changes were made in response to the comment.

Comment: Concerning §19.101(30), one commenter stated the definition for DHS is confusing and poorly worded and it would be more clear to just refer to DADS in all relevant and applicable regulations and refer to HHSC for all relevant and applicable references to administrative hearings.

Response: The agency disagrees with the comment. The former Department of Human Services (DHS) regulated nursing facilities under Chapter 19, and the chapter still includes references to that agency. Until all of the references have been updated to the Department of Aging and Disability Services (DADS) or the Health and Human Services Commission (HHSC), depending on the context, the definition of DHS continues to be necessary.

Comment: Concerning §19.101(79), one commenter stated that the definition of "misappropriation of funds" uses the term "effective consent" which is not defined.

Response: The agency states that amending that definition was not a part of this proposal. The agency will consider the suggested amendment in connection with subsequent amendments to Chapter 19.

Comment: Concerning §19.101(80), one commenter stated that the proposed definition of "neglect" is limited from a prior broader definition to a "licensing standard or action" or a "Medicaid or Medicare requirement action" which means if DADS or CMS does not cite a violation or take action then no "neglect" occurred. The commenter also stated that the definition lacks integration with other rules and statutes that define the rights of persons in nursing facilities, assisted living facilities, persons receiving mental health services, persons with intellectual and developmental disabilities that are receiving services of IDD, and older persons. Additionally, there are sections in the Texas Administrative Code that govern the rights of all such persons. The commenter suggested that the terms "abuse" and "neglect" be further defined as including, but not limited to the "negligent or willful violation of any of those rights."

Response: The agency agrees with the comment in part. The agency has eliminated the use of different definitions of neglect for licensure and certification purposes and has replaced it with a single definition that is consistent with state and federal law governing nursing facilities.

Comment: Concerning §19.101(129), two commenters requested that the terms "seclusion" and "involuntary seclusion" be added back in to the definition for "abuse" and is concerned that "temporary monitoring separation" is now allowed.

Response: The agency has made the following changes to definitions in response to the comments. The agency has added the

term "unreasonable confinement" to the definitions, because that term is used in the definition of "abuse" in THSC, Chapter 260A, governing the reporting and investigation of abuse, neglect, and exploitation. The agency has defined "unreasonable confinement" to be synonymous with "involuntary seclusion" a term that must remain in the definition section because it is used in other contexts in Chapter 19. However, the definition of "involuntary seclusion" has been changed to provide that monitored separation from other residents is not considered involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not to exceed 24 hours, until professional staff can develop a plan of care to meet the resident's needs. Finally, the agency notes that a definition of "seclusion" is not necessary because the term used in Chapter 19 is "involuntary seclusion."

Comment: One commenter indicated the address for Disability Rights Texas in §19.502(e)(6) is incorrect and requested the address be corrected.

Response: The agency agrees and has changed the address.

Comment: Concerning §19.502(d), one commenter suggested that provisions be added to notify the state or regional Long-Term Care Ombudsman Offices when a discharge notice is issued to a resident.

Response: The agency disagrees with the comment. A nursing facility is currently required to include contact information for the regional representative of the Office of the State Long-Term Care Ombudsman in a resident's notice of discharge. However, the agency declines to require a nursing facility to notify the state or regional Ombudsman Office when a discharge notice is issued to a resident. The agency will consider adding such notice as a responsibility of a nursing facility in connection with future amendments to Chapter 19.

Comment: Concerning §19.502(i), one commenter requested that the rule be correctly stated to read that a resident has 90 days to appeal a discharge from the date of the notice or the proposed date of action, whichever is later as outlined in 1 TAC §357.3(b)(2)(B). In addition, the commenter requested that provisions be included for DADS, HHSC, or a hearing officer to enter an immediate stay and notice to a facility that a facility cannot discharge a resident pending the outcome of the hearing officer's decision when a resident has appealed a discharge before the proposed discharge date.

Response: The agency agrees with the comment in part. A resident is allowed 90 days after the date of a notice of discharge to appeal the proposed discharge. Therefore, the agency has changed the rule accordingly. The rule allows a resident to remain in the facility if the resident requests a hearing before the discharge date. A fair hearing is governed by rules of the Health and Human Services Commission in 1 TAC Chapter 357. For that reason, the agency believes Chapter 19 is not the appropriate rule chapter to authorize a hearing officer to issue a stay against a nursing facility discharging a resident.

Comment: Concerning §19.2008(c), (f), and (g), one commenter stated that references to "exploitation" and "findings of exploitation" have been removed resulting in weaker protection for the resident. The commenter stated that by omission an exploitation complaint will never merit further investigation. In addition the commenter stated that very few complaints are validated by DADS and requested the addition of a provision to reopen an investigation, especially for a complaint called in by an ombudsman.

Response: The agency disagrees with the comment. The references to exploitation in §19.2008 have not been deleted and the investigation of exploitation continues to be governed by that section. The agency declines to add a provision specifically allowing an investigation to be reopened, but notes that an investigation may be reopened if the agency determines there is a basis for doing so.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

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; THSC, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; THSC, Chapter 260A, which requires a facility to report and DADS to investigate abuse, neglect, or exploitation of a nursing facility resident; 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.

§19.101. Definitions.

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

- (1) Abuse--negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Penal Code §21.08 (indecent exposure) or Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.
- (2) Act--Chapter 242 of the Texas Health and Safety Code.
- (3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.
- (4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).
- (5) Addition--The addition of floor space to an institution.
- (6) Administrator--Licensed nursing facility administrator.
- (7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.
- (8) Affiliate--With respect to a:
 - (A) partnership, each partner thereof;
 - (B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;
 - (C) natural person, which includes each:
 - (i) person's spouse;
 - (ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(9) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(10) Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(11) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(12) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(13) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(14) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, faceshields, and protective clothing for purposes of infection control.

(15) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(16) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid and/or Medicare programs.

(17) CFR--Code of Federal Regulations.

(18) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(19) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(20) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(21) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(22) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

- (A) goal setting;
- (B) establishing priorities for management of care;
- (C) making decisions about specific measures to be used to resolve the resident's problems; and/or

(D) assisting in the development of appropriate coping mechanisms.

(23) Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(24) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(25) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(26) DADS--The Department of Aging and Disability Services.

(27) Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(28) Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(29) Department--Department of Aging and Disability Services.

(30) DHS--This term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(31) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have

one year of supervisory experience in dietetic service of a health care facility.

(32) Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

(A) assessment of the resident's health care status;

(B) planning for the resident's care;

(C) assignment of duties to achieve the resident's care;

(D) nursing intervention; and

(E) evaluation and change of approaches as necessary.

(33) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(34) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(35) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(36) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(37) Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(38) Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(39) Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids.

(40) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65

and over and who are eligible as defined in Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(41) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(42) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(43) Fiduciary agent--An individual who holds in trust another's monies.

(44) Free choice--Unrestricted right to choose a qualified provider of services.

(45) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(46) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(47) HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(48) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(49) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

(50) HIV--Human Immunodeficiency Virus.

(51) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(52) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(53) Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(54) Interdisciplinary care plan--See the definition of "comprehensive care plan."

(55) Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room,

against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not exceed to 24 hours, until professional staff can develop a plan of care to meet the resident's needs.

(56) IV--Intravenous.

(57) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(58) Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(59) Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(60) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(61) Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(62) Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(63) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter (relating to Advance Directives)).

(64) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(65) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(66) Long-term care-regulatory--DADS Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(67) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(68) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(69) MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(70) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(71) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(72) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(73) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(74) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(75) Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

(76) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(77) Medical-social care plan--See Interdisciplinary Care Plan.

(78) Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(79) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(80) Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(81) Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(82) NHIC--This term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(83) Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(84) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(85) Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(86) Nurse practitioner--A person licensed by the Texas Board of Nursing as a registered professional nurse, authorized by the Texas Board of Nursing as an advanced practice nurse in the role of nurse practitioner.

(87) Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(88) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(89) Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(90) Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(91) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, orderlies, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(92) Objectives--See definition of "goals."

(93) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(94) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(95) Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(96) Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(97) PASARR--Preadmission Screening and Resident Review.

(98) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases

for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(99) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(100) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(101) Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(102) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(103) Physical restraint--See Restraints (physical).

(104) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(105) Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(106) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(107) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(108) Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(109) PRN (pro re nata)--As needed.

(110) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(111) Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(112) Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(113) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(114) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS Regulatory Services Division.

(115) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(116) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.

(117) Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(118) Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(119) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(120) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(121) Resident--Any individual residing in a nursing facility.

(122) Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medi-

care & Medicaid Services (CMS); utilization guidelines; and Resident Assessment Protocols (RAPS).

(123) Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(124) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(125) Restraint 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 a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(126) Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(127) Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(128) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(129) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(130) Secretary--Secretary of the U.S. Department of Health and Human Services.

(131) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(132) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(133) Social Security Administration--Federal agency for administration of social security benefits. Local social security admin-

istration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(134) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(135) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(136) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(137) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(138) State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(139) Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(140) Supervision--General supervision, unless otherwise identified.

(141) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(142) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(143) Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(144) *Texas Register*--A publication of the Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The *Texas Register* was established by the Administrative Procedure and Texas Register Act of 1975.

(145) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to elimi-

nate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(146) Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(147) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(148) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(149) Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(150) Title XVIII--Medicare provisions of the Social Security Act.

(151) Title XIX--Medicaid provisions of the Social Security Act.

(152) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(153) UAR--HHSC's Utilization and Assessment Review Section.

(154) Uniform data set--See Resident Assessment Instrument (RAI).

(155) Universal precautions--The use of barrier and other precautions by long-term care facility employees and/or contract agents to prevent the spread of blood-borne diseases.

(156) Unreasonable confinement--Involuntary seclusion.

(157) Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(158) Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(159) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-4162



SUBCHAPTER F. ADMISSION, TRANSFER, AND DISCHARGE RIGHTS IN MEDICAID-CERTIFIED FACILITIES

40 TAC §19.502

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; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§19.502. *Transfer and Discharge in Medicaid-certified Facilities.*

(a) Definition. Transfer and discharge includes movement of a resident to a bed outside the certified facility, whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement within the same certified facility.

(b) Transfer and discharge requirements. The facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless:

(1) the transfer or discharge is necessary for the resident's welfare, and the resident's needs cannot be met in the facility;

(2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(3) the safety of individuals in the facility is endangered;

(4) the health of other individuals in the facility would otherwise be endangered;

(5) the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;

(6) the resident, responsible party, or family or legal representative requests a voluntary transfer or discharge; or

(7) the facility ceases to operate as a nursing facility and no longer provides resident care.

(c) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in subsection (b)(1) - (5) of this section, the resident's clinical record must be documented. The documentation must be made by:

(1) the resident's physician when transfer or discharge is necessary under subsection (b)(1) or (2) of this section; and

(2) a physician when transfer or discharge is necessary under subsection (b)(4) of this section.

(d) Notice before transfer or discharge. Before a facility transfers or discharges a resident, the facility must:

(1) notify the resident and, if known, a responsible party or family or legal representative of the resident about the transfer or discharge and the reasons for the move in writing and in a language the resident understands;

(2) record the reasons in the resident's clinical record;

(3) include in the notice the items described in subsection (f) of this section; and

(4) comply with §19.2310 of this chapter (relating to Nursing Facility Ceases to Participate) when the facility voluntarily withdraws from Medicaid or Medicare or is terminated from Medicaid or Medicare participation by DADS or the secretary.

(e) Timing of the notice.

(1) Except when specified in paragraph (3) of this subsection or in §19.2310 of this chapter, the notice of transfer or discharge required under subsection (d) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(2) The requirements described in paragraph (1) of this subsection and subsection (g) of this section do not have to be met if the resident, responsible party, or family or legal representative requests the transfer or discharge.

(3) Notice may be made as soon as practicable before transfer or discharge when:

(A) the safety of individuals in the facility would be endangered, as specified in subsection (b)(3) of this section;

(B) the health of individuals in the facility would be endangered, as specified in subsection (b)(4) of this section;

(C) the resident's health improves sufficiently to allow a more immediate transfer or discharge, as specified in subsection (b)(2) of this section;

(D) the transfer and discharge is necessary for the resident's welfare because the resident's needs cannot be met in the facility, as specified in subsection (b)(1) of this section, and the resident's urgent medical needs require an immediate transfer or discharge; or

(E) a resident has not resided in the facility for 30 days.

(4) When an immediate involuntary transfer or discharge as specified in subsection (b)(3) or (4) of this section, is contemplated, unless the discharge is to a hospital, the facility must:

(A) immediately call the staff of the state office Consumer Rights and Services section of DADS to report its intention to discharge; and

(B) submit to DADS the required physician documentation regarding the discharge.

(f) Contents of the notice. For nursing facilities, the written notice specified in subsection (d) of this section must include the following:

(1) the reason for transfer or discharge;

(2) the effective date of transfer or discharge;

(3) the location to which the resident is transferred or discharged;

(4) a statement that the resident has the right to appeal the action as outlined in HHSC's Fair Hearings, Fraud, and Civil Rights Handbook by requesting a hearing through the Medicaid eligibility worker at the local DADS office within 10 days;

(5) the name, address, and telephone number of the regional representative of the Office of the State Long Term Care Ombudsman, DADS, and of the toll-free number of the Texas Long Term Care Ombudsman, 1-800-252-2412; and

(6) in the case of a resident with mental illness, the address and phone number of the state mental health authority, which is Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78712-9347, 1-800-252-8154; or in the case of a resident with an intellectual or developmental disability, the authority for persons with intellectual and developmental disabilities, which is DADS Access and Intake Division, P.O. Box 14930, Austin, Texas 78714-9030, 1-800-458-9858, and the phone number of the agency responsible for the protection and advocacy of persons with intellectual and developmental disabilities, which is: Disability Rights Texas, 2222 West Braker Lane, Austin, Texas 78758, 1-800-252-9108.

(g) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(h) Notice of relocation to another room. Except in an emergency, the facility must notify the resident and either the responsible party or the family or legal representative at least five days before relocation of the resident to another room within the facility. The facility must prepare a written notice which contains:

(1) the reasons for the relocation;

(2) the effective date of the relocation; and

(3) the room to which the facility is relocating the resident.

(i) Fair hearings.

(1) Individuals who receive a discharge notice from a facility have 90 days to appeal. If the recipient appeals before the discharge date, the facility must allow the resident to remain in the facility, except in the circumstances described in subsections (b)(5) and (e)(3) of this section, until the hearing officer makes a final determination. Vendor payments and eligibility will continue until the hearing officer makes a final determination. If the recipient has left the facility, Medicaid eligibility will remain in effect until the hearing officer makes a final determination.

(2) When the hearing officer determines that the discharge was inappropriate, the facility, upon written notification by the hearing officer, must readmit the resident immediately, or to the next available bed. If the discharge has not yet taken place, and the hearing officer finds that the discharge will be inappropriate, the facility, upon written notification by the hearing officer, must allow the resident to remain in the facility. The hearing officer will also report the findings to DADS Regulatory Services Division for investigation of possible noncompliance.

(3) When the hearing officer determines that the discharge is appropriate, the resident is notified in writing of this decision. Any payments made on behalf of the recipient past the date of discharge or decision, whichever is later, must be recouped.

(j) Discharge of married residents. If two residents in a facility are married and the facility proposes to discharge one spouse to another facility, the facility must give the other spouse notice of his right to

be discharged to the same facility. If the spouse notifies a facility, in writing, that he wishes to be discharged to another facility, the facility must discharge both spouses on the same day, pending availability of accommodations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201304525

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: October 31, 2013

Proposal publication date: April 12, 2013

For further information, please call: (512) 438-4162



SUBCHAPTER G. RESIDENT BEHAVIOR AND FACILITY PRACTICE

40 TAC §19.602

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; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Health and Safety Code, Chapter 260A, which requires a facility to report and DADS to investigate abuse, neglect, or exploitation of a nursing facility resident; 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201304526

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: October 31, 2013

Proposal publication date: April 12, 2013

For further information, please call: (512) 438-4162



SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1920, §19.1921

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; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Health and Safety Code, Chapter 260A, which requires a facility to report and DADS to investigate abuse, neglect, or exploitation of a nursing facility resident; 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201304527

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: October 31, 2013

Proposal publication date: April 12, 2013

For further information, please call: (512) 438-4162



SUBCHAPTER U. INSPECTIONS, SURVEYS, AND VISITS

40 TAC §19.2006, §19.2008

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; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Health and Safety Code, Chapter 260A, which requires a facility to report and DADS to investigate abuse, neglect, or exploitation of a nursing facility resident; 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201304528

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: October 31, 2013

Proposal publication date: April 12, 2013

For further information, please call: (512) 438-4162



SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2310

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; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201304529

Kenneth L. Owens

General Counsel

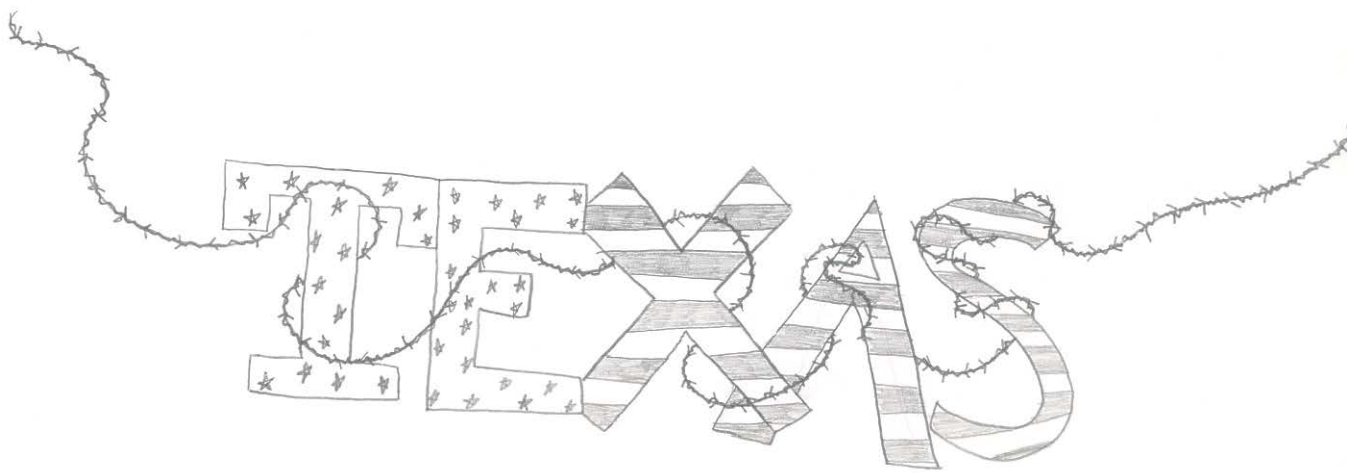
Department of Aging and Disability Services

Effective date: October 31, 2013

Proposal publication date: April 12, 2013

For further information, please call: (512) 438-4162





REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §163.43, concerning Funding and Financial Management. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes amendments to 37 TAC §163.43.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201304515
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: October 11, 2013



Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission files this notice of intent to review Chapter 313, Officials and Rules of Horse Racing, and Chapter 315, Officials and Rules for Greyhound Racing. These reviews are conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years.

The reviews shall assess whether the reasons for initially adopting the rules within the chapters continue to exist and whether any changes to the rules should be made.

All comments or questions in response to this notice of rule review may be submitted in writing to Mary Welch, Assistant to the Executive Director of the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. The Commission will accept public comments regarding the chapter and the rules within it for 30 days following publication of this notice in the *Texas Register*.

Any proposed changes to the rules within Chapter 313 or 315 as a result of the reviews will be published in the Proposed Rules section of the

Texas Register and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-201304539
Mark Fenner
General Counsel
Texas Racing Commission
Filed: October 11, 2013



Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board (agency) files this notice of intent to review Title 31, Part 17, Chapter 529, Subchapter A, §§529.1 - 529.8, concerning Operation and Maintenance Grant Program, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The agency finds that the reason for adopting the rules continues to exist.

As required by §2001.039 of the Texas Government Code, the agency will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tss-web.texas.gov, or by facsimile at (254) 773-3311.

TRD-201304596
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: October 15, 2013



Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 807, Career Schools and Colleges, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule

reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.texas.gov. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-201304500

Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Filed: October 10, 2013



The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 811, Choices, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.texas.gov. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-201304501

Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Filed: October 10, 2013



The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 835, Self-Sufficiency Fund, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.texas.gov. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-201304502

Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Filed: October 10, 2013



The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 841, Workforce Investment Act, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.texas.gov. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-201304503

Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Filed: October 10, 2013



The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 847, Project RIO Employment Activities and Support Services, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.texas.gov. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-201304504

Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Filed: October 10, 2013



The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 849, Employment and Training Services for Dislocated Workers Eligible for Trade Benefits, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.texas.gov. The

Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-201304505

Laurie Biscoe

Deputy Director, Workforce Programs

Texas Workforce Commission

Filed: October 10, 2013



Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice adopts the review of §151.51, concerning Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the July 12, 2013, issue of the *Texas Register* (38 TexReg 4515).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §151.51.

Written comments were received from one citizen regarding the review. The citizen suggested that Texas Department of Criminal Justice cease permitting employees to continue to receive hazardous duty pay after their position was reclassified to be ineligible for hazardous duty pay in 1995. The senate bill responsible for the change in law required that employees in the affected positions continue to be classified as custodial officers so long as they remained in their positions. Act of May 26, 1995, 74th Legislature, Regular Session, Chapter 586, §8 and §50, 1995 Texas General Laws 3385, 3388, and 3401. The citizen also suggested that TDCJ employees associated with executions should not get hazardous duty pay because executions are nothing out of the ordinary. State law mandates that custodial officer designated jobs in TDCJ have routine offender contact or require response to emergency situations involving offenders. Texas Government Code §813.506. Executions are clearly covered by the routine offender contact language of the statute. Because the citizen's suggestions are controlled by state law, TDCJ declines to incorporate those suggestions into the rule.

The agency's reason for adopting the rule continues to exist.

TRD-201304516

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: October 11, 2013



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 B, §5.208, concerning Designation and Re-designation of Eligible Entities in Unserved Areas, pursuant to Texas Government Code §2001.039. The Department published the Notice of Intent to Review this rule in the August 9, 2013, issue of the *Texas Register* (38 TexReg 5113).

The purpose of the review was to assess whether the reasons for adopting the rule continue to exist. No comments were received regarding the review.

This rule was initially adopted to clarify the designation and re-designation of Community Services Block Grant Eligible Entities in unserved areas. As a result of this review, the Department finds that the reasons for adopting the rule continue to exist and readopts the section without changes in accordance with the requirements of the Texas Government Code §2001.039. The rule considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-201304555

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 14, 2013



Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission has completed its reviews of Chapter 309, Racetrack Licenses and Operations, and Chapter 311, Other Licenses. These reviews were conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years.

Notice of the review of Chapter 309 was published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5137). During the review, the Commission adopted amendments to rules relating to racetrack licenses, changes in racetrack ownership, and the greyhound grading system. The Commission also adopted a new rule relating to ownership and management reviews of active racetrack licenses.

Notice of the review of Chapter 311 was published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6943). During the review, the Commission adopted amendments to rules relating to occupational licenses, license application procedures, background investigations, fees, horse owners, and greyhound owners. The Commission also adopted a new rule relating to equine dental providers.

During the rule reviews, the commission received no comments in response to the notices other than the comments received in response to individual rule proposals.

The commission has determined that the reasons for initially adopting each rule within Chapters 309 and 311 continue to exist and readopts the rules within those chapters without changes.

This completes the review of 16 TAC Part 8, Chapters 309 and 311.

TRD-201304538

Mark Fenner

General Counsel

Texas Racing Commission

Filed: October 11, 2013





The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Draft Bond Program Policies and Request for Proposals Available for Public Comment

The Texas State Affordable Housing Corporation (the "Corporation") is posting for public comment the draft of the 2014 Private Activity Bond Program Request for Proposals and 501(c)(3) Bond Program Policies. The draft is open to public comment for at least 30 days and available for download or viewing at the Corporation's website: www.tsahc.org. The Corporation anticipates approving the final version at its December Board meeting.

Any party interested in submitting comments or questions about the draft is invited to submit comments in writing to David Danenfelzer, Manager of Development Finance, at: ddanenfelzer@tsahc.org or by letter addressed to: Manager of Development Finance, 2200 East MLK Jr. Boulevard, Austin, Texas 78702. Interested parties may also call the Corporation directly at (512) 477-3555 for more information.

TRD-201304585

David Long
President

Texas State Affordable Housing Corporation
Filed: October 15, 2013

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - September 2013

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period September 2013 is \$76.99 per barrel for the three-month period beginning on June 1, 2013, and ending August 31, 2013. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of September 2013 from a qualified low-producing oil lease is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined as required by Tax Code, §201.059, that the average taxable price of gas for reporting period September 2013 is \$2.87 per mcf for the three-month period beginning on June 1, 2013, and ending August 31, 2013. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2013 from a qualified low-producing well is eligible for a 50% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of September 2013 is \$106.54 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of September 2013 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of September 2013 is \$3.62 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of September 2013 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Manager, Tax Interpretations and Publications Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201304568

Ashley Harden

General Counsel

Comptroller of Public Accounts

Filed: October 15, 2013

Correction of Error

The Comptroller of Public Accounts adopted amendments to 34 TAC §9.3044 in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6602). The amendments included revisions to Form 50-162 (Appointment for Agent for Property Tax Matters) which was adopted by reference. The form, which was not published in the *Texas Register* or the Texas Administrative Code, had a typographical error. The word "and" in the instructions at the end of the first page of the form should have been "or". The corrected sentence reads "If you have additional property for which authority is granted, attach additional sheets providing the appraisal district account number, physical or situs address, or legal description for each property."

The Comptroller has corrected the error. The corrected form can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, TX 78711-3528.

TRD-201304508

Notice of Contract Amendment

The Texas Comptroller of Public Accounts ("Comptroller") announces this notice of amendment of a consulting services contract awarded to AKF Consulting, LLC dba AKF Consulting Group, 1350 Avenue of the Americas, Second Floor, New York, New York 10019, under Request for Proposals (RFP) 198a to assist the Texas Prepaid Higher Education Tuition Board with administering the state's qualified tuition plans. The Notice of RFP was published in the May 14, 2010, issue of the *Texas Register* (35 TexReg 3877). The Notice of Award was published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11737). The term of the contract is December 10, 2010, through December 31, 2014. The amendment increases the total amount of the contract from \$100,000.00 to \$150,000.00.

TRD-201304602



Notice of Loan Fund Availability and Request for Applications

Pursuant to: (1) the LoanSTAR (Saving Taxes and Resources) Revolving Loan Program of the Texas State Energy Plan (SEP) in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321, *et seq.*), as amended by the Energy Conservation and Production Act (42 U.S.C. 6326, *et seq.*); (2) the Oil Overcharge Restitutionary Act, Chapter 2305 of the Texas Government Code; and (3) 34 Texas Administrative Code Chapter 19, Subchapter D Loan Program for Energy Retrofits; the Texas Comptroller of Public Accounts (Comptroller) and the State Energy Conservation Office (SECO) announces its Notice of Loan Fund Availability (NOLFA) and Request for Applications (RFA #BE-G10-2013) and invites applications from eligible interested governmental entities for loan assistance to perform building energy efficiency and retrofit activities.

PROGRAM SUMMARY: The Texas LoanSTAR Revolving Loan Program finances energy-related cost-reduction retrofits for eligible public sector institutions. Low interest rate loans are provided to assist those institutions in financing their energy-related cost-reduction efforts. The program's revolving loan mechanism allows loan recipients to repay loans through the stream of energy cost savings realized from the projects.

FUNDS AVAILABLE AND LOAN TERM: Approximately \$51,000,000 in LoanSTAR funds may be available in the form of the building efficiency and retrofit revolving loan funds. The anticipated maximum amount of funds available for each loan recipient is \$7,500,000. SECO may make more than one award of a loan and may make more than one award of a loan to a single loan recipient with this NOLFA/RFA announcement. The interest rate to be charged to loan recipients for this NOLFA/RFA announcement is 2.0% fixed. The loan term will be equal to the composite simple payback term for the energy efficiency measures.

ELIGIBILITY CRITERIA: Eligible public sector institutions include the following: (1) any state department, commission, board, office, institution, facility, or other agency; (2) a public junior college or community college; (3) an institution of higher education as defined in §61.003 of the Texas Education Code; (4) units of local government including a county, city, town, a public or non-profit hospital or health care facility; (5) a public school; or (6) a political subdivision of the state.

Utility dollar savings are the most important criterion for determining if the measure can be considered an eligible Energy Cost Reduction Measure (ECRM). ECRMs are not limited to those activities that save units of energy. An ECRM could conceivably call for actions which save no energy or consume additional BTUs, but save utility budget dollars. Examples of such ECRMs include demand reduction, increased power factor, load shifting, switching utility rate structures, and thermal storage projects.

Projects financed by LoanSTAR must have a composite simple payback of ten (10) years or less for design-build and design-bid-build projects and a total project payback of ten (10) years or less for energy savings performance contracts. In addition, each ECRM and Utility Cost Reduction Measure (UCRM) must have a simple payback that does not exceed the estimated useful life (EUL) of the ECRM or UCRM. Loan recipients have the option of buying down specific energy-related cost-reduction projects so that paybacks can meet both the individual and composite loan term limits. SECO encourages Ap-

plicants to consider renewable energy technologies when evaluating ECRMs and UCRMs.

Before entering into a LoanSTAR loan agreement, Applicants are required to submit an Energy Assessment Report (EAR) for Design-Bid-Build Projects and Design-Build Projects, or a Utility Assessment Report (UAR) for Energy Savings Performance Contracts, or a Systems Commissioning Report in the case where the commissioning meets LoanSTAR payback requirements. All LoanSTAR projects must be reviewed and analyzed by a professional engineer licensed in the State of Texas (Engineer). The Engineer shall be selected by the Applicant.

When an Engineer analyzes a project; he/she shall submit the details of his/her analysis in the form of an EAR for Design-Bid-Build Projects and Design-Build Projects, or a UAR for Energy Savings Performance Contracts. The EAR shall be prepared in accordance with the LoanSTAR Technical Guidelines (<http://seco.cpa.state.tx.us/ls/guidelines/>) prescribed format. The UAR shall be prepared in accordance with the SECO Performance Contracting Guidelines (<http://seco.cpa.state.tx.us/perf-contract/>) prescribed format. There is not a prescribed format for Systems Commissioning Reports.

Project descriptions and calculations contained within the EAR, the UAR, and the Systems Commissioning Reports must be reviewed and approved by SECO before project financing is authorized.

Project designs for Design-Bid-Build must be reviewed and approved by SECO before construction can commence. Design-Build project designs must be sufficiently complete to be reviewed and approved by SECO before construction can commence. Design-Bid-Build, Design-Build, and Energy Savings Performance Contracts are monitored during the construction phase and at project completion.

Post-retrofit energy savings should be monitored by the Applicant in Design-Bid-Build and Design-Build projects to ensure that energy cost savings are being realized. The level of monitoring may range from utility bill analysis to individual system or whole building metering, depending on the size and types of retrofits installed.

For Energy Savings Performance Contracts, a Measurement and Verification (M+V) plan must be developed and approved by SECO. Post construction measurement and verification costs must be included as part of the total project cost when calculating the payback.

Additional LoanSTAR funds can be borrowed for metering of large, complex retrofits in order to maximize the probability of achieving, or exceeding, calculated savings; however, the maximum allowable loan amount, including the cost of the metering, cannot be exceeded.

APPLICATION REQUIREMENTS: Comptroller will make the loan application, instructions, and a sample loan agreement with attachments available for review electronically on the SECO website at: <http://www.seco.cpa.state.tx.us/funding/> after 10:00 a.m. CT on Friday, October 18, 2013.

The loan application must: (1) be complete; (2) be submitted under a signed transmittal letter; (3) include an executive summary and a table of contents; and (4) describe the project and personnel qualifications relevant to the evaluation criteria. Applications must also meet the following program requirements:

The maximum loan amount shall not exceed \$7.5 million.

The interest rate is set at 2.0%.

The loan repayment term is equal to the Total Loan Payback for Design-Bid-Build and Design-Build projects and the Total Project Payback for Energy Savings Performance Contracts. The individual ECRM/UCRM must demonstrate a simple payback of less than the ECRM's/UCRM's estimated useful life.

Project expenses will be reimbursed on a "cost reimbursement" basis.

Loan recipient will be required to comply with federal Solid Waste Disposal Act, and, if applicable, National Environmental Policy Act, and National Historic Preservation Act. Loan recipients will ensure that the State Historical Preservation Office (SHPO) is consulted in any project award that may include a building or site of historical importance. In this regard, SHPO guidance will be solicited and followed to ensure that the historical significance of the building will be preserved. All requirements are set out in the sample contract.

SECO will conduct periodic on-site monitoring visits on all building retrofit projects.

All improvements financed through the LoanSTAR Revolving Loan Program shall meet minimum efficiency standards (as prescribed by applicable building energy codes). Examples of projects that are acceptable may include:

Building and mechanical system commissioning and optimization

Energy management systems and equipment control automation

High efficiency heating, ventilation and air conditioning systems, boilers, heat pumps and other heating and air conditioning projects

High efficiency lighting fixtures and lamps

Building Shell Improvements (insulation, adding reflective window film, radiant barriers, and cool roof).

Load Management Projects

Energy Recovery Systems

Low flow plumbing fixtures, high efficiency pumps

Systems commissioning

Renewable energy efficiency projects are strongly encouraged wherever feasible, and may include installation of distributed technology such as rooftop solar water and space heating systems, geothermal heat pumps (only closed loop systems with no greater than 10 ton capacity), or electric generation with photovoltaic or small wind and solar-thermal systems. If there are closed-loop geothermal heat pumps greater than 10 ton capacity involved, then Applicants will be responsible for further National Environmental Policy Act (NEPA) review by DOE in the event of an award. If renewable generation greater than 20 KW is involved, Applicants will be responsible for further NEPA review by DOE.

Applicants shall submit one (1) original, five (5) bound copies, and one (1) electronic copy of the loan application, as well as of one of the following documents:

1. Project Assessment Commitment. The Project Assessment Commitment can be used for Design-Bid-Build and Design-Build projects, for Energy Savings Performance Contracts, or for Commissioning projects. The Project Assessment Commitment shall be signed by the applicant's Chief Financial Officer or equivalent;

2. Preliminary Energy Assessment (PEA). A PEA can be used for Design-Bid-Build and Design-Build projects, for Energy Savings Performance Contracts, or for Commissioning projects. The PEA must be completed by a Professional Engineer licensed in the State of Texas. PEAs must include Energy Cost Reduction Measure (ECRM) or Utility Cost Reduction Measure (UCRM) that will be completed to reduce utility (energy and water) costs. Project costs and simple paybacks must also be documented for each ECRM and UCRM in the PEA;

3. Energy Assessment Report (EAR). An EAR can be used for Design-Bid-Build and Design-Build projects;

4. Utility Assessment Report (UAR). The UAR can be used for Energy Savings Performance Contracts; or

5. Commissioning Report for Commissioning projects.

While the Project Assessment Commitment and the PEA will qualify the project for potential funding, an approved EAR, UAR or Commissioning Report will be required prior to execution of a loan agreement.

ISSUING OFFICE: Parties interested in submitting an application should contact Jason C. Frizzell, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, at: 111 E. 17th Street, Room 201, Austin, Texas 78774, or via phone at (512) 305-8673. This NOLFA/RFA will be available on Friday, October 18, 2013, after 10:00 a.m. Central Time (CT) and during normal business hours thereafter.

QUESTIONS: All written inquiries and questions must be received at the above-referenced address not later than 2:00 p.m. (CT) on Monday, November 18, 2013. Prospective applicants are encouraged to send questions via email to contracts@cpa.states.tx.us or fax to (512) 463-3669 to ensure timely receipt. On or about November 25, 2013, or as soon thereafter as practical, Comptroller expects to post responses to the questions received by the deadline on the website referenced above. Late questions will not be considered under any circumstances.

CLOSING DATE: Applications must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CT), on December 6, 2013. Late Applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of applications in the Issuing Office.

SCHEDULE OF EVENTS: The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - October 25, 2013, after 10:00 a.m. CT; Questions Due - November 18, 2013, 2:00 p.m. CT; Official Responses to Questions posted - November 22, 2013, or as soon thereafter as practical; Applications Due - December 13, 2013, 2:00 p.m. CT; Loan Commitment and/or Agreement Execution - as soon as practical.

TRD-201304601

Jason C. Frizzell

Assistant General Counsel

Comptroller of Public Accounts

Filed: October 16, 2013

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 304.003, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/21/13 - 10/27/13 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/21/13 - 10/27/13 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/13 - 11/30/13 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/13 - 11/30/13 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201304587

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 15, 2013

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Corner Stone Credit Union (Lancaster) seeking approval to merge with North Central PHM Federal Credit Union (Dallas), with Corner Stone Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201304599

Harold E. Feeney

Commissioner

Credit Union Department

Filed: October 16, 2013

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas (#1) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located within a 10-mile radius of the branch office located at 1410 Research Forest Dr., Shenandoah, TX 77381, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas (#2) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located within a 10-mile radius of the branch office located at 24250 Cinco Ranch Blvd., Katy, TX 77494, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas (#3) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located within a 10-mile radius of the branch office located at 24706 Southwest Freeway, Rosenberg, TX 77471, to be eligible for membership in the credit union.

An application was received from Pegasus Community Credit Union, Dallas, Texas (#1) to expand its field of membership. The proposal would permit churches belonging to the Texas Conference of Seventh-Day Adventists located in Bowie, Brown, Coleman, Collin, Cook, Dallas, Denton, Eastland, Ellis, Erath, Grayson, Hill, Hood, Howard, Johnson, Kaufman, Navarro, Parker, Rockwall, Tarrant,

Wichita, Wilbarger, and Young Counties, Texas, and their members, to be eligible for membership in the credit union.

An application was received from Pegasus Community Credit Union, Dallas, Texas (#2) to expand its field of membership. The proposal would permit employees of the Texas Conference of Seventh-Day Adventists who work in or are paid from the headquarters located in Alvarado, Texas to be eligible for membership in the credit union.

An application was received from Anheuser-Busch Employees' Credit Union, St. Louis, Missouri to expand its field of membership. The proposal would permit individuals, organizations and associations who are located, reside, or work within a ten mile radius of our branch located at 725 E. Belt Line Road, Cedar Hill, Texas 75104, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201304598

Harold E. Feeney

Commissioner

Credit Union Department

Filed: October 16, 2013

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Neighborhood Credit Union, Dallas, Texas - See *Texas Register* issue, dated September 28, 2012.

MemberSource Credit Union, Houston, Texas (#1) - See *Texas Register* issue, dated June 28, 2013.

MemberSource Credit Union, Houston, Texas (#2) - See *Texas Register* issue, dated June 28, 2013.

MemberSource Credit Union, Houston, Texas (#3) - See *Texas Register* issue, dated June 28, 2013.

MemberSource Credit Union, Houston, Texas (#4) - See *Texas Register* issue, dated June 28, 2013.

MemberSource Credit Union, Houston, Texas (#5) - See *Texas Register* issue, dated June 28, 2013.

InTouch Credit Union, Plano, Texas - See *Texas Register* issue, dated July 26, 2013.

Application to Amend Articles of Incorporation - Withdrawn

YOUR Community Credit Union, Irving, Texas - See *Texas Register* issue, dated September 27, 2013.

TRD-201304600

Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 16, 2013

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Texas Education Agency

Request for Applications Concerning the 2014-2015 Public Charter School Program Start-Up Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-14-103 from eligible charter schools to provide initial start-up funding for planning and/or implementing charter school activities. This competitive grant opportunity is available for charter schools that meet the federal definition of a charter school, have never received Public Charter School Program start-up funds, and are one of the following: (1) a campus charter school approved by its local board of trustees pursuant to the Texas Education Code (TEC), Chapter 12, Subchapter C, on or before November 30, 2013, that submits all required documentation as required by the RFA and previously described in the "To the Administrator Addressed" letter dated August 16, 2013; (2) an open-enrollment charter school approved by the commissioner of education under the Generation 18 charter application pursuant to the TEC, Chapter 12, Subchapter D; (3) a college, university, or junior college charter school approved by the commissioner pursuant to the TEC, Chapter 12, Subchapter E; or (4) an open-enrollment charter school designated by the commissioner for the 2014-2015 school year as a new school under an existing charter. Charters awarded by the commissioner under the Generation 18 application that have been notified of contingencies to be cleared prior to receiving a charter contract are considered eligible to apply for the grant. However, these charters should be diligent in working with TEA to complete the contingency process as all contingencies pertaining to the charter application and approval must be cleared and a contract issued to the charter holder prior to receiving grant funding, if awarded. Charters submitting an application for a New School Designation for the 2014-2015 school year are considered to be eligible to apply for the grant. However, the commissioner must designate the campus as a new school under an existing charter prior to the charter receiving grant funding, if awarded.

Description. The purpose and goals of the 2014-2015 Public Charter School Program Start-Up Grant are to provide financial assistance for the planning, program design, and initial implementation of charter schools and expand the number of high-quality charter schools available to students.

Dates of Project. The 2014-2015 Public Charter School Program Start-Up Grant will be implemented primarily during the 2014-2015 school year. Applicants should plan for a starting date of no earlier than May 1, 2014, and an ending date of no later than July 31, 2015.

Project Amount. Approximately \$9 million is available for funding the 2014-2015 Public Charter School Program Start-Up Grant. It is anticipated that approximately 10 to 15 grants of no more than \$800,000 each will be awarded. Applicants that are in their first or second year of eligibility may apply for grant funding. However, if selected for funding, the award amount will be prorated based on the remaining months of eligibility. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to

be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

Applicants' Conference. A webinar will be held on Monday, November 25, 2013, from 9:00 a.m. to 12:00 p.m. Register for the webinar at <https://www2.gotomeeting.com/register/301917602>.

Questions relevant to the RFA may be emailed to Arnoldo Alaniz at CharterSchools@tea.state.tx.us or faxed to (512) 463-9732 prior to Tuesday, November 12, 2013. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at CharterSchools@tea.state.tx.us. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Tuesday, December 10, 2013. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, December 17, 2013, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (two blocks north of the Capitol Building at 17th Street and North Congress Avenue), Austin, Texas 78701 or mailed to Document Control Center, Division of Grants Administration, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-201304610
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 16, 2013

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Employees Retirement System of Texas

Contract Award Announcement

This contract award announcement is being filed by the Employees Retirement System of Texas in relation to a contract award to provide investment data warehouse interfaces and reporting enhancements. The

contractor is Eagle Investment Systems, LLC, 45 William Street, Suite 200, Wellesley, Massachusetts 02481.

The cost of the contract is \$490,500. The contract was executed on October 10, 2013. The term of the contract begins on October 10, 2013, with no express termination date, subject to the terms of the contract.

TRD-201304563

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: October 14, 2013



Request for Qualification to Invest in an International Index Fund for the 401(k) and 457 Plans of the TexaSaver Program

The state of Texas through the Board of Trustees ("Board") of the Employees Retirement System of Texas ("ERS") is issuing a Request for Qualification ("RFQ") for qualified Investment Managers/Firms (each a "Contractor") to obtain Proposals for investment opportunities in an International Index Fund for the 401(k) and 457 Plans of the TexaSaver Deferred Compensation Program ("TexaSaver Program") beginning on or after October 31, 2013, and extending through a term as determined by ERS. Each Proposal must provide for the level of benefits required in the RFQ and meet other requirements.

Each qualified Contractor wishing to respond to the RFQ shall: 1) qualify and provide documentation evidencing its status as either an SEC-registered investment advisor or a national banking organization subject to the oversight of the Office of the Comptroller of the Currency ("OCC"), or otherwise provide evidence of exemption, 2) have managed tax-exempt assets for at least five (5) years, 3) not be the sub-advisor if the proposed investment vehicle is a mutual fund or collective/commingled fund (this requirement does not apply to separate account investment vehicles), 4) serve as a fiduciary for the TexaSaver Program, with an additional requirement for the proposed vehicle that is a non-mutual fund (i.e., collective/commingled fund) to have the TexaSaver Program assets held in a fiduciary capacity consistent with 12 C.F.R. Part 9 (Fiduciary Activities of National Banks) and guidelines promulgated by the OCC, and 5) not have been subject to any major enforcement activities by federal or state regulators or been involved in any significant litigation surrounding investment activities.

If selected, Contractors shall be required to execute a contract provided by, and satisfactory to, ERS.

The RFQ will be available on or after **October 31, 2013**, from the ERS website. Proposals must be received at ERS by 12:00 Noon (CT) on **December 19, 2013**. To access the RFQ from the ERS website, qualified Contractors shall email their request to the attention of iVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall include the Contractor's full legal name, street address, as well as phone and fax numbers of Contractor's main point of contact. Upon receipt of Contractor's emailed request, a user ID and password will be issued permitting access to the secured RFQ.

General questions concerning the RFQ and/or ancillary bid materials should be sent to the iVendor Mailbox where responses, if applicable, are updated frequently.

The Board is not required to select the lowest bid or investment fund but shall take into consideration other relevant criteria, including ability to service contracts, past experience, and other criteria as referenced in Article II of the RFQ. ERS reserves the right to select none, one, or more than one Contractor when it is determined that such action would be in the best interest of ERS, its Participants or the state of Texas.

ERS reserves the right to reject any or all Proposals and call for new Proposals if deemed by ERS to be in the best interest of ERS, its Participants or the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFQ's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFQ and will not pay any costs incurred by any entity in responding to this notice or the RFQ or in connection with the preparation of a Proposal. ERS specifically reserves the right to vary all provisions set forth in the RFQ and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, its Participants or the state of Texas.

TRD-201304564

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: October 14, 2013



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 25, 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 November 25, 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: ABF FREIGHT SYSTEM, INCORPORATED; DOCKET NUMBER: 2013-1098-PST-E; IDENTIFIER: RN101474716; LOCATION: Houston, 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 (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized

piping associated with the UST system; PENALTY: \$4,630; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Basu Dev Bhandari dba Jimmy's Food Store; DOCKET NUMBER: 2013-1172-PST-E; IDENTIFIER: RN102224623; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: BIG SCORE INVESTORS, LLC dba Parkway Mobil Mart 2; DOCKET NUMBER: 2013-1022-PST-E; IDENTIFIER: RN102270444; LOCATION: Plano, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operating procedure of the vapor recovery system; 30 TAC §115.242(3)(C) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is a part of the approved system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$7,110; ENFORCEMENT COORDINATOR: Troy Warden, (512) 239-1050; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: BIROME WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1343-PWS-E; IDENTIFIER: RN101228468; LOCATION: Hill County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to timely mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each customer by July 1 of each year and failed to timely submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: \$650; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Bob R. Simpson and Janice L. Simpson dba 101 Ranch Mercer Road; DOCKET NUMBER: 2013-1290-WR-E; IDENTIFIER: RN106779507; LOCATION: Palo Pinto, Palo Pinto County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §297.11 and TWC, §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$2,868; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Bobby Fredrickson, Trustee of the Bobby Fredrickson 1999 Trust; DOCKET NUMBER: 2013-0994-EAQ-E; IDENTIFIER: RN105596118; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to commencing regulated activities over the Edwards Aquifer Recharge Zone; PENALTY: \$33,750; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(7) COMPANY: Cimarex Energy Co. of Colorado; DOCKET NUMBER: 2013-1209-AIR-E; IDENTIFIER: RN102538923; LOCATION: McLean, Gray County; TYPE OF FACILITY: natural gas compression plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3311/Oil and Gas General Operating Permit Number 514 Site-wide Requirements (b)(1) and (2), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: \$3,937; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: City of Annona; DOCKET NUMBER: 2013-0723-PWS-E; IDENTIFIER: RN101196640; LOCATION: Annona, Red River County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.113(f)(4) and §290.122(b)(2)(A) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the running annual average and by failing to provide public notification regarding the failure to comply with the MCL; and 30 TAC §290.122(b)(2)(A), by failing to provide public notification regarding the failure to comply with the MCL for TTHM; PENALTY: \$1,060; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: City of Kendleton; DOCKET NUMBER: 2012-0932-MWD-E; IDENTIFIER: RN102844412; LOCATION: Kendleton, Fort Bend County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010996001, Effluent Limitations and Monitoring Requirements Number 6, by failing to comply with permitted effluent limitations; and 30 TAC §§305.125(17), 319.1 and 319.7(d) and TPDES Permit Number WQ0010996001, Monitoring and Reporting Requirements Number 1, by failing to submit the monthly discharge monitoring reports (DMRs) for the monitoring periods ending September 30, 2011 - December 31, 2011, and the quarterly DMR for the monitoring period ending December 31, 2011; PENALTY: \$10,657; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: City of Yorktown; DOCKET NUMBER: 2013-0888-MWD-E; IDENTIFIER: RN103025805; LOCATION: Yorktown, Dewitt County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §30.350(d) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010323001, Other Requirements Number 1, by failing to ensure that the facility is operated a minimum of five days

per week by a chief operator or an operator holding a Category C license or higher; 30 TAC §305.125(1) and TPDES Permit Number WQ0010323001, Sludge Provisions, Section III, Part C, by failing to give 180 days prior notice to the executive director of any change in the sewage sludge disposal practice; 30 TAC §305.125(5) and TPDES Permit Number WQ0010323001, Operational Requirements Number 1, by failing to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and §319.7(a)(1), (2), (3) and (5) and TPDES Permit Number WQ0010323001, Monitoring and Reporting Requirements Numbers 3.c.i., iii., iv. and vi., by failing to maintain records of monitoring activities; 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0010323001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the monthly discharge monitoring reports (DMRs) for the monitoring periods ending May 31, 2012, July 31, 2012, and December 31, 2012; 30 TAC §305.125(1) and TPDES Permit Number WQ0010323001, Monitoring and Reporting Requirements Number 7.c., by failing to submit noncompliance notifications for effluent violations that exceeded the permitted effluent limit by 40% or more for the monitoring periods ending February 29, 2012 - January 31, 2013; 30 TAC §305.125(1) and §319.11 and TPDES Permit Number WQ0010323001, Monitoring and Reporting Requirements Number 2, by failing to comply with test procedures for the analysis of pollutants; 30 TAC §305.125(1) and TPDES Permit Number WQ0010323001, Permit Conditions Number 4.a., by failing to give notice to the executive director as soon as possible of any planned physical alterations or additions to the facility; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010323001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2012; PENALTY: \$51,030; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: COTTONWOOD CREEK MHP, L.P.; DOCKET NUMBER: 2013-1248-PWS-E; IDENTIFIER: RN101442259; LOCATION: Dallas County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to timely mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to timely submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 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 each quarter; and 30 TAC §290.122(c)(2)(A), by failing to timely provide public notification regarding the failure to conduct routine coliform monitoring for the months of November 2012 - January 2013; PENALTY: \$750; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Country Club Retirement Community, L.P.; DOCKET NUMBER: 2013-1118-MWD-E; IDENTIFIER: RN105460646; LOCATION: Whitney, Hill County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014871001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports (DMRs) by the 20th day of the following month for the monitoring periods ending May 31, 2012 - January 31, 2013; 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ0014871001, Sludge Provisions, by failing to timely

submit the annual sludge report for the monitoring period ending July 31, 2012, by September 1, 2012; and 30 TAC §305.125(17) and §319.1, and TPDES Permit Number WQ0014871001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the monitoring results for biochemical oxygen demand for the monitoring period ending March 31, 2012; PENALTY: \$3,987; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Dhungana Corporation dba Discount Mart; DOCKET NUMBER: 2013-1476-PST-E; IDENTIFIER: RN101551679; LOCATION: Greenville, Hunt 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: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: DuraTherm, Incorporated; DOCKET NUMBER: 2013-0848-IHW-E; IDENTIFIER: RN100890235; LOCATION: San Leon, Galveston County; TYPE OF FACILITY: hazardous waste processing and storage; RULE VIOLATED: 30 TAC §335.2(a), 40 Code of Federal Regulations §270.1(c), and Industrial and Hazardous Waste (IHW) Permit Number 50355, Permit Provisions (PPs) IV.B.1., V.B.1., V.C.1., and V.K., by failing to prevent the acceptance and management of unauthorized waste at the facility; 30 TAC §335.6(c) and IHW Permit Number 50355, PP II.C.1.h., by failing to update the facility's Notice of Registration; 30 TAC §335.152(a)(1), 40 Code of Federal Regulations (CFR) §264.15, and IHW Permit Number 50355, PP III.D., by failing to follow the inspection schedule contained in the facility's IHW permit; 30 TAC §335.2(b) and IHW Permit Number 50355, PP II.C.1.h., by failing to prevent the disposal of hazardous waste at an unauthorized facility; 30 TAC §335.10(c) and IHW Permit Number 50355, PP II.C.1.h., by failing to designate the correct waste code on a hazardous waste manifest; and 30 TAC §335.12(a), 40 CFR §264.71(a)(1) and IHW Permit Number 50355, PP II.C.1.h., by failing to indicate a weight discrepancy on a hazardous waste manifest; PENALTY: \$53,537; Supplemental Environmental Project offset amount of \$21,415 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2012-1962-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1871, Special Terms and Conditions Number 7, and Flexible Permit Numbers 49138, PSDTX768M1, PSDTX799, PSDTX802, PSDTX932, and PSDTX992M1, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$126,250; Supplemental Environmental Project offset amount of \$63,125 applied to Texas Air Research Center-Lamar University; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2013-0996-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and

§122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Number 20160, Special Conditions Number 1, and Federal Operating Permit Number O3056, Special Terms and Conditions Number 17, by failing to prevent unauthorized emissions; PENALTY: \$25,000; Supplemental Environmental Project offset amount of \$12,500 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: KEMPNER WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1344-PWS-E; IDENTIFIER: RN101197549; LOCATION: Kempner, Lampasas County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 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: \$1,824; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: KKR INVESTMENT, LLC; DOCKET NUMBER: 2013-1204-EAQ-E; IDENTIFIER: RN106735442; LOCATION: Buda, Hays County; TYPE OF FACILITY: construction site for a new convenience store with a gas station; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Underground Storage Tank Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Transition Zone; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78711-3087, (512) 339-2929.

(19) COMPANY: LAKE LIVINGSTON WATER SUPPLY AND SEWER SERVICE CORPORATION; DOCKET NUMBER: 2013-0942-PWS-E; IDENTIFIER: RN101253904; LOCATION: Riverside, Walker County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes based on the running annual average; and 30 TAC §290.113(f)(5) and §290.122(b)(2)(A) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for total haloacetic acids (HAA5), based on the running annual average and by failing to provide public notification regarding the failure to comply with the MCL for HAA5; PENALTY: \$750; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: MANGAL ENTERPRISE LLC dba First Colony Shell; DOCKET NUMBER: 2013-1326-PST-E; IDENTIFIER: RN101731941; LOCATION: Sugar Land, Fort Bend 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: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Pipe Distributors, Ltd.; DOCKET NUMBER: 2013-1286-PST-E; IDENTIFIER: RN100654698; LOCATION: Houston, 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:

\$2,438; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Red Sand RV, LLC; DOCKET NUMBER: 2013-0855-PWS-E; IDENTIFIER: RN106356660; LOCATION: Cotulla, La Salle County; TYPE OF FACILITY: recreational vehicle park with an associated water supply system; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notice for failure to conduct coliform monitoring; and 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the TCEQ's executive director; PENALTY: \$2,265; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(23) COMPANY: RICARDOS TRAILER PARK, LLC dba Ranch Oaks Mobile Home Park; DOCKET NUMBER: 2013-1113-PWS-E; IDENTIFIER: RN104709746; LOCATION: Johnson County; TYPE OF FACILITY: mobile home park with a public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(F)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(F)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(F)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of at least 20 gallons per connection; 30 TAC §290.45(b)(1)(F)(i) and THSC, §341.0315(c), by failing to provide a minimum well production capacity of 0.6 gpm per connection; 30 TAC §290.43(c) and (3), by failing to provide a ground storage tank that meets American Water Works Association standards; 30 TAC §290.43(c)(4), by failing to provide all water storage tanks with a liquid level indicator located at the tank site; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to provide facility records to commission personnel at time of the investigation; 30 TAC §290.41(c)(3)(K), by failing to properly seal the wellhead with a gasket or sealing compound; 30 TAC §290.42(l), by failing to maintain a complete, thorough, and up-to-date plant operations manual for operator review and reference; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation standards; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; PENALTY: \$1,331; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Roy Biswajit dba Roy's Grocery Store; DOCKET NUMBER: 2013-1231-PST-E; IDENTIFIER: RN106348063; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: SHERGILL FUEL ENTERPRISES INCORPORATED dba Friendly's 2; DOCKET NUMBER: 2013-0857-PST-E; IDENTIFIER: RN101833077; LOCATION: Athens, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and

TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(26) COMPANY: SOUTH FORT WORTH RV RANCH, L.L.C.; DOCKET NUMBER: 2013-0649-MWD-E; IDENTIFIER: RN104813605; LOCATION: Burlleson, Johnson County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(7) and §305.126(b), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014680001, Permit Conditions Number 4(a), by failing to give notice to the executive director before physical alterations or additions were made to the facility; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0014680001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: The 5125 Company; DOCKET NUMBER: 2013-1324-WQ-E; IDENTIFIER: RN106710676; LOCATION: Kingsville, Kleberg County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of waste into or adjacent to water in the state; PENALTY: \$1,876; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(28) COMPANY: Thurman Transportation, Incorporated; DOCKET NUMBER: 2013-1312-WR-E; IDENTIFIER: RN100680024; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: soil excavation operation; RULE VIOLATED: 30 TAC §297.11 and TWC, §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$2,349; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: TRINITY TOWERS LIMITED PARTNERSHIP dba Trinity Towers; DOCKET NUMBER: 2012-1433-PST-E; IDENTIFIER: RN101433654; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: emergency generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form within 30 days of the ownership change date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$17,002; ENFORCEMENT COORDI-

NATOR: Michael Pace, (817) 588-5933; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(30) COMPANY: Valerie Wilson dba Lil Bits Water Works; DOCKET NUMBER: 2013-1136-PWS-E; IDENTIFIER: RN101422103; LOCATION: Leander, Williamson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notice of the failure to sample; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual public health service fees and/or any associated late fees for TCEQ Financial Administration Account Number 92460170 for Fiscal Year 2013; PENALTY: \$2,563; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(31) COMPANY: Western Gulf Terminal Partners, LP; DOCKET NUMBER: 2013-1123-IHW-E; IDENTIFIER: RN104025325; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: marine vessel and barge cleaning facility; RULE VIOLATED: 30 TAC §335.10(a), by failing to correctly manifest Class 1 waste utilizing a completed Uniform Waste Manifest form; 30 TAC §335.503(a) and §335.513 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and classifications and maintain the required documentation; 30 TAC §335.2(b), by failing to prevent the disposal of Class 1 waste at an unauthorized facility; PENALTY: \$100,125; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-201304569

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 15, 2013



Enforcement Orders

An agreed order was entered regarding Our G & G, Inc. dba DJs Country Store, Docket No. 2012-0079-PST-E on October 9, 2013 assessing \$19,003 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Charlotte, Docket No. 2012-1290-MWD-E on October 9, 2013 assessing \$36,440 in administrative penalties with \$7,288 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 City of Big Wells, Docket No. 2012-1467-MWD-E on October 9, 2013 assessing \$35,325 in administrative penalties.

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 ELLISON CONSTRUCTION COMPANY, LLC, Docket No. 2012-1527-WQ-E on October 9, 2013 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAMIE'S HOUSE CHARTER SCHOOL, INC. and Ollie J. Hilliard, Docket No. 2012-2202-PWS-E on October 9, 2013 assessing \$3,009 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIRAJ MINARA, INC. dba Grocery Plus, Docket No. 2012-2236-PST-E on October 9, 2013 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTH TEXAS ROLL-OFFS, LLC, Docket No. 2012-2252-MLM-E on October 9, 2013 assessing \$16,841 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STONE GATE GOLF COURSE, L.C., Docket No. 2012-2383-PWS-E on October 9, 2013 assessing \$1,739 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Moutawakil Investments, L.L.C. dba Super Food Mart 36, Docket No. 2012-2404-PST-E on October 9, 2013 assessing \$5,132 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amirali Makanojia dba Doc's Country Store, Docket No. 2012-2434-PST-E on October 9, 2013 assessing \$9,821 in administrative penalties with \$1,964 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 Equistar Chemicals, LP, Docket No. 2012-2572-AIR-E on October 9, 2013 assessing \$17,848 in administrative penalties with \$3,569 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-

3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GJN L.L.C. Sunmart 141, Docket No. 2012-2656-PST-E on October 9, 2013 assessing \$13,500 in administrative penalties with \$2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PEACE BUSINESS, INC. dba Sun Coast Food Mart, Docket No. 2013-0080-PST-E on October 9, 2013 assessing \$18,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abdulali K. Tejani dba FM Express Mart, Docket No. 2013-0106-PST-E on October 9, 2013 assessing \$8,079 in administrative penalties with \$1,615 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 WTG Gas Processing, L.P., Docket No. 2013-0119-AIR-E on October 9, 2013 assessing \$48,376 in administrative penalties with \$9,675 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HUFFSMITH-KOHRVILLE, INC., Docket No. 2013-0162-MWD-E on October 9, 2013 assessing \$19,288 in administrative penalties with \$3,857 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 Robert F. Bryer dba Bentwood Estates Mobile Home Park, Docket No. 2013-0218-PWS-E on October 9, 2013 assessing \$1,264 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lucite International, Inc., Docket No. 2013-0224-IWD-E on October 9, 2013 assessing \$89,169 in administrative penalties with \$17,833 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 Raja & Aliah Investments, Inc. dba Rogers Food Mart, Docket No. 2013-0232-PST-E on October 9, 2013 assessing \$8,879 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PANTRY CONVENIENCE STORES, INC., Docket No. 2013-0234-PST-E on October 9, 2013 assessing \$11,250 in administrative penalties with \$2,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2013-0248-IWD-E on October 9, 2013 assessing \$8,438 in administrative penalties with \$1,687 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 AKZO NOBEL POLYMER CHEMICALS LLC, Docket No. 2013-0295-AIR-E on October 9, 2013 assessing \$15,750 in administrative penalties with \$3,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TAAS Corporation dba Mac's Corner, Docket No. 2013-0335-PST-E on October 9, 2013 assessing \$10,125 in administrative penalties with \$2,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2013-0368-AIR-E on October 9, 2013 assessing \$34,388 in administrative penalties with \$6,877 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 KM Liquids Terminals LLC, Docket No. 2013-0369-AIR-E on October 9, 2013 assessing \$100,000 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.

An agreed order was entered regarding City of Gladewater, Docket No. 2013-0380-PWS-E on October 9, 2013 assessing \$4,848 in administrative penalties.

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 KT CORPORATION dba Lamp Post, Docket No. 2013-0463-PST-E on October 9, 2013 assessing \$7,813 in administrative penalties with \$1,562 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shintech Incorporated, Docket No. 2013-0470-AIR-E on October 9, 2013 assessing \$45,000 in administrative penalties with \$9,000 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 Aqua Texas, Inc., Docket No. 2013-0481-MWD-E on October 9, 2013 assessing \$19,125 in administrative penalties with \$3,825 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 6965 S. L. INC. dba Simon's Korner, Docket No. 2013-0492-PST-E on October 9, 2013 assessing \$10,125 in administrative penalties with \$2,025 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 Jose Alberto Trevino, Docket No. 2013-0501-AIR-E on October 9, 2013 assessing \$6,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bosque Utilities Corporation, Docket No. 2013-0634-MWD-E on October 9, 2013 assessing \$8,750 in administrative penalties with \$1,750 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 Stephen Hall dba Hall's Landscape, Docket No. 2013-0638-LII-E on October 9, 2013 assessing \$625 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-201304605

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 16, 2013



Notice of Correction to Agreed Order Number 3

In the October 11, 2013, issue of the *Texas Register* (38 TexReg 7141), the Texas Commission on Environmental Quality published a notice of Agreed Orders. Agreed Order Number 3, concerning the

City of Wellman, which appeared on page 7142, has been corrected. The phrase "PENALTY: \$20,727" should have been submitted as "PENALTY: \$20,727, Supplemental Environmental Project (SEP) offset amount of \$20,727 applied to the repair and upgrade Wastewater Treatment Plant in Terry County."

For questions concerning this error, please contact Jennifer Cook at (512) 239-1873.

TRD-201304583

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 15, 2013



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 25, 2013**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 25, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: ADO Alliance, Inc.; DOCKET NUMBER: 2012-2340-PST-E; TCEQ ID NUMBER: RN101444081; LOCATION: 2745 Evangeline Drive, Vidor, Orange County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: \$4,687; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Butterflies, Inc.; DOCKET NUMBER: 2012-0194-PST-E; TCEQ ID NUMBER: RN102062999; LOCATION: 203 East Court Street, Newton, Newton County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with

retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(b) and 30 TAC §334.50(b)(2), by failing to provide release detection for the suction piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain the UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$6,141; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Elizabeth Perez d/b/a JD's Kwik Stop; DOCKET NUMBER: 2013-0704-PWS-E; TCEQ ID NUMBER: RN105486518; LOCATION: 16672 United States Highway 83 North, Laredo, Webb County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.035(a) and 30 TAC §290.39(e)(1) and (h)(1) and TCEQ AO Docket Number 2010-1641-PWS-E, Ordering Provision Number 2.c., by failing to submit engineering plans and specifications to the executive director and receive written approval prior to beginning construction of a new public water supply system; THSC, §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and TCEQ AO Docket Number 2010-1641-PWS-E, Ordering Provision Number 2.a., by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine residual throughout the distribution system at all times; 30 TAC §290.41(c)(3)(A) and TCEQ AO Docket Number 2010-1641-PWS-E, Ordering Provision Number 2.c., by failing to submit a well completion data for review and approval prior to placing a public drinking water well into service; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees for TCEQ Financial Administration Account Number 92400035 for fiscal year 2013; PENALTY: \$8,312; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: Global Environmental & Marine Services, Inc.; DOCKET NUMBER: 2011-0463-MLM-E; TCEQ ID NUMBER: RN105577738 and RN106115157; LOCATION: 317 Gilliam Street (Facility Number 1), 336 Gilliam Street (Facility Number 2), Corpus Christi, Nueces County; TYPE OF FACILITY: solid and liquid marine waste removal; RULES VIOLATED: at Facility Number 1: 30 TAC §335.62 and §335.503, and 40 Code of Federal Regulation (CFR) §262.11, by failing to conduct hazardous waste determinations and waste classifications; 30 TAC §335.261(a) and §335.262(c)(2)(F), and 40 CFR §273.34(e) and §273.35(c), by failing to label or clearly mark with any one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)" each lamp or a container or package in which such lamps are contained; by failing to contain paint and paint-related waste in a container that was labeled or marked clearly with the words "Universal Waste - Paint and Paint-Related Wastes", and by failing to demonstrate the length of time that the universal waste has been accumulated by placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received; 30 TAC §335.4, by failing to prevent the storage of industrial solid waste in such a manner that would cause the discharge or imminent threat of discharge of industrial solid waste into or adjacent to waters in the state; 30 TAC §335.6(c), by failing to provide written notification for all industrial solid waste streams and associated waste management units; 30 TAC §§335.2(b), 335.10(a), and 335.11(a)(1), and 40 CFR §262.20, by failing to prevent the

disposal of industrial solid waste at an unauthorized facility, by failing to use waste manifests when shipping hazardous and Class I industrial wastes off-site, and failed to obtain a properly completed manifest for a Class I industrial waste; 30 TAC §335.9(a)(1)(G), by failing to maintain records of hazardous and industrial solid waste activities; 30 TAC §324.1 and 40 CFR §279.54(f), by failing to label or clearly mark containers and aboveground storage tanks (ASTs) used to store or process used oil with the words "Used Oil"; 30 TAC §324.1 and §324.12(3), and 40 CFR §279.55, by failing to develop and maintain a written analysis plan for sampling and analyzing, keeping records, and complying with analytical requirements for documenting that used oil is not hazardous waste and/or that used oil to be burned for energy recovery meets on-specification requirements; 30 TAC §324.1 and 40 CFR §279.54(c) and (d), by failing to install and maintain a secondary containment system for containers and ASTs used to store or process used oil; 30 TAC §324.1 and §324.12(4), and 40 CFR §279.57(b), by failing to submit the required biennial report to the commission of all used oil operations that have been completed; 30 TAC §324.1 and §324.15, and 40 CFR §279.54(b) and (g), by failing to keep containers storing used oil in good condition to prevent them from leaking, and by failing to perform cleanup action upon detection of a release of used oil; 30 TAC §§324.22(b), 37.2011 and 37.2021, by failing to provide proof of financial assurance as a used oil handler and a used oil transporter; 30 TAC §324.11(2) and §324.12(2), and 40 CFR §279.42(a) and §279.51(a), by failing to register used oil activities with the TCEQ and the United States Environmental Protection Agency; 30 TAC §324.1 and 40 CFR §279.52, by failing to comply with preparedness and prevention requirements as applicable to used oil processors and re-refiners; and 30 TAC §324.1 and 40 CFR §279.54, by failing to prepare and implement a Spill Prevention, Control and Countermeasures plan applicable to used oil processors; at Facility Number 2: 30 TAC §324.1 and 40 CFR §279.54(f), by failing to label or clearly mark four ASTs used to store or process used oil with the words "Used Oil"; 30 TAC §324.1 and 40 CFR §279.54(d), by failing to install and maintain a secondary containment system for four ASTs used to store used oil; and 30 TAC §324.1 and §324.15, and 40 CFR §279.54(b) and (g), by failing to keep containers storing used oil in good condition and to prevent them from leaking, and by failing to perform cleanup action upon detection of a release of used oil PENALTY: \$95,835; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: Hein Hettinga and Gerben Hettinga d/b/a GH Dairy El Paso; DOCKET NUMBER: 2012-1828-IWD-E; TCEQ ID NUMBER: RN10588009; LOCATION: 9747 Pan American Drive, El Paso, El Paso County; TYPE OF FACILITY: dairy processing facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization under either the Texas Pollutant Discharge Elimination System, Multi-Sector General Permit Number TXR0550000, or the Non-Exposure Certification; PENALTY: \$1,250; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(6) COMPANY: JACK AND SAM, INC. d/b/a Jacks Grocery 7; DOCKET NUMBER: 2013-1189-PST-E; TCEQ ID NUMBER: RN101891547; LOCATION: 9900 Galveston Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system at the facility;

PENALTY: \$9,000; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Michael Ung d/b/a Mikes Food Mart; DOCKET NUMBER: 2013-0575-PST-E; TCEQ ID NUMBER: RN102784329; LOCATION: 102 Highway 8 South, Douglassville, Cass County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; PENALTY: \$8,750; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Semi & Shamim Enterprises, LLC d/b/a S S Express Mart; DOCKET NUMBER: 2013-0161-PST-E; TCEQ ID NUMBER: RN101786432; LOCATION: 4603 Gulf Freeway, La Marque, Galveston County; TYPE OF FACILITY: underground storage tank system and convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.244(3), by failing to conduct monthly inspections of the Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.248(1), by failing to ensure at least once station representative received training in the operation and maintenance of the Stage II vapor recovery system; and THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$4,971; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201304571

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 15, 2013



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 25, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or

considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 25, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: AL-IMRAN ENTERPRISES, INC. d/b/a Vargas Food Mart 2; DOCKET NUMBER: 2013-0764-PST-E; TCEQ ID NUMBER: RN102284767; LOCATION: 6201 Lyons Avenue, Houston, Harris county; TYPE OF FACILITY: underground storage tank system and convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$5,048; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Dario Canales d/b/a DC Auto Collision; DOCKET NUMBER: 2013-0672-AIR-E; TCEQ ID NUMBER: RN106145949; LOCATION: 6825 Alameda Avenue, El Paso, El Paso County; TYPE OF FACILITY: auto body shop; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), and 30 TAC §116.110(a), by failing to obtain authorization for an auto body shop prior to conducting surface coating operations; THSC, §382.085(b) and 30 TAC §115.422(1)(A), by failing to use an enclosed cleaner to clean equipment; THSC, §382.085(b) and 30 TAC §115.422(1)(C), by failing to store all waste solvents in closed containers; and THSC, §382.085(b) and 30 TAC §115.426(1)(A) and (B)(i), by failing to properly maintain records; PENALTY: \$5,250; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: HT Bells Food LLC d/b/a Bells Market; DOCKET NUMBER: 2013-0920-PST-E; TCEQ ID NUMBER: RN103028254; LOCATION: 104 West Bells Boulevard, Bells, Grayson County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 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: \$5,130; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Jorge Perez; DOCKET NUMBER: 2013-0461-WOC-E; TCEQ ID NUMBER: RN106555287; LOCATION: 2.5 miles south of Farm-to-Market Road 2360, Starr County; TYPE OF FACILITY: process control duties of a water treatment plant;

RULES VIOLATED: TWC, §37.003, Texas Health and Safety Code, §341.034(b) and 30 TAC §30.5(a) and §30.381(b), by failing to obtain a valid Class "C" or higher water operator license prior to supervising the maintenance of a water treatment plant; PENALTY: \$1,000; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Jose Flores Cabazos a/k/a Jose Flores Cavazos; DOCKET NUMBER: 2012-1879-PWS-E; TCEQ ID NUMBER: RN105922645; LOCATION: 17601 County Road 2220, Lubbock, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.035(c) and 30 TAC §290.39(e)(1) and (h)(1), by failing to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water system; and THSC, §341.033(a) and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a Class "D" or higher license; PENALTY: \$214; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201304584

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 15, 2013



Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 25, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional

notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DOs are available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 25, 2013**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: AZZAH ENTERPRISES, INC. d/b/a Blue Star Food Mart; DOCKET NUMBER: 2013-0523-PST-E; TCEQ ID NUMBER: RN101908481; LOCATION: 10104 Tidwell Road, Houston, Harris County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(C), by failing to obtain a UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$15,233; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Barakat S & A, Inc. d/b/a SAA Food Mart; DOCKET NUMBER: 2013-0099-PST-E; TCEQ ID NUMBER: RN104091723; LOCATION: 6700 Rufe Snow Drive, Fort Worth, Tarrant County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$6,000; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(3) COMPANY: BLH Sportsman Center, LLC; DOCKET NUMBER: 2013-0547-PST-E; TCEQ ID NUMBER: RN101828127; LOCATION: 2724 Belle Plain Street, Brownwood, Brown County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Piknik Enterprises, Inc. d/b/a Piknik Foods 11 and d/b/a Piknik Foods 3; DOCKET NUMBER: 2013-0667-PST-E; TCEQ ID NUMBER: RN101782530 and RN101811206; LOCATION: 907 West Commerce Street (Facility Number 1), 919 Guadalupe Street (Facility Number 2), San Antonio, Bexar County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: Facility Number 1, TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; Facility Number 2, TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: \$12,722; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201304570

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 15, 2013



Notice of Water Quality Applications

The following notices were issued on October 2, 2013, through October 11, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF CORSICANA has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010402003 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,950,000 gallons per day via Outfall 001 and an annual average flow not to exceed 1,000,000 gallons per day via Outfall 002. The application also requests an extension of a temporary variance to the existing water quality standards for the dissolved oxygen criterion for the Post Oak Creek arm of Richland-Chambers Reservoir which was granted in the permit issued April 11, 2005 and extended in the permit issued August 26, 2008. The facility is located at 2151 Jester Drive, approximately 2,200 feet north of the Lake Halbert Spillway and approximately 9,500 feet southeast of the intersection of State Highway 31 and Interstate Highway 45 in Navarro County, Texas 75109. The applicant has also applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program.

MEADWESTVACO TEXAS LP which operates Evadale Mill, a Kraft pulp and paper mill, has applied for the renewal of TPDES Permit No. WQ0000493000 with a major amendment to authorize a reduction in the monitoring frequency for: (a) adsorbable organic halides (AOX) at Outfalls 001 and 01a from once per week to once per year, (b) chloroform at Outfalls 101 and 201 from once per month to once per quarter, (c) 2,3,7,8-TCDF, 3,4,5-Trichlorocatechol, 3,4,5-Trichloroguaiacol, 3,4,6-Trichlorocatechol, 3,4,6-Trichloroguaiacol, 4,5,6-Trichloroguaiacol, Tetrachlorocatechol, Tetrachloroguaia-

col, Trichlorosyringol, 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD), 2,4,5-Trichlorophenol, 2,4,6-Trichlorophenol, 2,3,4,6-Tetrachlorophenol, and Pentachlorophenol at Outfalls 101 and 201 from once per quarter to once per year, and (d) TCDD Equivalents at Outfalls 001 and 01a from once per quarter to once per year. The current permit authorizes the discharge of treated process wastewater commingled with cooling water, domestic wastewater, storm water runoff, and previously monitored effluents (bleach plant effluent via internal outfalls 101 and 201) at a daily average flow not to exceed 65,000,000 gallons per day via Outfalls 001 and 01a; storm water runoff commingled with previously monitored effluent (filter backwash water via internal Outfall 102), utility wastewater, periodic overflows from the woodyard sump-dam and car rinse runoff on an intermittent and flow variable basis via Outfall 002. The facility is located approximately one mile south of Farm-to-Market Road 2246 and one mile southeast of the Town of Evadale, Jasper County, Texas 77615.

KEESHAN AND BOST CHEMICAL CO INC which operates a facility that manufactures organic acetate esters and purified alcohols, has applied for a renewal of TPDES Permit No. WQ0002068000, which authorizes the discharge of process wastewater commingled with utility wastewaters and stormwater runoff at a daily average flow not to exceed 33,000 gallons per day via Outfall 001, and stormwater runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 22102 State Highway 6, on the south side of State Highway 6, approximately two miles east of the City of Manvel, Brazoria County, Texas 77578.

TEXAS A&M UNIVERSITY which operates the Brayton Fire Training Field, has applied for a major amendment without renewal to TPDES Permit No. WQ0002585000 to authorize effluent limitations be recalculated for total aluminum based on a site-specific partition coefficient. The current permit authorizes the discharge of treated process water from stationary blaze pads, surface runoff from a bioremediation landfarm storm water, and groundwater at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001. The draft permit authorizes the discharge of treated process water from stationary blaze pads, storm water, and groundwater at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001. The facility is located on Nuclear Science Road, approximately 0.5 mile south of the intersection of Farm-to-Market Road 2347 and Nuclear Science Road, adjacent to Easterwood Airport, in the City of College Station, Brazos County, Texas 77845.

CRAY VALLEY USA LLC which operates the Cray Valley Wallisville Road Plant, a synthetic resins manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0003207000, which authorizes the discharge of cooling tower blowdown and stormwater runoff on an intermittent and flow variable basis via Outfall 001, and stormwater runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 17335 Wallisville Road, approximately 4500 feet east-northeast of the intersection of Wallisville Road and Sheldon Road, Harris County, Texas 77049.

SYNTECH CHEMICALS INC which operates a speciality chemicals manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0003593000, to authorize the discharge of stormwater at an intermittent and flow-variable rate. The facility is located at 14822 Hooper Road, Houston, Harris County, Texas 77047.

CJUF II STRATUS BLOCK 21 LLC which operates CJUF II Stratus Block 21 Facility, a mixed-use residential and commercial high-rise tower, has applied for a major amendment to TPDES Permit No. WQ0004854000 to authorize the reduction of the monitoring frequencies for tetrachloroethylene (PCE), trichloroethylene (TCE), cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, 1,1-dichloroethylene, and vinyl chloride from, once a week to once

a quarter. The current permit authorizes the discharge of treated groundwater at a daily maximum flow not to exceed 432,000 gallons per day via Outfall 001. The facility is located at 200 Lavaca Street in downtown Austin, bounded by 2nd and 3rd Streets (to the north and south) and by Lavaca and Guadalupe Streets (to the east and west), Travis County, Texas 78701.

TENASKA BROWNSVILLE PARTNERS LLC which proposes to operate the Tenaska Brownsville Generating Station, a combined cycle steam electric power generating facility, has applied for a new permit TPDES Permit No. WQ0005005000, to authorize the discharge of cooling tower blowdown and low volume wastes at a daily average flow not to exceed 2,300,000 gallons per day via Outfall 001. The facility is located east of Old Alice Road, approximately 500 feet north of the intersection of Old Alice Road and Farm-to-Market Road 511, Cameron County, Texas 78523. 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.

ETHYL CORPORATION which operates a facility that produces and distributes fuel and lube oil additives, has applied for a renewal of TPDES Permit No. WQ0003890000, which authorizes the discharge of storm water on an intermittent and variable basis. The facility is located at 1000 N. South Avenue, approximately two miles north of State Highway 225 at the intersection of N. South Avenue and the Houston Ship Channel (Buffalo Bayou), Harris County, Texas.

AUC GROUP LP has applied for a new permit, proposed TPDES Permit No. WQ0015093001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. This facility was previously permitted under TPDES Permit No. WQ0014724001 which expired September 1, 2011. The facility will be located 800 feet north-northwest of the intersection of State Highway 288 and County Road 57 in Brazoria County, Texas 77583.

CITY OF DENVER CITY has applied for a renewal of TCEQ Permit No. WQ0010087003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 505,000 gallons per day via surface irrigation of 251 acres of non-public access perennial pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1 mile south of the intersection of Farm-to-Market Road 2056 and State Highway 214, southeast of the City of Denver City in Gaines County, Texas 79323.

CITY OF MARLIN has applied for a renewal of TPDES Permit No. WQ0010110003, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 170,000 gallons per day. The facility is located 1.7 miles from the intersection of Farm-to-Market Road 147 and Highway 6, immediately south of the dam for the New Marlin City Lake in Falls County, Texas 76661.

WHARTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0010849001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 850 feet north of the intersection of Farm-to-Market Road 1160 and Loop 525, between Farm-to-Market Road 1160 and East Mustang Creek in Wharton County, Texas 77455.

CITY OF ABBOTT has applied for a renewal of TPDES Permit No. WQ0011544001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 0.5 mile south of Farm-to-Market

Road 1242 and 1.1 miles east of Interstate Highway 35, in the City of Abbott in Hill County, Texas 76621.

COUNTRY TERRACE WATER COMPANY INC has applied for a renewal of TPDES Permit No. WQ0011955001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 490,000 gallons per day. The facility is located approximately 600 feet south of Highlands Reservoir, approximately 0.75 mile northwest of the intersection of Wallisville and Wade Roads at 2503 Goldenrod Street, Highlands in Harris County, Texas 77562.

CITY OF ANDERSON has applied for a renewal of TPDES Permit No. WQ0013931001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The facility is located 0.5 mile south of the intersection of Farm-to-Market Road 1774 and State Highway 90 in Grimes County, Texas 77830.

WEST CYPRESS HILLS WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 has applied for a renewal of TCEQ Permit No. WQ0014857001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 310,000 gallons per day via public access subsurface drip irrigation system on 72.08 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 2.5 miles southwest of the intersection of State Highway 71 and Cypress Ranch Boulevard in Travis County, Texas 78669.

NORTHEAST TEXAS MUNICIPAL WATER DISTRICT has applied for a new permit, proposed TPDES Permit No. WQ0015086001, to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 600,000 gallons per day. The facility will be located at 3119 State Highway 155, Avinger in Marion County, Texas 75630.

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-201304604

Bridget C. Bohac
Chief Clerk

Texas Commission on Environmental Quality
Filed: October 16, 2013

Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780.

Deadline: Monthly Report due July 5, 2013 for Committees

Ronnie Smitherman, Ironworkers State COPE Fund, 3003 Dawn Dr. #104, Georgetown, Texas 78628-2800

Deadline: Monthly Report due August 6, 2013 for Committees

Ronnie Smitherman, Ironworkers State COPE Fund, 3003 Dawn Dr. #104, Georgetown, Texas 78628-2800

Deadline: Lobby Activities Report due August 12, 2013

Danielle Delgadillo, 1212 Guadalupe St., Ste. 301, Austin, Texas 78701

L. Alan Gray, 1212 Guadalupe St. #1003, Austin, Texas 78701

Ralph E. Townes, Jr., 1212 Guadalupe St. #1003, Austin, Texas 78701

TRD-201304490

David A. Reisman

Executive Director

Texas Ethics Commission

Filed: October 9, 2013

Texas Facilities Commission

Request for Proposals #303-5-20411

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-5-20411. TFC seeks a five (5) or ten (10) year lease of approximately 3,499 square feet of office space in Copperas Cove, Coryell County, Texas.

The deadline for questions is November 18, 2013 and the deadline for proposals is November 25, 2013 at 3:00 p.m. The award date is December 20, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Evelyn Esquivel at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=108495.

TRD-201304565

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 14, 2013

Request for Proposals #303-5-20412

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-5-20412. TFC seeks a five (5) or ten (10) year lease of approximately 51,240 square feet of office space in McAllen, Pharr, or Edinburg, Texas.

The deadline for questions is November 4, 2013 and the deadline for proposals is November 15, 2013 at 3:00 p.m. The award date is December 18, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=108469.

TRD-201304511

Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 11, 2013

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Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking - B-On-Time for Private/Independent, Non-Profit Institutions of Higher Education

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop rules for the B-On-Time Loan (BOT) Program allocation methodology for private/independent, non-profit institutions of higher education and to develop procedures for THECB staff to verify the accuracy of the application of that allocation methodology. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, 2013, Regular Session.

In identifying persons likely affected by the proposed rules, the Commissioner of Higher Education sent individually addressed letters via email to all presidents and chancellors of private/independent, non-profit institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus. The letters contained a hyperlink to an online survey via the "SurveyMonkey" website. The survey asked for the individual's willingness to participate, nominations of others to be considered, and the primary issues that the person believes the committee should address.

From this effort, 14 individuals responded (out of approximately 40 affected institutions) and expressed an interest to participate or nominated someone from their institution to participate in the BOT negotiated rulemaking committee. The authority of the volunteers and nominations includes presidents and directors/associate directors of financial aid. This indicates that the probable willingness and authority of the affected interests to negotiate in good faith is also high, and that there is a good probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rules.

The following is a list of the stakeholders who are significantly affected by these rules and will be represented on the negotiated rulemaking committee on BOT:

- (1) Private/Independent, Non-Profit Institutions of Higher Education
- (2) Independent Colleges and Universities of Texas
- (3) Texas Higher Education Coordinating Board

The THECB proposes to appoint the following 13 individuals (out of the pool of the 14 respondents) to the negotiating rulemaking committee on BOT to represent affected parties and the agency:

Private/Independent, Non-Profit Institutions

Stephen M. Brower, Associate Director of Financial Aid, Hardin-Simmons University

Veronica Gabbard, Senior Director of Financial Aid and Scholarships, Houston Baptist University

Glenda Huff, Director of Financial Aid, Howard Payne University

Eric King, Director of Financial Aid, Jarvis Christian College

Amy Hardesty, Director of Financial Assistance, Lubbock Christian University

Esmarelda Flores, Director of Financial Aid, Our Lady of the Lake University

Lydia Babbitt, Assistant Director of Financial Aid, Southern Methodist University

James Gaeta, Director of Financial Aid, Southwestern University

Doris Constantine, Associate Vice President for Student Financial Services, St. Edward's University

Melet Leafgreen, Assistant Director of Financial Aid, Texas Christian University

Ron Brown, Director of Financial Aid, University of Mary Hardin Baylor

Independent Colleges and Universities of Texas

Carol McDonald, President

Texas Higher Education Coordinating Board

Dan Weaver, Assistant Commissioner for Business and Support Services

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

- * Name and contact information of the person submitting the application;
- * Description of how the person is significantly affected by the rule;
- * Name and contact information of the person being nominated for membership; and
- * Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee. Comments and applications for membership of the committee must be submitted by November 4, 2013, to Linda Battles, Associate Commissioner/Chief of Staff, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Linda.Battles@theccb.state.tx.us.

TRD-201304616

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: October 16, 2013

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Notice of Intent to Engage in Negotiated Rulemaking - Compliance Monitoring

The Texas Higher Education Coordinating Board ("THECB" or "Board") intends to engage in negotiated rulemaking to develop rules for the establishment of an agency-wide, risk-based compliance monitoring function for: 1) funds allocated by the THECB to institutions of higher education, private or independent institutions of higher education, and other entities, including student financial assistance funds (e.g., grants, scholarships, loans, and work-study), academic support grants, and any other grants, to ensure those funds are distributed in accordance with applicable law and THECB rules; and 2) data reported by institutions of higher education to the THECB and used

by the Board for funding or policymaking decisions, including data used for formula funding allocations to ensure the data is reported accurately. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, 2013, Regular Session.

In identifying persons likely affected by the proposed rules, the Commissioner of Higher Education sent individually addressed letters via email to all presidents and chancellors of public and private/independent, non-profit institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus. The letters contained a hyperlink to an online survey via the "SurveyMonkey" website. The survey asked for the individual's willingness to participate, nominations of others to be considered, and the primary issues that the person believes the committee should address.

From this effort, 69 individuals responded (out of approximately 150 affected institutions) and expressed an interest to participate or nominate someone from their institution to participate in the compliance monitoring negotiated rulemaking committee. This presents a good probability that the identified interests will be adequately represented. The authority of the volunteers and nominations includes presidents, vice chancellors, directors/associate directors of financial aid and enrollment, and registrars. This indicates that the probable willingness and authority of the affected interests to negotiate in good faith is also high, and that there is a good probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rules.

The following is a list of the stakeholders who are significantly affected by these rules and will be represented on the negotiated rulemaking committee on compliance monitoring:

- (1) Public Universities/Systems
- (2) Public Two-Year Colleges/Districts
- (3) Public Health-Related Institutions
- (4) Private/Independent, Non-Profit Institutions of Higher Education
- (5) Texas Higher Education Coordinating Board

The THECB proposes to appoint the following 27 individuals (out of the pool of the 69 respondents) to the negotiating rulemaking committee on compliance monitoring to represent affected parties and the agency:

Public Universities/Systems

Jesse W. Rogers, President, Midwestern State University

Dana Gibson, President, Sam Houston State University

L. Dwayne Snider, Associate Vice President for Academic Administration, Tarleton State University

Laura Elizondo, Director of Financial Aid, Texas A&M International University

James Hallmark, Vice Chancellor for Academic Affairs, Texas A&M University System

Mark Hammer, Associate Provost for Institutional Research, Texas Woman's University

Paul Liebman, Chief Compliance Officer, The University of Texas at Austin

Kim Turner, Chief Audit Executive, Texas Tech University System

Philip Castille, President, University of Houston-Victoria

Michelle R. Finley, Director of Internal Audit, University of North Texas System

Public Two-Year Colleges/Districts

Cecilia V. Martinez, Associate Director, Grants and Contracts Compliance, Alamo Community College District

Carrie Streeter, Registrar and Director of Admissions, Brazosport College

William Serrata, President, El Paso Community College

William Holda, President, Kilgore College

Katherine Persson, President, Lone Star College-Kingwood

Johnette McKown, President, McLennan Community College

Denise Welch, Director of Financial Aid, Panola College

Kelvin Sharp, President, South Plains College

James Henry Russell, President, Texarkana College

Jonathan Hoekstra, Vice Chancellor/Chief of Staff, Texas State Technical College System

Public Health-Related Institutions

Arnim Dontes, Executive Vice President for Business Affairs, The University of Texas Southwestern Medical Center

Private/Independent, Non-Profit Institutions

Bill Ellis, President, Howard Payne University

Larry L. Earvin, President/CEO, Huston-Tillotson University

Paul Galyean, Director of Financial Aid, Jacksonville College

Anne Walker, Director of Financial Aid, Rice University

Ron Brown, Director of Financial Aid, University of Mary-Hardin Baylor

Texas Higher Education Coordinating Board

Mark Poehl, Director of Internal Audit and Compliance

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

* Name and contact information of the person submitting the application;

* Description of how the person is significantly affected by the rules;

* Name and contact information of the person being nominated for membership; and

* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee. Comments and applications for membership on the committee must be submitted by November 4, 2013, to Linda Battles, Associate Commissioner/Chief of Staff, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Linda.Battles@theccb.state.tx.us.

TRD-201304614



Notice of Intent to Engage in Negotiated Rulemaking - Texas College Work Study

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop rules for the Texas College Work Study (TCWS) allocation methodology and to develop procedures for THECB staff to verify the accuracy of the application of that allocation methodology. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, 2013, Regular Session.

In identifying persons likely affected by the proposed rules, the Commissioner of Higher Education sent individually addressed letters via email to all presidents and chancellors of public and private/independent, non-profit institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus. The letters contained a hyperlink to an online survey via the "SurveyMonkey" website. The survey asked for the individual's willingness to participate, nominations of others to be considered, and the primary issues that the person believes the committee should address.

From this effort, 60 individuals responded (out of approximately 150 affected institutions) and expressed an interest to participate or nominated someone from their institution to participate in the TCWS negotiated rulemaking committee. This presents a good probability that the identified interests will be adequately represented. The authority of the volunteers and nominations includes presidents, directors/associate directors of financial aid, and registrars. This indicates that the probable willingness and authority of the affected interests to negotiate in good faith is also high, and that there is a good probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rules.

The following is a list of the stakeholders who are significantly affected by these rules and will be represented on the negotiated rulemaking committee on TCWS:

- (1) Public Universities
- (2) Public Two-Year Colleges
- (3) Private/Independent, Non-Profit Institutions of Higher Education
- (4) Texas Higher Education Coordinating Board

The THECB proposes to appoint the following 21 individuals (out of the pool of the 60 respondents) to the negotiating rulemaking committee on TCWS to represent affected parties and the agency:

Public Universities

Laura Elizondo, Director of Financial Aid, Texas A&M International University

Delisa Falks, Executive Director of Scholarships and Financial Aid, Texas A&M University

Linda Ballard, Director of Student Financial Assistance, Texas Southern University

Christopher D. Murr, Director of Financial Aid and Scholarships, Texas State University

Tom Melecki, Director of Student Financial Services, The University of Texas at Austin

Tomikia P. LeGrande, Dean of Enrollment Management, University of Houston-Downtown

Zelma DeLeon, Executive Director of Student Financial Aid and Scholarships, University of North Texas

Elaine L. Rivera, Executive Director of Student Financial Services, The University of Texas-Pan American

Public Two-Year Colleges

Harold Whitis, District Director of Student Financial Aid, Alamo Community Colleges

Dora Sims, Director of Financial Aid, Alvin Community College

Angalynn Bishop, Registrar, Del Mar College

Jodie Wright, Director of Financial Aid, Howard College

Billy Roessler, Vice President, North Central Texas College

Denise Welch, Director of Financial Aid, Panola College

Joan Rondot, Associate College Registrar, San Jacinto College

Mary Gallegos Adams, Associate Vice President of Enrollment, Texas State Technical College-Harlingen

Private/Independent, Non-Profit Institutions

Lee Ferguson, Director of Financial Aid, Dallas Baptist University

Antonio Holloway, Director of Financial Aid, Huston-Tillotson University

Tracy Watkins, Director of Financial Aid, LeTourneau University

Rachel Atkins, Director of Financial Aid, McMurry University

Texas Higher Education Coordinating Board

Dan Weaver, Assistant Commissioner for Business and Support Services

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

* Name and contact information of the person submitting the application;

* Description of how the person is significantly affected by the rules;

* Name and contact information of the person being nominated for membership; and

* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee. Comments and applications for membership on the committee must be submitted by November 4, 2013, to Linda Battles, Associate Commissioner/Chief of Staff, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Linda.Battles@theccb.state.tx.us.

TRD-201304615



Notice of Intent to Engage in Negotiated Rulemaking - Tuition Equalization Grant Program

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop rules for the Tuition Equalization Grant (TEG) program allocation methodology and to develop procedures for THECB staff to verify the accuracy of the application of that allocation methodology. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, 2013, Regular Session.

In identifying persons likely affected by the proposed rules, the Commissioner of Higher Education sent individually addressed letters via email to all presidents and chancellors of private/independent, non-profit institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus. The letters contained a hyperlink to an online survey via the "SurveyMonkey" website. The survey asked for the individual's willingness to participate, nominations of others to be considered, and the primary issues that the person believes the committee should address.

From this effort, 31 individuals responded (out of approximately 40 affected institutions) and expressed an interest to participate or nominated someone from their institution to participate in the TEG negotiated rulemaking committee. This presents a good probability that the identified interests will be adequately represented. The authority of the volunteers and nominations includes presidents and directors/associate directors of financial aid. This indicates that the probable willingness and authority of the affected interests to negotiate in good faith is also high, and that there is a good probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rules.

The following is a list of the stakeholders who are significantly affected by these rules and will be represented on the negotiated rulemaking committee on TEG:

- (1) Private/Independent, Non-Profit Institutions of Higher Education
- (2) Independent Colleges and Universities of Texas
- (3) Texas Higher Education Coordinating Board

The THECB proposes to appoint the following 17 individuals (out of the pool of the 31 respondents) to the negotiating rulemaking committee on TEG to represent affected parties and the agency:

Private/Independent, Non-Profit Institutions

Stephen M. Brower, Associate Director of Financial Aid, Hardin-Simmons University

Veronica Gabbard, Senior Director of Financial Aid and Scholarships, Houston Baptist University

Glenda Huff, Director of Financial Aid, Howard Payne University

Paul Galyean, Director of Financial Aid, Jacksonville College

Amy Hardesty, Director of Financial Assistance, Lubbock Christian University

Esmarelda Flores, Director of Financial Aid, Our Lady of the Lake University

Anne Walker, Director of Financial Aid, Rice University

Greg Brothers, Senior Vice President and Chief Financial Officer, South Texas School of Law

Lydia Babbitt, Assistant Director of Financial Aid, Southern Methodist University

James Gaeta, Director of Financial Aid, Southwestern University

Doris Constantine, Associate Vice President for Student Financial Services, St. Edward's University

Arthur Gourdreau, Director of Financial Aid, Texas Chiropractic College

Melet Leafgreen, Assistant Director of Financial Aid, Texas Christian University

Cecelia Jones, Director of Financial Aid, Texas College

Ron Brown, Director of Financial Aid, University of Mary Hardin Baylor

Independent Colleges and Universities of Texas

Carol McDonald, President

Texas Higher Education Coordinating Board

Dan Weaver, Assistant Commissioner for Business and Support Services

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

- * Name and contact information of the person submitting the application;
- * Description of how the person is significantly affected by the rules;
- * Name and contact information of the person being nominated for membership; and
- * Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee. Comments and applications for membership of the committee must be submitted by November 4, 2013, to Linda Battles, Associate Commissioner/Chief of Staff, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Linda.Battles@thehb.state.tx.us.

TRD-201304617

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: October 16, 2013



Texas Department of Housing and Community Affairs

Announcement of Public Comment Period on the Substantial Amendment to 2013 State of Texas Consolidated Plan: One Year Action Plan

The Texas Department of Housing and Community Affairs (the "Department") announces the opening of the public comment period for the Substantial Amendment to the 2013 State of Texas Consolidated Plan: One Year Action Plan (Plan). The Substantial Amendment to the 2013 Plan is proposed to align with revisions to 24 CFR Part 91, effective August 23, 2013.

The Substantial Amendment to the 2013 Plan is available on the Department's website at www.tdhca.state.tx.us.

The public comment period will be held October 25, 2013, until 5:00 p.m. Monday, November 25, 2013, to receive input. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, 2013 Plan Amendment Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to HOME@tdhca.state.tx.us. Enter 2013 Plan Amendment in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 25, 2013.

Substantial Amendment to 2013 State of Texas Consolidated Plan: One-Year Action Plan

Jurisdiction(s): State of Texas, Texas Department of Housing and Community Affairs

Jurisdiction Web Address: <http://www.tdhca.state.tx.us>

One Year Action Plan

Contact: Elizabeth Yevich

Address: Texas Department of Housing and Community Affairs

221 East 11th Street, Austin, Texas 78701

Telephone: (512) 463-7961

Fax: (512) 475-0070

Email: elizabeth.yevich@tdhca.state.tx.us

This document is a substantial amendment to the Plan for FFY 2013 submitted by the State of Texas. The Plan is the annual update to the Consolidated Plan for FFY 2010 through 2014. This amendment is proposed to align the Plan with revisions to 24 CFR Part 91, effective August 23, 2013. The revision allows Participating Jurisdictions (PJs) to provide preferences for certain subpopulations or limitations on assistance only if the preferences or limitations are identified in the PJs' planning document as having an unmet housing need and are needed to narrow the gap in benefits and services received by such persons. Any limitation or preference must not violate nondiscrimination requirements in 24 CFR 92.350, and the PJ may not limit or give preferences to students (FR DOC #: 2013-17348 published July 24, 2013).

A. PREFERENCES FOR SPECIAL NEEDS POPULATIONS

The Texas Department of Housing and Community Affairs ("the Department") may consider allowing HOME Administrators to propose to limit beneficiaries or give preferences to certain groups of the low-income population as described in this section, provided the limitations or preferences do not violate nondiscrimination requirements in 24 CFR §92.350. These preferences or limitations will be described in applications for award or Administrator program designs. Marketing materials and affirmative marketing plans must clearly describe these preferences and the purpose of these preferences.

Programs designed to target assistance to special needs populations may include the elderly, frail elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS, persons with the Violence Against Women Act protections (domestic violence, dating violence, sexual assault, or stalking), colonia residents, migrant farmworkers, homeless populations, veterans, wounded warriors (as

defined by the Caring for Wounded Warriors Act of 2008), and public housing residents. Preferences may also include programs designed to assist veterans, households with a member who is pregnant, households with a member entering an institution of higher learning provided the household does not consist of an individual that is not eligible to receive Section 8 assistance on the basis of their student status, disaster victims, refugees or families of refugees, persons transitioning out of incarceration, and persons transitioning out of the foster care system and nursing facilities.

The Department will only consider programs designed to limit assistance to households with a member who has HIV/AIDS, mental illness, alcohol or other drug addiction, or households that would qualify under the Department's Project Access program as defined in 10 TAC Chapter 5, §5.801.

The Department may also consider permitting rental housing owners to give a preference or limitation as indicated in this section and may allow a preference or limitation that is not described in this section provided that another federal or state funding source for the rental housing requires a limitation or preference.

B. ACTIVITIES

The eligible activities to be administered with a preference or limitation are all HOME eligible activities identified in the Plan, and Tenant-Based Rental Assistance (TBRA) and Multifamily Rental projects in particular.

C. EXPECTED IMPACT

Based on the Department's current funding models, the Department expects an increase in the number of entities interested in administering TBRA, with a preponderance of assistance serving households at or below 60% of AMFI.

D. PUBLIC COMMENT

The draft Substantial Amendment will be presented to the Department's Governing Board at the October 10, 2013, Board meeting, it will be published in the *Texas Register* and posted for comment on the Department's website from October 25, 2013, through November 25, 2013. The final Substantial Amendment to the 2013 Action Plan, along with public comment, will be presented to the Department's Governing Board at the December 12, 2013, meeting.

TRD-201304609

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 16, 2013



Notice of Public Hearing - Multifamily Housing Revenue Bonds (Decatur-Angle Apartments)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Marine Creek Elementary School, 4801 Huffines Boulevard, Fort Worth, Texas 76135 at 6:00 p.m. on November 13, 2013, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$23,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Decatur-Angle Ltd., a Texas limited partnership, or a related person or affiliate thereof (the "Borrower"), to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development described as follows: an approximately 302-unit multifamily housing development to be located at the

northeast corner of Old Decatur Road and Angle Avenue, Fort Worth, Tarrant County, Texas 76106 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Jorge Reyes at (512) 475-4577 at least five days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

<http://www.tdhca.state.tx.us/multifamily/bond/index.htm>.

TRD-201304608

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 16, 2013



Re-release of the Notice of Funding Availability Housing Trust Fund 2014-2015 Amy Young Barrier Removal Program

I. Source of Housing Trust Funds.

The Housing Trust Fund (HTF) was established by the 72nd Legislature, Senate Bill 546, Texas Government Code, §2306.201, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of \$3,578,250 in funding from the Housing Trust Fund (HTF) for the Amy Young Barrier Removal Program (Program) through the Department's first-come, first-served Reservation System. For Fiscal Year (FY) 2014, \$1,789,125 in combined project and administration funding will be available on **November 1, 2013**. For FY 2015, another \$1,789,125 in combined project and administration funding will be available on or around September 3, 2014.

The Amy Young Barrier Removal Program provides one-time grants of up to \$20,000 to Persons with Disabilities, qualified as earning 80% or less of the applicable Area Median Family Income, for home modifications necessary for accessibility and addressing housing-related health and safety hazards, as approved by the Department. Program beneficiaries may be tenants or homeowners and their household members with disabilities.

Starting on July 26, 2013, the Department will accept applications from organizations seeking authorization to access the first-come, first-served Reservation System (which opens on **November 1, 2013**) on an ongoing basis until all Program funds are reserved. For the release of funding for FY 2015, the Department will reopen the process for accepting applications from organizations seeking authorization to access the Reservation System on or around July 1, 2014.

III. Application Deadline and Availability.

The HTF "2014-2015 Amy Young Barrier Removal Program" NOFA is posted on the Department's website: <http://www.tdhca.state.tx.us/htf/index.htm>. Subscribers to the Department's LISTSERV will receive notification that the NOFA is posted.

Questions regarding the HTF Program NOFA may be addressed to Mark Leonard at (512) 936-7799 or htf@tdhca.state.tx.us

TRD-201304590

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 15, 2013



Re-release of the Notice of Funding Availability Office of Colonia Initiatives 2014-2015 Texas Bootstrap Loan Program

I. Source of Housing Trust Funds.

The Housing Trust Fund (HTF) was established by the 72nd Legislature, Senate Bill 546, Texas Government Code, §2306.201, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department"), through its Office of Colonia Initiatives, announces the availability of approximately \$6,000,000 of State of Texas Housing Trust Funds for the Texas Bootstrap Loan Program (Bootstrap). For Fiscal Year (FY) 2014, approximately \$3,000,000 will be available on **November 1, 2013**. For FY 2015, the remaining estimated \$3,000,000 will be available for reservation on or around June 4, 2014, however funds will not be available for distribution until September 3, 2014.

The purpose of the Bootstrap Program is to purchase land and/or build new residential or improve existing residential housing through self-help construction methodologies for Owner-Builders, including persons with special needs, whose household income does not exceed 60 percent of the Area Median Family Income.

In order to reserve Program funds on behalf of Owner-Builders, nonprofit organizations must undergo certification as a "Nonprofit Owner-Builder Housing Provider" by the Department and execute a loan origination agreement. Two-thirds of the funds are set aside for Owner-Builders with property in census tracts with median incomes not exceeding 75 percent of the state median income per the most recent statistics available. The remaining one-third will be released statewide.

III. Application Deadline and Availability.

The "2014-2015 Texas Bootstrap Loan Program" NOFA is posted on the Department's website: <http://www.tdhca.state.tx.us/oci/bootstrap.jsp>. Subscribers to the Department's LISTSERV will receive notification that the NOFA is posted.

Questions regarding the Bootstrap Program NOFA may be addressed to Raul Gonzales at (512) 475-1473 or raul.gonzales@tdhca.state.tx.us

TRD-201304589

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 15, 2013



Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by GULFSTREAM PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Sarasota, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201304607

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: October 16, 2013



Notice of Informal Stakeholder Meeting

The Texas Department of Insurance provides notice of an informal stakeholder meeting to discuss and gather information relating to the determination of rates of assessments for expenses of examination of: (1) foreign and domestic insurance companies and workers' compensation self-insurance groups; (2) examinations, investigations, and general administrative expenses for the regulation of insurance premium finance companies; and (3) insurance maintenance taxes.

Insurance Code §§401.151, 401.152, 401.155, and 401.156 and Labor Code §407A.252 require the commissioner of insurance to determine rates for the assessments for expenses of examination of foreign and domestic insurance companies and workers' compensation self-insurance groups. Insurance Code §651.006 requires the commissioner of insurance to determine the rates for the assessments to cover the cost of examinations, investigations, and general administrative expenses for the regulation of insurance premium finance companies. Insurance Code Title 3 Subtitles C and D, and Labor Code Chapters 403, 405, 407, and 407A require the commissioner of insurance to determine the rates for the assessments of insurance maintenance taxes.

Legislative changes passed during the 83rd Legislative Session that will have an impact on rates and assessment costs include, but are not limited to, the following: (1) Senate Bill 1665, 83rd Legislature, Regular Session, effective June 14, 2013; (2) House Bill 2163, 83rd Legislature, Regular Session, effective September 1, 2013; and (3) Article 1, Rider 16, Page 28, Chapter 1411 (S.B. 1), Acts of the 83rd Legislature, Regular Session, 2013 (the General Appropriations Act). The department is gathering information to use in adopting rules to establish the rates of each tax and assessment.

The department has scheduled an informal stakeholder meeting to be held 10:30 a.m. to noon on Thursday, October 31, 2013, in Room 102 at the William P. Hobby, Jr., State Office Building, 333 Guadalupe Street, Austin, Texas.

The purpose of the informal meeting is for the department to provide information to and receive comments and information from all interested parties. Staff and stakeholders will informally discuss the preliminary estimates of the projected rates of assessment, the supporting documentation and methodology of the process for determining the estimated projected rates of assessment and fees, and the draft rules to establish the rates of each tax and assessment.

Shortly after the informal stakeholder meeting, the department will make available the proposed amendments to the rules that establish the rates of assessments and fees. The department will post the rule proposals on the department's website at <http://www.tdi.texas.gov/> and submit them for publication and formal public comment in the *Texas Register*. Interested persons may view the rule proposals at the department's website and may obtain copies of the rule proposals by submitting a written request to the Office of the Chief Clerk, Texas Department of Insurance, MC113-2A, P.O. Box 149104, Austin, Texas 78714-9104.

If you have any questions about this matter, please contact the Office of the Chief Clerk at (512) 463-6327.

TRD-201304606

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: October 16, 2013



Notice of Public Hearing

The commissioner will hold a public hearing under Docket No. 2754 at 9:30 a.m. on October 30, 2013, in Room 100 at the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The commissioner will consider the Texas Windstorm Insurance Association's petition related to the maximum limits of liability for windstorm and hail insurance policies covering residential dwellings and individually-owned townhouses, and associated contents; contents of apartments, condominiums, or townhouses; commercial structures and associated contents; and governmental structures and associated contents. The petition was submitted under Texas Insurance Code §§2210.502 - 2210.504.

The petition does not affect the association's rates.

This notice is made under Texas Insurance Code §2210.504(a), which requires notice and a hearing prior to the commissioner's approval, disapproval, or modification of the association's proposed adjustments to the limits of liability for its windstorm and hail insurance policies. Texas Insurance Code Chapter 40 does not apply to this proceeding.

A copy of the association's petition is available for review online at <http://www.tdi.texas.gov/submissions/indextwia.html#limit> and in the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. To request a copy of the petition (Reference No. P-1013-01), contact Victoria Ortega at (512) 463-6327. Parties seeking additional information about this matter may contact J'ne Byckovski, chief actuary, by mail at the Texas Department of Insurance, MC 105-5F, 333 Guadalupe Street, Austin, Texas 78701 or by phone at (512) 475-3017.

TRD-201304523

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: October 11, 2013



Texas Department of Licensing and Regulation

Vacancies on Advisory Board on Barbering

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Advisory Board on Barbering (Board) established by Texas Occupations Code, Chapter 1601. The pertinent rule may be found in 16 TAC §82.65. The purpose of the Advisory Board on Barbering is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on: education and curricula for applicants; the content of examinations; proposed rules and standards on technical issues related to barbering; and other issues affecting barbering.

The Board is composed of five members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of two members who are engaged in the practice of barbering as a Class A barber and do not hold a barbershop permit; two members who are barbershop owners and hold barbershop permits; and one member who holds a permit to conduct or operate a barber school. 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 two members who are engaged in the practice of barbering as a Class A barber and do not hold a barbershop permit.

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 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 applicants' expense.

TRD-201304611

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: October 16, 2013



Vacancies on Elevator Advisory Board

The Texas Department of Licensing and Regulation (Department) announces five vacancies on the Elevator Advisory Board (Board) established by Texas Health and Safety Code, Chapter 754, §754.012 and §754.013. The pertinent rule may be found in 16 TAC §74.65. The purpose of the Elevator Advisory Board (Board) is to advise the Texas Commission of Licensing and Regulation (Commission) on the adoption of appropriate standards for the installation, alteration, operation, and inspection of equipment; the status of equipment used by the public in this state; sources of information relating to equipment safety; public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and any other matter considered relevant by the Commission.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of a representative of the insurance industry or a certified elevator inspector; a representative of equipment constructors; a representative of owners or managers of a building having fewer than six stories and having equipment; a representative of owners or managers of a building having six stories or more and having equipment; a representative of independent equipment maintenance companies; a representative of equipment manufacturers; a licensed or registered engineer or architect; a public member; and a public member with a physical disability. Members serve at the will of the Commission. This announce-

ment is for the following positions: a representative of equipment constructors; a representative of owners or managers of a building having fewer than six stories and having equipment; a licensed or registered engineer or architect; a public member; and a public member with a physical disability.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone at (800) 803-9202, fax at (512) 475-2874 or email 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 applicants' expense.

TRD-201304612

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: October 16, 2013



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 member who represents the public.

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 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 applicants' expense.

TRD-201304613

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: October 16, 2013



Texas Lottery Commission

Extension of Comment Period

On September 19, 2013, the Texas Lottery Commission (Commission) proposed amendments to 16 TAC §402.200 relating to General Restrictions on the Conduct of Bingo, §402.400 relating to General Licensing Provisions, §402.402 relating to Registry of Bingo Workers, §402.403 relating to Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises, §402.404 relating to License and Registry Fees, §402.410 relating to Amendment of a License - General Provisions, §402.411 relating to Late License Renewal, §402.420 relating to Qualifications and Requirements for Conductor's License, §402.700 relating to Denials; Suspensions; Revocations; Hearings, and proposed new rules 16 TAC §402.702 relating to Disqualifying Convictions, §402.703 relating to Audit Policy, and §402.705 relating to Inspection of Premises. The proposed rules were published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6843) with a 30-day comment period to follow. The comment period for all of the foregoing proposals has been extended for an additional two weeks, and written comments will be accepted through November 18, 2013. Comments on the proposed amendments may be submitted to James Person, Assistant General Counsel (for §§402.200, 402.400, 402.403, 402.404, 402.410, 402.411, 402.700, 402.703, and 402.705), or Lea Burnett, Assistant General Counsel (for §§402.402, 402.420 and 402.702), by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission encourages all interested persons to submit written comments no later than November 18, 2013.

TRD-201304603
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 16, 2013



Instant Game Number 1570 "Merry Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1570 is "MERRY MONEY." The play style is "key number match."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1570 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1570.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, TREE SYMBOL, JINGLE BELL SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$2,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1570 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
TREE SYMBOL	WINX5
JINGLE BELL SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TENS
\$15.00	FIFTN
\$20.00	TWENTY

\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1570), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1570-0000001-001.

K. Pack - A Pack of "MERRY MONEY" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MERRY MONEY" Instant Game No. 1570 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "MERRY MONEY" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "TREE" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "JINGLE BELL" Play Symbol, the player WINS ALL 20 PRIZES! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in §1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No matching WINNING NUMBERS Play Symbols on a Ticket.

C. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No more than three matching non-winning Prize Symbols on a Ticket.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and \$10).

G. When the "JINGLE BELL" (win all) Play Symbol appears, there will be no occurrence of any of YOUR NUMBERS Play Symbols matching to any WINNING NUMBERS Play Symbol.

H. The "JINGLE BELL" (win all) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. The "TREE" (win x 5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

J. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MERRY MONEY" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A

claimant may also claim any of the above prizes under the procedure described in §2.3.B and §2.3.C of these Game Procedures.

B. To claim a "MERRY MONEY" Instant Game prize of \$2,000 or \$100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MERRY MONEY" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in §2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MERRY MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "MERRY MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank

account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned

by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,600,000 Tickets in the Instant Game No. 1570. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1570 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	616,000	10.71
\$10	704,000	9.38
\$15	264,000	25.00
\$20	88,000	75.00
\$50	19,250	342.86
\$100	26,290	251.05
\$500	4,250	1,552.94
\$2,000	150	44,000.00
\$100,000	6	1,100,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1570 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1570, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201304566

Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 14, 2013

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North Central Texas Council of Governments

Consultant Proposal Request

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting written proposals from firms to provide permanent and mobile equipment to collect counts of bicycle and pedestrian users on shared use paths (trails) and on-street bicycle facilities in the North Central Texas Region. The equipment shall be able to count/op-

erate for continuous data collection with the ability to summarize count totals by 15 minute time intervals with a high degree of accuracy, and provide automatic data uploads and online interface with standard analysis tools and data storage which easily generate graphs and reports of the counts. The equipment shall provide bi-directional detection, be able to distinguish between pedestrian and bicycle users, and have the ability to count bicyclists riding side by side. Training for the installation of equipment, use of equipment, and software/data management shall also be provided. Engineering services are not anticipated for purchase or installation of this equipment.

Due Date

Proposals must be received no later than 3:00 p.m., on Friday, November 8, 2013, to Karla Weaver, AICP, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, October 25, 2013. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201304595

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: October 15, 2013

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on October 10, 2013, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable Texas, LLC and Time Warner NY Cable, LLC to Amend Its State-Issued Certificate of Franchise Authority, Project Number 41927.

Time Warner Cable, Inc. (TWCI) (parent company to Time Warner Cable Texas, SICFA No. 90008 and Time Warner NY Cable, SICFA No. 90019) is undertaking an internal reorganization whereby the

TWCI subsidiary Time Warner NY Cable, LLC will be consolidated into Time Warner Cable Texas, LLC. This will result in the consolidation of SICFA No. 90019 into SICFA No. 90008.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 41927.

TRD-201304572

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 15, 2013

Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on October 9, 2013, for an amendment to certificated service area boundaries within Irion County, Texas.

Docket Style and Number: Application of Southwest Texas Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Service Area Exception within Irion County. Docket Number 41924.

The Application: Southwest Texas Electric Cooperative, Inc. (SWTEC) filed an application for a service area exception to allow SWTEC to provide service to a specific customer located within the certificated service area of Concho Valley Electric Cooperative, Inc. (CVEC). CVEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 1, 2013 by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 41924.

TRD-201304512

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 11, 2013

Notice of Application to Implement Non-Standard Metering Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application made in compliance with commission rules to implement non-standard metering service.

Docket Style and Number: Compliance Tariff of AEP Texas Central Company and AEP Texas North Company Related to Non-Standard Metering Service Pursuant to P.U.C. Substantive Rule §25.133; Docket No. 41879.

The Application: On September 30, 2013, AEP Texas Central Company (TCC) filed with the commission a compliance tariff seeking approval of non-refundable up-front one-time fixed fees, monthly fees,

and discretionary service fees to be charged for non-standard metering services. TCC proposes the following fees:

Non-Refundable One-Time Fee (Options):

- Keep existing non-standard meter: \$209
- Digital, non-communicating meter (Self-contained): \$286
- Digital, non-communicating meter (CT): \$319
- Analog meter: \$286
- Advanced meter with the communications technology disabled: \$250
- Monthly fee (same for all meter types): \$18

Discretionary Service Fees:

- Disconnect for Non-Pay (DNP): \$20
- Reconnect after DNP:
 - Standard: \$20
 - Same Day: \$38
 - Weekend: \$48
 - Holiday: \$60
- Re-reads: \$17
- Out-of-cycle Meter Read for Purpose of a Self-Selected Switch: \$16

Persons who wish to intervene in this proceeding or who wish to express their comments concerning the compliance tariffs should contact the commission by the intervention deadline of November 26, 2013. A request to intervene or comments should be mailed to the Public Utility Commission, at P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket No. 41879.

TRD-201304530
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2013



Notice of Application to Implement Non-Standard Metering Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application made in compliance with commission rules to implement non-standard metering service.

Docket Style and Number: Compliance Tariff of AEP Texas Central Company and AEP Texas North Company Related to Non-Standard Metering Service Pursuant to P.U.C. Substantive Rule §25.133; Docket No. 41879.

The Application: On September 30, 2013, AEP Texas North Company (TNC) filed with the commission a compliance tariff seeking approval of non-refundable up-front one-time fixed fees, monthly fees, and discretionary service fees to be charged for non-standard metering services. TNC proposes the following fees:

Non-Refundable One-Time Fee (Options):

- Keep existing non-standard meter: \$203
- Digital, non-communicating meter (Self-contained): \$318

- Digital, non-communicating meter (CT): \$356
- Analog meter: \$318
- Advanced meter with the communications technology disabled: \$263
- Monthly fee (same for all meter types): \$35

Discretionary Service Fees:

- Disconnect for Non-Pay (DNP): \$21
- Reconnect after DNP:
 - Standard: \$11
 - Same Day: \$39
 - Weekend: \$53
 - Holiday: \$66
- Re-reads: \$17
- Out-of-cycle Meter Read for Purpose of a Self-Selected Switch: \$16

Persons who wish to intervene in this proceeding or who wish to express their comments concerning the compliance tariffs should contact the commission by the intervention deadline of November 26, 2013. A request to intervene or comments should be mailed to the Public Utility Commission, at P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket No. 41879.

TRD-201304531
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2013



Notice of Application to Implement Non-Standard Metering Service

Notice is given to the public of a filing with the Public Utility Commission of Texas (commission) made in compliance with commission rules to implement Non-Standard Metering Service.

Docket Style and Number: Compliance Tariff of Oncor Electric Delivery Company, LLC Related to Non-Standard Metering Service Pursuant to P.U.C. Substantive Rule §25.133; Docket No. 41890.

The Application: On September 30, 2013, Oncor Electric Delivery Company, LLC (Oncor) filed with the commission a compliance tariff to implement Non-Standard Metering Service. Oncor proposes the following fees:

Non-refundable, one time up-front fees

- For Customers without an AMS meter:
 - Keep existing meter: \$373.70 to \$489.20
 - Install new analog meter: \$372.35 to \$612.40
 - Install digital, non-communicating meter: \$389.00 to \$521.65
 - Install AMS meter with communications disabled: \$391.60 to \$524.25
- For Customers with an AMS meter:
 - Install new analog meter: \$396.55 to \$769.20
 - Install digital, non-communicating meter: \$413.15 to \$678.45

-Install AMS meter with communications disabled: \$415.80 to \$681.05

Monthly fees

Recurring monthly fee:

-kWh Only Metering: \$23.75

-kWh and demand Metering: \$28.45

Discretionary services fees

Disconnect for non-pay (DNP):

-At Meter: \$22.25

-At Premium Location: \$46.05

Reconnect after DNP:

-At Meter: \$26.70 to \$100.80

-At Premium Location: \$52.30 to \$153.90

Out-of-Cycle Meter Read Charges:

-Meter reading found to be in error: \$0.00

-Meter reading found to be accurate: \$22.25

-Out-of-cycle meter read for the purpose of a self-selected switch:

-Retail customer without a provisioned advanced meter: \$22.25

Persons who wish to intervene in or comment upon these proceedings in Docket No. 41890, should notify the commission by the intervention deadline of November 22, 2013. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201304597

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 15, 2013



Notice of Application to Implement Non-Standard Metering Service

Notice is given to the public of a filing with the Public Utility Commission of Texas (commission) made in compliance with commission rules to implement Non-Standard Metering Service.

Docket Style and Number: Compliance Tariff of Texas-New Mexico Power Company Related to Non-Standard Metering Service Pursuant to P.U.C. Substantive Rule §25.133; Docket No. 41901.

The Application: On September 30, 2013, Texas New Mexico Power (TNMP) filed with the commission a compliance tariff to implement Non-Standard Metering Service. TNMP proposes the following fees:

Fee Type:

Existing Analog (One Time) - \$142.84

Replace AMS w/ Analog (One Time) - \$220.42

Replace AMS w/ Digital (One Time) - \$247.48

Monthly meter reading fee (recurring) - \$38.99

Persons who wish to intervene in or comment upon these proceedings in Docket No. 41901 should notify the commission by the intervention deadline of November 27, 2013. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201304522

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 11, 2013



Notice of Application to Implement Non-Standard Metering Service

Notice is given to the public of a filing with the Public Utility Commission of Texas (commission) made in compliance with commission rules to implement Non-Standard Metering Service.

Docket Style and Number: Compliance Tariff of CenterPoint Energy Houston Electric, LLC Related to Non-Standard Metering Service Pursuant to P.U.C. Substantive Rule §25.133; Docket No. 41906.

The Application: On September 30, 2013, CenterPoint Energy Houston Electric, LLC (CEHE) filed with the commission a compliance tariff to implement Non-Standard Metering Service. CEHE proposes the following fees:

Non-refundable, one time up-front fees:

Existing analog meter: \$135.00

New analog meter: \$210.00

Digital non-communicating meter: \$240.00

AMS meter with communications disabled: \$210.00

Monthly fees:

Recurring monthly fee: \$38.50

Discretionary services fees:

Disconnect for non-pay (DNP):

Standard disconnect (non-standard meter): \$23.35

Reconnect after DNP:

Standard reconnect (non-standard meter): \$23.35

Re-reads (premises with a non-standard meter):

Meter reading found to be in error: \$0.00

Meter reading found to be accurate: \$23.35

Out-of-cycle meter read for the purpose of a self-selected switch:

Retail customer without a provisioned advanced meter: \$23.35

Persons who wish to intervene in or comment upon these proceedings in Docket No. 41906, should notify the commission by the intervention deadline of November 26, 2013. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text

telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201304588
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 15, 2013



Notice of Petition for Restoration of Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on October 9, 2013, for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act (PURA) §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of Eastex Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to PURA §56.025 and P.U.C. Substantive Rule §26.406, Docket Number 41925.

The Application: Eastex Telephone Cooperative, Inc. (Eastex) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Eastex. The petition requests that the commission allow Eastex recovery of funds from the TUSF in the amount of \$362,114.76 to replace projected 2012 FUSF revenue reductions. Eastex is not seeking any rate increases through this proceeding.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 41925.

TRD-201304507
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2013



Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9150

APPROVAL OF AMENDMENTS TO TEXAS RULES OF DISCIPLINARY PROCEDURE AND INTERNAL OPERATING PROCEDURES OF THE COMMISSION FOR LAWYER DISCIPLINE

ORDERED that:

1. In accordance with the Act of June 14, 2013, 83rd Leg., R.S. (SB 825), and pursuant to section 22.004 of the Texas Government Code, the Supreme Court of Texas amends Rules of Disciplinary Procedure 1.06 and 15.06 and the Commission for Lawyer Discipline's Internal Operating Procedure 13 as follows, effective November 1, 2013.
2. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;

- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this Order to each elected member of the Legislature; and
- d. submit a copy of the Order for publication in the *Texas Register*.

Dated: October 14, 2013.

Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

Jeffrey V. Brown, Justice

Amendments to Rule 1.06, Texas Rules of Disciplinary Procedure

1.06. Definitions

...
V. "Penal Institution" has the meaning assigned by Article 62.001, Code of Criminal Procedure.

W. "Professional Misconduct" includes:

1. Acts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct.
2. Attorney conduct that occurs in another state or in the District of Columbia and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.
3. Violation of any disciplinary or disability order or judgment.
4. Engaging in conduct that constitutes barratry as defined by the law of this state.
5. Failure to comply with Rule 13.01 of these rules relating to notification of an attorney's cessation of practice.
6. Engaging in the practice of law either during a period of suspension or when on inactive status.
7. Conviction of a Serious Crime, or being placed on probation for a Serious Crime with or without an adjudication of guilt.

8. Conviction of an Intentional Crime, or being placed on probation for an Intentional Crime with or without an adjudication of guilt.

X. "Reasonable Attorneys' Fees," for purposes of these rules only, means a reasonable fee for a competent private attorney, under the circumstances. Relevant factors that may be considered in determining the reasonableness of a fee include but are not limited to the following:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The fee customarily charged in the locality for similar legal services;
3. The amount involved and the results obtained;
4. The time limitations imposed by the circumstances; and
5. The experience, reputation, and ability of the lawyer or lawyers performing the services.

Y. "Respondent" means any attorney who is the subject of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action.

Z. "Sanction" means any of the following:

1. Disbarment.
2. Resignation in lieu of discipline.
3. Indefinite Disability Suspension.
4. Suspension for a term certain.
5. Probation of suspension, which probation may be concurrent with the period of suspension, upon such reasonable terms as are appropriate under the circumstances.
6. Interim suspension.
7. Public reprimand.
8. Private reprimand.

The term "Sanction" may include the following additional ancillary requirements.

- a. Restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of Respondent's Professional Misconduct); and
- b. Payment of Reasonable Attorneys' Fees and all direct expenses associated with the proceedings.

AA. "Serious Crime" means barratry; and felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

BB. "State Bar" means the State Bar of Texas.

CC. "Summary Disposition Panel" means a panel of the Committee that determines whether a Complaint should proceed or should be dismissed based upon the absence of evidence to support a finding of Just Cause after a reasonable investigation by the Chief Disciplinary Counsel of the allegations in the Grievance.

DD. "Wrongfully Imprisoned Person" has the meaning assigned by Section 501.101, Government Code.

Amendments to Rule 15.06, Texas Rules of Disciplinary Procedure

15.06. Limitations; Rules and Exceptions

A. General Rule: No attorney licensed to practice law in Texas may be disciplined for Professional Misconduct that occurred ~~occurring~~ more

than four years before the date on which a Grievance alleging the time when the allegation of Professional Misconduct is received by the brought to the attention of the Office of Chief Disciplinary Counsel, except in cases in which disbarment or suspension is compulsory.

B. Exception: Compulsory Discipline: The general rule does not apply to a Disciplinary Action seeking compulsory discipline under Part VIII.

C. Exception: Alleged Violation of the Disclosure Rule: A prosecutor may be disciplined for a violation of Rule 3.09(d), Texas Disciplinary Rules of Professional Conduct, that resulted in the wrongful imprisonment of a person if the Grievance alleging the violation is received by the Chief Disciplinary Counsel within four years after the date on which the Wrongfully Imprisoned Person was released from a Penal Institution.

D. Effect of Fraudulent Concealment: If the doctrine of fraudulent concealment is successfully invoked, the time periods stated in this rule do not begin to run until the Complainant discovered, or in the exercise of reasonable diligence should have discovered, the Professional Misconduct. Limitations will not begin to run where fraud or concealment is involved until such Professional Misconduct is discovered or should have been discovered in the exercise of reasonable diligence by the Complainant.

Amendments to Internal Operation Procedure 13, Commission for Lawyer Discipline

13. LIMITATIONS ON THE USE OF PRIVATE REPRIMANDS.

In accordance with Section 81.072(11), Texas Government Code, the Commission adopts the following rules restricting the use of private reprimands by district grievance committees. Private reprimands shall not be utilized if:

- A. A private reprimand has been imposed upon the Respondent within the preceding five (5) year period for a violation of the same disciplinary rule; or
- B. The Respondent has previously received two (2) or more private reprimands, whether or not for violations of the same disciplinary rule, within the preceding ten (10) years; or
- C. The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
- D. The misconduct has resulted in substantial injury to the client, the public, the legal system or the profession; or
- E. There is likelihood of future misconduct by Respondent; or
- F. The Respondent's misconduct was an intentional violation of the Texas Disciplinary Rules of Professional Conduct or, if applicable, the Texas Code of Professional Conduct; or
- G. A Disciplinary Action has been filed as a result of such misconduct; or
- H. The misconduct involves the failure of a prosecutor to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense.

TRD-201304574

Martha Newton

Rules Attorney

Supreme Court of Texas

Filed: October 15, 2013

◆ ◆ ◆
Texas Windstorm Insurance Association

Request for Proposals - Review of Claims and Underwriting Processes

The Texas Windstorm Insurance Association (TWIA) requests proposals for Review of Claims and Underwriting Processes. The request for proposals (RFP) is available on TWIA's web site at www.twia.org under the heading "News & Upcoming Events."

TWIA invites all qualified Respondents to submit proposals in accordance with the requirements outlined in this RFP. The purpose of this RFP is to obtain proposals from qualified Respondents for the review of TWIA's claims and underwriting functions as described in this RFP.

Responses to the RFP must be received on or before November 5, 2013 5:00 p.m. CST, Austin, Texas.

NOTE: Proposals, other than those submitted by email, must be time stamped in TWIA offices before the hour and date specified for receipt of proposal. Late responses will not be considered under any circumstances. Dates of receipt for email responses will be the received date shown by our system. In no event will TWIA be liable for responses delayed by delivery services or email systems.

Email Responses to David Durden at Texas Windstorm Insurance Association, rfp@twia.org.

Submit Responses by Hand Delivery, Express Mail, or U.S. Postal Service to:

Texas Windstorm Insurance Association

ATTN: David Durden

5700 South MoPac, Building A

Austin, Texas 78749

Each Response must show RFP Number on Return Envelope or email subject line.

Sealed responses will be received until the date and time established for receipt. Responses received later than the specified date and time, whether delivered in person or by mail or email, will be disqualified as untimely.

Refer Inquiries to:

David Durden, Texas Windstorm Insurance Association

Fax: (512) 899-4950

Email: rfp@twia.org

TRD-201304567

Wesley Koehl

Human Resources Coordinator

Texas Windstorm Insurance Association

Filed: October 14, 2013





How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 38 (2013) is cited as follows: 38 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "38 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 38 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)

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***Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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