TEXAS REGISTER

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

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

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IN THIS ISSUE

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1174-GA

Requestor:

The Honorable Rene O. Oliveira

Chair, Committee on Business & Industry

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a Type 4B economic development corporation may use sales tax funds to hire an independent contractor for the purpose of developing a comprehensive plan for future development of the city (RQ-1174-GA)

Briefs requested by January 20, 2014

RQ-1175-GA

Requestor:

The Honorable Dan Patrick

Chair, Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Use of the Common Core State Standards Initiative by Texas school districts to teach state standards (RQ-1175-GA)

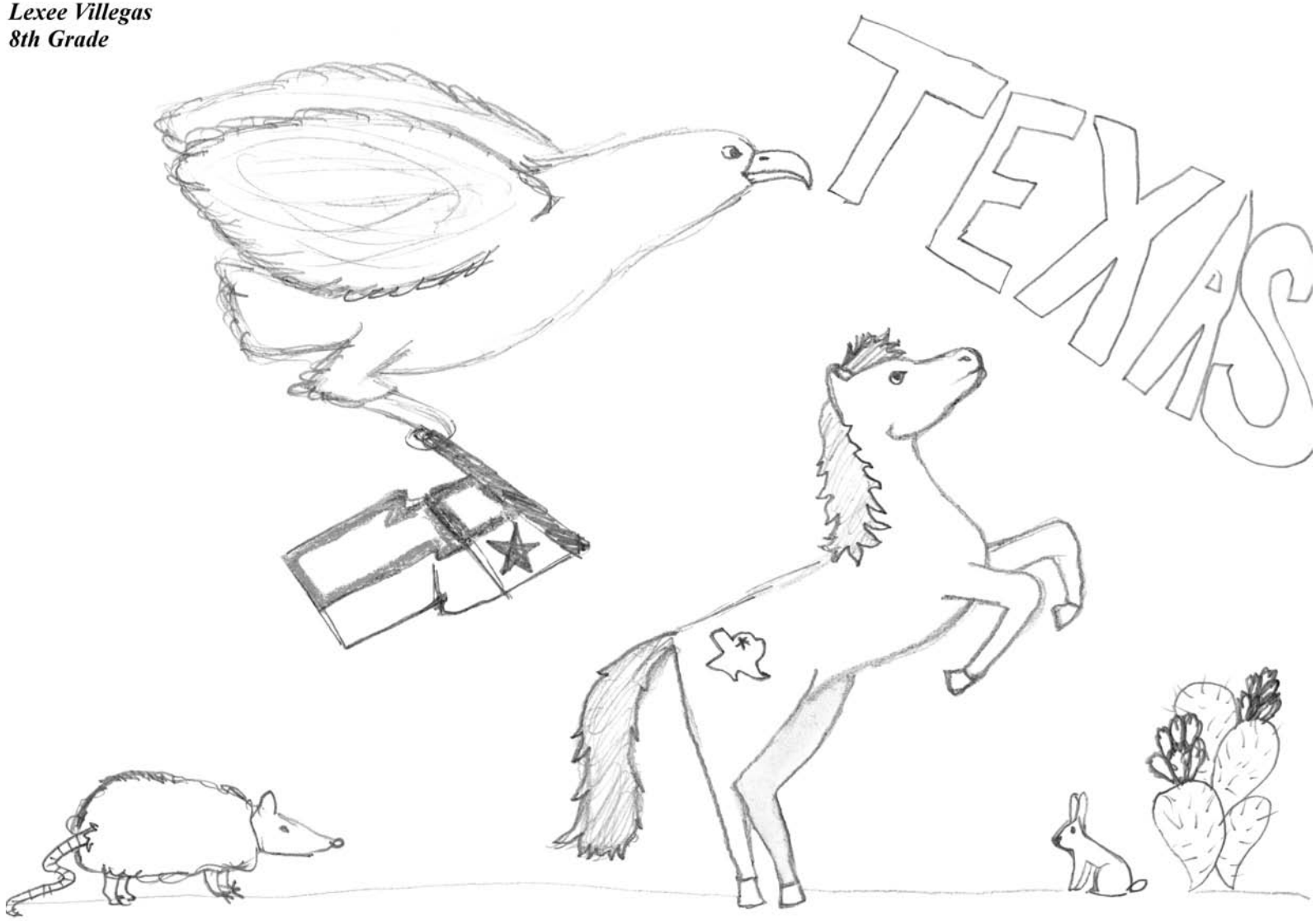
Briefs requested by January 20, 2014

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

TRD-201306112
Katherine Cary
General Counsel
Office of the Attorney General
Filed: December 30, 2013

♦ ♦ ♦

Lexee Villegas
8th Grade



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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER H. INCOME AND RENT LIMITS

10 TAC §10.1004

The Texas Department of Housing and Community Affairs (the "Department") proposes new §10.1004, concerning Housing Tax Credit Properties, TCAP, Exchange and HTF. The proposed new section provides standards to identify which properties can use the rural income limits and details the calculation used for determining the income and rent limits for Housing Tax Credit Properties, TCAP, Exchange and HTF Developments administered by the Department

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section 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 section is in effect, the public benefit anticipated as a result of the new section will be improved compliance and clarity regarding requirements. There will not be any additional economic cost to any individuals required to comply with the new section.

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 January 10, 2014, through February 10, 2014, to receive input on the new section. 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. FEBRUARY 10, 2014.

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

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

§10.1004. Housing Tax Credit Properties, TCAP, Exchange and HTF.

(a) Except for certain rural properties, Housing Tax Credit, TCAP, Exchange, and HTF Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

(1) The 50 percent and 60 percent Area Median Gross Income (AMGI) by household size.

(2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50 percent and HERA Special 60 percent income limit by household size. These higher limits can only be used if at least one building in the Project (as defined on line 8b on Form 8609) was placed in service on or before December 31, 2008.

(b) If HUD releases a 30 percent, 40 percent, 60 percent or 80 percent income limit in the MTSP charts, the Department will use that data. Otherwise, the following calculation will be used, without rounding, to determine additional income limits:

(1) To calculate the 30 percent AMGI, the 50 percent AMGI limit will be multiplied by .60 or 60 percent.

(2) To calculate the 40 percent AMGI, the 50 percent AMGI limit will be multiplied by .80 or 80 percent.

(3) To calculate the 60 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.2 or 120 percent.

(4) To calculate the 80 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.6 or 160 percent.

(c) Treatment of Rural Properties. Section 42(i)(8) of the Code permits certain Housing Tax Credit, Exchange, and Tax Credit Assistance properties to use the national non-metropolitan median income limit when the area median gross income limit for a place is less than the national non-metropolitan median income. The Department will make the determination if a place qualifies as rural using the following process:

(1) When HUD releases MTSP income limits, the Compliance Division will review the most current listing of places on the Housing Tax Credit Site Demographic Characteristics Report found on the Department's website, which classifies each place as Rural or Urban. This determination is made in accordance with §10.3(a)(116) of this chapter (relating to Definitions). For the purposes of determining places that are eligible to use the rural income and rent limits, the following places will be removed from the list:

(A) Urban places.

(B) Places with a population in excess of 20,000 as of the 2010 census.

(C) Places with a population between 10,000 and 20,000 as of the 2010 census that are in a Metropolitan Statistical Area.

(D) Places that have an income limit greater than the national non-metropolitan income limit.

(2) All remaining places will be eligible to use the national non-metropolitan median income.

(3) Generally, HUD only releases the national non-metropolitan median income by household size for the 50 percent AMGI. The Department will calculate the additional income limits in accordance with subsection (b) of this section.

(4) The Department allows the use of rural income limits for HTF multifamily rental Developments that are considered rural using the process described in paragraph (1)(A) - (D) of this subsection.

(d) Rent limits are a calculation of income limits and cannot exceed 30 percent of the applicable Imputed Income Limit. Rent limits are published by bedroom size and will be rounded down to the nearest dollar. Example 1004(1): To calculate the 30 percent 1 bedroom rent limit:

(1) Determine the imputed income limited by multiplying the bedroom size by 1.5: 1 bedroom x 1.5 persons = 1.5.

(2) To calculate the 1.5 person income limit, average the 1 person and 2 person income limits: If the 1 person 30 percent income limit is $12,000 and the 2 person 30 percent income limit is $19,000, the imputed income limit would be $15,500 ($12,000 + $19,000 = $31,000/2 = $15,500).

(3) To calculate the 30 percent 1 bedroom rent limit, multiply the imputed income limit of $15,500 by 30 percent, then divide by 12 months and round down. In this example, the 30 percent 1 bedroom limit is $387 ($15,500 times 30 percent divided by 12 = $387.50 per month. Rounded down the limit is $387). Example 1004(2): to calculate the 50 percent 2 bedroom rent limit:

(A) Determine the imputed income limited to be calculated by multiplying the bedroom size by 1.5: 2 bedrooms x 1.5 persons = 3.

(B) The 3 person income limit is already published; for this example the applicable 3 person 50 percent income limit is $27,000.

(C) To calculate the 50 percent 2 bedroom rent limit, multiply the $27,000 by 30 percent, then divide by 12. In this example, the 50 percent 2 bedroom limit is $675 ($27,000 times 30 percent divided by 12 = $675. No rounding is needed since the calculation yields a whole number).

(e) The Department releases rent limits assuming that the gross rent floor is set by the date the Housing Tax Credits were allocated.

(1) For a 9 percent Housing Tax Credit, the allocation date is the date the Carryover Agreement is signed by the Department.

(2) For a 4 percent Housing Tax Credit, the allocation date is the date of the Determination Notice.

(3) For TCAP, the allocation date is the date the accompanied credit was allocated.

(4) For Exchange, the allocation date is the effective date of the Subaward agreement.

(f) Revenue Procedure 94-57 permits, but does not require, owners to set the gross rent floor to the limits that are in effect at the time the Project (as defined on line 8b on Form 8609) places in service. However this election must be made prior to the Placed in Service Date. A Gross Rent Floor Election form is available on the Department's website. Unless otherwise elected, the initial date of allocation described in subsection (e) of this section will be used.

(1) In the event an owner elects to set the gross rent floor based on the income limits that are in effect at the time the Project places in service and wishes to revoke such election, prior approval from the Department is required. The request will be treated as non-material amendment, subject to the fee described in §10.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

(2) An owner may request to change the election only once during the Compliance Period.

(g) For the HTF program, the date the LURA is executed is the date that sets the gross rent floor.

(h) Held Harmless Policy.

(1) In accordance with Section 3009 of the Housing and Economic Recovery Act of 2008, once a Project (as defined on line 8b on Form 8609) places in service, the income limits shall not be less than those in effect in the preceding year.

(2) Unless other guidance is received from the U.S. Treasury Department, in the event that a place no longer qualifies as rural, a Project that was placed in service prior to loss of rural designation can continue to use the rural income limits that were in effect before the place lost such designation for the purposes of determining the applicable income and rent limit. However, if in any subsequent year the rural income limits increase, the existing project cannot use the increased rural limits. Example 1004(3): Project A was placed in service in 2010. At that time, the place was classified as Rural. In 2012 that place lost its rural designation. The rural income limits increased in 2013. Project A can continue to use the rural income limits in effect in 2012 but cannot use the higher 2013 rural income limits. For owners that execute a carryover for a Project located in a rural place that looses such designation prior to the placed in service date, unless other guidance is received from the U.S. Treasury Department, the Department will monitor using the rent limits calculated from the rural limits that were in effect at the time of the carryover. However for the purposes of determining household eligibility, such Project must use the applicable MTSP income limits published by HUD.

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

Filed with the Office of the Secretary of State on December 30, 2013.

TRD-201306146
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 9, 2014
For further information, please call: (512) 475-3959

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TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

13 TAC §121.7

The Office of the Governor, Texas Film Commission (Commission) proposes an amendment to §121.7, concerning Underutilized and Economically Distressed Areas.

The proposed amendment to §121.7 clarifies the use of locations, and subsequent documentation of such use, in determining the number of filming days in Underutilized or Economically Distressed Areas for the purposes of receiving an additional 2.5% incentive.

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

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

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

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

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

§121.7. Underutilized and Economically Distressed Areas.

(a) Projects which complete at least 25% of their total Filming Days in Underutilized or Economically Distressed Areas (UEDAs) may receive an additional 2.5% of total in-state spending. The additional 2.5% applies to all eligible spending in all areas of Texas; it is not restricted to the spending in UEDAs [~~Underutilized or Economically Distressed Areas~~].

(b) In the event that multiple locations are utilized within a single Filming Day, in order to calculate the 25% of total Filming Days in UEDAs [~~Underutilized or Economically Distressed Areas~~] necessary to receive an additional 2.5% of total in-state spending, the Texas Film Commission (Commission) may pro-rate a given Filming Day by number of shooting [~~shot~~] locations reflected on production reports furnished by an Applicant to the Commission. For example, if eight shooting locations are utilized in a Filming Day, and five are located in UEDAs [~~Underutilized or Economically Distressed Areas~~], 5/8 of that Filming Day will count in calculating the 25% of total Filming Days necessary to become eligible for the additional grant percentage.

(c) If one or more shooting locations are not located in UEDAs, but are serviced by a basecamp located in an UEDA, such shooting locations shall be deemed to be located in UEDAs when calculating the 25% of total Filming Days necessary to become eligible for the additional grant percentage. A production company must have paid financial consideration to the owner/leaseholder of the basecamp location pursuant to a location agreement to be considered a "basecamp" under this subsection.

(d) [~~(c)~~] The Commission shall use maps to identify the areas that qualify for designation in accordance with §121.2(26) of this chapter. The maps in effect since August 28, 2011 shall expire on August 31, 2015 at which time the Commission shall update the maps. The Commission, having no obligation to do so, will endeavor to make such updated maps available in an electronic format on the Commission's Internet website up to 90 days prior to their effective date.

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

Filed with the Office of the Secretary of State on December 20, 2013.

TRD-201306096
David Zimmerman
Assistant General Counsel
Texas Film Commission
Earliest possible date of adoption: February 9, 2014
For further information, please call: (512) 936-0181

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. GENERAL

22 TAC §571.1

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.1, concerning Definitions.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add Licensed Veterinary Technicians (LVT). Specifically, for the definition of a "Passing Score," the proposal adds that a passing score for an LVT is a score of at least 75 percent on the Veterinary Technician National Examination. The Board further proposes to add new definitions to define "VTNE" as the Veterinary Technician National Examination, "LVTE" as the Licensed Veterinary Technician jurisprudence examination, and "Veterinary Technician Program" as a program of education for veterinary technician accredited by the American Veterinary Medical Association.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to include, clarify, and standardize rules concerning LVTs.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession, and §801.151(c), which states that the Board shall adopt rules to protect the public, and provide for the licensing and regulation of veterinary technicians.

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

§571.1. Definitions.

The following words and terms, when used in the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) or the Rules of the Board (Texas Administrative Code, Title 22, Part 24, Chapters 571 - 577) shall have the following meaning:

(1) Board--the Texas Board of Veterinary Medical Examiners.

(2) EDPE--Equine Dental Provider Jurisprudence Examination.

(3) Locally derived scaled score--the equivalent of the criterion referenced passing point for the national examination or the NAVLE.

(4) Name on license--licenses will be issued to successful applicants in the name of the individual as it appears on the birth certificate, court order, marriage license, or documentation of naturalization.

(5) National Board of Veterinary Medical Examiners (NBVME)--the organization responsible for producing, administering and scoring the NAVLE.

(6) National examination--the examination in existence and effective prior to the inauguration date of the NAVLE and which consists of the national board examination (NBE) and the clinical competency test (CCT).

(7) North American Veterinary Licensing Examination (NAVLE)--the examination which replaced the national examination in the year 2000.

(8) Passing Score--an examination score of at least 75 percent on the national examination and NAVLE, which is based on a locally derived scaled score; an examination score of at least 75 percent on the VTNE, which is based on a locally derived scaled score;[~~,~~ ~~and~~] an examination score of at least 85 percent on [~~either~~] the SBE, the LVTE, or the EDPE. The examination score on [~~either~~] the SBE, LVTE, or the EDPE is valid for one year past the date of the examination.

(9) SBE--State Board Examination.

(10) School or college of veterinary medicine--a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA). Applicants who are graduates of a school or college of veterinary medicine not accredited by the Council on Education of the AVMA are eligible provided that the applicant presents satisfactory proof to the Board that the applicant is a graduate of a school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) certificate.

(11) VTNE--Veterinary Technician National Examination.

(12) LVTE--Licensed Veterinary Technician jurisprudence examination.

(13) Veterinary Technician Program--a program of education for veterinary technicians accredited by AVMA.

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

Filed with the Office of the Secretary of State on December 30, 2013.

TRD-201306113
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: February 9, 2014
For further information, please call: (512) 305-7563

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22 TAC §571.4

The Texas Board of Veterinary Medical Examiners (Board) proposes new §571.4, concerning Qualifications for Licensed Veterinary Technician License.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the new rule to specify the qualifications for a Licensed Veterinary Technician (LVT). The proposed rule provides that for an applicant to be eligible for licensure as an LVT, an applicant must present satisfactory proof to the Board that the applicant is at least 18 years old, has obtained a passing score on the Veterinary Technician National Examination (VTNE) and the Licensed Veterinary Technician jurisprudence examination (LVTE), and is a graduate of a Veterinary Technician Program. An applicant must first take and pass the VTNE in order to apply for the LVTE. The Board may refuse to issue an LVT license to an applicant who meets these qualifications but is otherwise subject to denial of license as provided in §801.401 and §801.402 of the Texas Occupations Code, including a criminal history background check.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the new rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to include, clarify, and standardize the qualifications for a person to obtain licensure as a veterinary technician in the Board's rules.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the new rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, §801.151(c), which states that the Board shall adopt rules to protect the public and to provide for the licensing and regulation of veterinary technicians.

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

§571.4. Qualifications for Licensed Veterinary Technician License.

(a) To be eligible for licensure as a licensed veterinary technician, an applicant must present satisfactory proof to the Board that the applicant:

(1) is at least 18 years old;

(2) has obtained at least a passing score on:

(A) the VTNE; and

(B) the LVTE; and

(3) is a graduate of a Veterinary Technician Program.

(4) A person must first take and pass the VTNE in order to apply for the LVTE.

(b) The Board may refuse to issue a licensed veterinary technician license to an applicant who meets the qualification criteria but is otherwise subject to denial of license as provided in Texas Occupations Code §801.401 and §801.402.

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

Filed with the Office of the Secretary of State on December 30, 2013.

TRD-201306114
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: February 9, 2014
For further information, please call: (512) 305-7563

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22 TAC §571.5

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.5, concerning Qualifications for Veterinary License.

The Board proposes the amendment to include §801.401 and §801.402 of the Texas Occupations Code to the reasons the Board may deny licensure to an applicant for veterinary license who meets the qualification criteria but is otherwise subject to denial under those two sections of law. This will include criminal history background checks. The proposal ensures that the Board can use the factors set out in §801.402 to deny licensure. Section 801.401 provides what actions the Board may take when a person is subject to disciplinary action or denial of license. Section 801.402 provides under what circumstances a person is subject to license denial or disciplinary action, including: when the person presents to the Board dishonest or fraudulent evidence of the person's qualifications; commits fraud or deception in the examination process or to obtain a license; is convicted of a felony under the laws of this state, another state, or the United States; is subject to disciplinary action in another jurisdiction, including the suspension, probation, or revocation of a license to practice veterinary medicine or to practice equine dentistry issued by another jurisdiction; is convicted for an offense under §42.09, 42.091, or 42.092 of the Texas Penal Code; represents the person as a veterinarian without a license issued under this chapter; or practices veterinary medicine or assists in the practice of veterinary medicine without a license.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the qualifications for a person to obtain licensure as a veterinarian in the Board's rules.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public.

Section 801.401 and §801.402 of the Texas Occupations Code are affected by the proposal. No other statutes, articles, or codes are affected by the proposal.

§571.5. Qualifications for Veterinary License.

(a) To be eligible for veterinary licensure, an applicant must present satisfactory proof to the Board that the applicant:

(1) is at least the age of majority;

(2) has obtained at least a passing score on:

(A) the NAVLE if an applicant sits for that examination subsequent to its inauguration date; or

(B) the national examination if an applicant sat for that examination prior to the inauguration date of the NAVLE; and

(C) the SBE; and

(3) is a graduate of a school or college of veterinary medicine that is approved by the Board.

(b) The Board may refuse to issue a veterinary license to an applicant who meets the qualification criteria but is otherwise subject to denial of license as provided in Texas Occupations Code §801.401 and §801.402 [~~disqualified as provided in the Texas Occupations Code, §801.401~~].

(c) An applicant may petition the Board in writing for an exception to subsection (a)(2)(A) or (B) of this section. In deciding whether to grant the petition, the Board may consider:

(1) the availability of the national examination or NAVLE at the time the petitioner originally applied for licensure;

(2) the number of years the petitioner has been in active practice;

(3) petitioner's license status and standing in other jurisdictions;

(4) petitioner's status as a diplomate in an AVMA recognized veterinary specialty; and

(5) any other factors that may be related to petitioner's request for an exception.

(d) As a condition of granting an exception under subsection (c)(2) of this section, the Board may impose additional requirements that are reasonably necessary to assure that the petitioner is competent to practice veterinary medicine in Texas.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §571.6

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.6, concerning Qualifications for Equine Dental Provider License.

The Board proposes the amendment to include §801.401 and §801.402 of the Texas Occupations Code to the reasons the Board may deny licensure to an applicant for an Equine Dental Provider license who meets the qualification criteria but is otherwise subject to denial under those two sections of law. This will include criminal history background checks. The proposal ensures that the Board can use the factors set out in §801.402 to deny licensure. Section 801.401 provides what actions the Board may take when a person is subject to disciplinary action or denial of license. Section 801.402 provides under what circumstances a person is subject to license denial or disciplinary action, including: when the person presents to the Board dishonest or fraudulent evidence of the person's qualifications; commits fraud or deception in the examination process or to obtain a license; is convicted of a felony under the laws of this state, another state, or the United States; is subject to disciplinary action in another jurisdiction, including the suspension, probation, or revocation of a license to practice veterinary medicine or to practice equine dentistry issued by another jurisdiction; is convicted for an offense under §42.09, 42.091, or 42.092 of the Texas Penal Code; represents the person as a veterinarian without a license issued under this chapter; or practices veterinary medicine or assists in the practice of veterinary medicine without a license.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the qualifications for a person to obtain licensure as an Equine Dental Provider in the Board's rules.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the

veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public.

Section 801.401 and §801.402 of the Texas Occupations Code are affected by the proposal. No other statutes, articles, or codes are affected by the proposal.

§571.6. Qualifications for Equine Dental Provider License.

(a) To be eligible for licensure as an equine dental provider, an applicant must present satisfactory proof to the Board that the applicant:

(1) has obtained at least a passing score of 85 on the EDPE; and

(2) is certified by the International Association of Equine Dentists or other Board-approved entity.

(b) The Board may refuse to issue an equine dental provider license to an applicant who meets the qualification criteria but is otherwise subject to denial of license as provided in Texas Occupations Code §801.401 and §801.402 [~~disqualified as provided in the Texas Occupations Code, §801.401~~].

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

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Loris Jones
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22 TAC §571.17

The Texas Board of Veterinary Medical Examiners (Board) proposes new §571.17, concerning Expedited Licensure Procedure for Military Spouses.

The Board proposes the new rule to consolidate the expedited licensure procedures for military spouses that are veterinarians and equine dental providers in one place and add a procedure for military spouses that are licensed veterinary technicians. In accordance with legislation from this last legislative session, the proposal also sets out expedited licensure procedure requirements, including that the military spouse holds a current license issued by another jurisdiction that has certain basic licensure requirements as set out in the Board's rules. The proposal provides that a license issued under this section is valid for 12 months from the date issued, and, when the license expires, the licensee must submit information showing he/she has met all requirements for regular licensure.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the new rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the qualifications for a military spouse who is a veterinarian, equine dental provider, or a licensed veterinary technician to obtain an expedited license in the Board's rules.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the new rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public, ensure that equine dentistry is performed by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing, and provide for the licensing and regulation of veterinary technicians.

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

§571.17. Expedited Licensure Procedure for Military Spouses.

(a) For any military spouse, as defined under Texas Occupations Code §55.001(1-b), the Board shall issue a license if the military spouse is not subject to denial of license as provided in Texas Occupations Code §801.401 and §801.402, and holds a current license issued by another jurisdiction that has the following licensure requirements:

(1) Veterinary licensure:

(A) at least a passing score on:

(i) the NAVLE if an applicant sits for that examination subsequent to its inauguration date; or

(ii) the national examination if an applicant sat for that examination prior to the inauguration date of the NAVLE; and

(B) is a graduate of a school or college of veterinary medicine.

(2) Equine Dental Provider licensure:

(A) certified by International Association of Equine Dentists or other Board-approved entity; and

(B) equine dental providers work only under supervision by a veterinarian licensed in the jurisdiction.

(3) Licensed Veterinary Technician licensure:

(A) at least a passing score on the VTNE; and

(B) graduate of Veterinary Technician Program.

(b) A license issued under this section is valid for 12 months from the date the license is issued. When a license issued under this section expires, the licensee must submit information showing that he or she has met all requirements for regular licensure.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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SUBCHAPTER B. EXAMINATIONS

22 TAC §571.21

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.21, concerning the Application for the SBE and EDPE.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add the Licensed Veterinary Technician jurisprudence examination (LVTE) to the title and rule regarding the application process for the SBE and EDPE.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the examination process for the SPE, EDPE, and LVTE in the Board's rules.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the licensing and regulation of veterinary technicians.

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

§571.21. Application for the SBE, LVTE, and EDPE.

The applicant for either the SBE, LVTE, or the EDPE shall apply on the appropriate form furnished by the Board. The completed application, including the completion of any terms and conditions as set forth by a Board order and the payment of appropriate fees, must be received at the Board offices no later than 45 days prior to the date of the examination for which the applicant desires to sit.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §571.23

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.23, concerning the Veterinary Licensing Examination.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to change the title and rule to add national board examinations for licensed veterinary technicians (LVTs). Specifically, the proposal adds the Veterinary Technician National Examination (VTNE) to the list of sources from which the Board will accept certified scores and in regard to the Board's process for answering requests for information on examination scores. The proposal further adds the Licensed Veterinary Technician jurisprudence examination (LVTE) to the list of when the Board may certify jurisprudence exam scores and make them available to other state licensing boards.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the certification process for scores from the American Association of Veterinary State Boards, the North

American Veterinary Licensing examination, VTNE, and LVTE in the Board's rules.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the licensing and regulation of veterinary technicians.

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

§571.23. National [~~Veterinary~~] Licensing Examination [~~Examinations~~].

(a) Results of National Board Examinations. The Board will accept certified scores issued by the:

(1) American Association of Veterinary State Boards (AAVSB), or its successor, for the national examination or the VTNE; and

(2) the official reporting service for the NAVLE.

(b) Score Information. All requests for information on examination scores shall be processed as follows:

(1) All requests from other state licensing boards for an applicant's raw scores on the VTNE, the national examination or NAVLE will be referred to the official reporting service for those examinations.

(2) All requests from other state licensing boards for an applicant's locally derived scale scores on the VTNE, the national examination or NAVLE will be based upon national data submitted by the official reporting service for those examinations.

(3) Upon written request of an applicant, the Board will certify the score of the SBE or LVTE to another state licensing board. Upon written request of an applicant, the Board will make LVTE, national examination or NAVLE scores available for informational purposes only to another state licensing board but will not certify the scores.

(4) The Board will not disclose any actual examination documents or materials.

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

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22 TAC §571.25

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.25, concerning the Reapplication for SBE and EDPE.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add the Licensed Veterinary Technician jurisprudence examination (LVTE) to the title and rule regarding the reapplication process for taking the state Board jurisprudence examinations.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to add the LVTE to the reapplication process and standardize the reapplication process for state Board jurisprudence examinations in the Board's rules.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the licensing and regulation of veterinary technicians.

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

§571.25. Reapplication for SBE, LVTE, and EDPE.

(a) An applicant for either the SBE, LVTE, or EDPE must submit a new application and the current fees at least 45 days prior to the date of the examination for which the applicant desires to sit, if the applicant:

(1) does not appear for the scheduled examination; or

(2) fails to attain a passing score on the scheduled examination.

(b) The Board shall refund the examination fee for either the SBE, LVTE, or EDPE if the applicant:

(1) provides notice of not less than fourteen (14) days before the date of the examination, that the applicant is unable to take the examination; or

(2) is unable to take the examination because of an emergency.

(c) For purposes of subsection (b)(2) of this section, an "emergency" shall be defined as any immediate, unforeseen event that would render a person unable or unfit to take an examination, and may include a death in the family or an injury or other event that could be reasonably considered to be an emergency. Matters of inconvenience or failure to satisfy an examination prerequisite, shall not be considered an emergency.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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SUBCHAPTER D. LICENSE RENEWALS

22 TAC §571.54

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.54, concerning Retired Veterinary License Status.

The Board proposes the amendment to prevent a veterinarian from retiring his license if he or she is currently the subject of an open complaint investigation or a contested case. The proposal still permits a veterinarian to voluntarily surrender his or her license during an open complaint investigation or a contested case.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to require veterinarians in violation of relevant rules and laws to be held accountable for such violations.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public.

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

§571.54. Retired Veterinary License Status.

(a) "Retirement" means the voluntary and permanent conclusion of a veterinary licensee's practice of veterinary medicine.

(b) A veterinarian may not retire his license if he is currently the subject of an open complaint investigation or a contested case.

(c) [~~(b)~~] If a veterinary licensee retiring for the first time requests reinstatement of his license in the same renewal year in which he retired, the licensee must:

(1) pay the annual renewal fee plus a $25 administrative processing fee to reinstate the license; and

(2) comply with the following continuing education requirements:

(A) If a retired veterinary licensee has maintained an annual average of 17 hours of approved continuing education, no additional continuing education hours will be required.

(B) If a retired veterinary licensee has maintained an annual average of less than 17 hours of approved continuing education, the retired licensee must complete 34 hours of continuing education in the twelve months immediately following reinstatement.

(d) [~~(c)~~] If a veterinary licensee has been retired for longer than one renewal period, the retired veterinary licensee may reinstate the license by:

(1) petitioning the Board in writing for reinstatement and completing an examination for reinstatement application with supporting documentation and fees; and

(2) submitting to reexamination and complying with all requirements for obtaining an original license. At the discretion of the Board, the petitioner may be required to take and pass the NAVLE prior to applying for and taking the SBE.

(e) [~~(d)~~] By no later than 30 days before the end of the current renewal year in which a licensee's veterinary license is retired for the first time, the Board shall inform the retired veterinary licensee that he or she may:

(1) apply to reinstate the license in accordance with subsection (d) [~~(c)~~] of this section; or

(2) remain in retired status.

(f) [~~(e)~~] The retired veterinary licensee shall notify the Board of his or her decision by no later than the end of the current renewal year in which the licensee's veterinary license is retired for the first time.

(g) [~~(f)~~] If the retired veterinary licensee decides to remain in retired status, he or she will no longer receive license renewal notices and will not be required to renew his or her retired veterinary license.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §571.60

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.60, concerning Expired Equine Dental Provider (EDP) Licenses.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add Licensed Veterinary Technicians (LVTs) to the rule regarding expired licenses. Specifically, the proposal provides that LVTs (like EDPs currently) will have their licenses expire on March 1 of each calendar year unless renewed properly prior to that time. A licensee who fails to renew his or her license for one year or more may request that his or her license be reinstated by appearing before the Board to explain why the license was not renewed (unless that LVT is a military spouse) and by taking and passing the Licensed Veterinary Technician jurisprudence examination.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clearly state the rules for LVTs as a new license type.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the licensing and regulation of veterinary technicians.

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

§571.60. Expired Licenses for Equine Dental Providers and Licensed Veterinary Technicians [~~Provider Licenses~~].

(a) Licensed veterinary technician and [~~An~~] equine dental provider licenses expire [~~provider's license expires~~] on March 1 of each calendar year and are [~~is~~] considered delinquent. On or before March 1, a licensee must renew an unexpired license, in writing, by paying the required fee and furnishing all information required by the Board for renewal.

(b) A licensed veterinary technician or an [~~An~~] equine dental provider licensee, who has failed to renew his or her license for a period of one year or more and wishes to reinstate the license, may be required to appear before the Board to explain why the licensee allowed the license to expire and the licensee's reasons for wanting it reinstated. The licensee must take and pass the EDPE or the LVTE, as appropriate for his or her license [~~and comply with §571.3 of this title (relating to Criminal History Evaluation Letters)~~].

(c) A licensed veterinary technician or an [~~An~~] equine dental provider licensee, who is the spouse of a person serving on active duty as a member of the armed forces of the United States who held an equine dental provider or veterinary technician license in Texas within the past five years, and has failed to renew his or her license for a period of one year or more while the licensee was living in another state for at least six months, may reinstate his or her license without appearing before the Board. The licensee must still take and pass the EDPE or the LVTE, as appropriate for his or her license [~~and comply with §571.3 of this title~~].

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §571.61

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.61, concerning Inactive Veterinary License Status.

The Board proposes the amendment to change the title and the rule by making the rule applicable to all licenses issued by the Board.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rule for inactive status for all licenses issued by the Board.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the board shall adopt rules to protect the public, provide for the regulation of veterinary technicians, and ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian.

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

§571.61. Inactive [~~Veterinary~~] License Status.

(a) Application. A [~~veterinary~~] licensee may request his/her license be placed on inactive status, whether or not he/she is practicing within the State of Texas, provided:

(1) his or her current license is active and is in good standing;

(2) a request in writing, on the form prescribed by the Board, is made for his or her license to be placed on official inactive status; and

(3) the original request is made during the annual license renewal period between January 1 and February 28; provided however, that subsequent requests for continued inactive status may be accepted by the Board at any time during the renewal year if accompanied by the appropriate delinquent penalty.

(b) Restrictions. The following restrictions shall apply to veterinary licensees whose licenses are on inactive status:

(1) Except as provided in §801.004, Texas Occupations Code, the licensee may not engage in the practice of veterinary medicine or otherwise provide treatment to any animal in the State of Texas.

(2) If the licensee possesses or obtains a federal Drug Enforcement Administration (DEA) and/or a Department of Public Safety (DPS) controlled substances registration for a Texas location, the licensee must comply with §573.43 and §573.50 of this title (relating to Misuse of DEA Narcotics Registration and Controlled Substances Records Keeping for Drugs on Hand, respectively).

(c) Return to Active Status. A [~~veterinary~~] licensee on inactive status wishing to practice [~~veterinary medicine~~] within the State of Texas must receive written approval from the Board prior to returning to active status. In addition to other information which may be requested or required by the Board, the following conditions apply to [~~veterinary~~] licensees applying to return to active status.

(1) A licensee who is [~~veterinarian~~] licensed and practicing in another state or jurisdiction must prove he or she is in good standing in that state or jurisdiction.

(2) A licensee on inactive status must pay the total annual renewal fee, less the amount of the inactive annual renewal fee, plus a $25 administrative processing fee to obtain a regular license. The regular annual renewal fee shall not be prorated for applications to return to active status made after the annual renewal period.

(d) Continuing Education Requirements.

(1) If a [~~veterinary~~] licensee on inactive status requesting a return to regular license status has maintained an annual average equal to the number [~~of 17 hours~~] of continuing education hours required annually for renewal of the license, not including any portion of the reactivation year, the licensee will be placed on regular license status without any additional requirements. If the average annual continuing education is less than the number of hours required annually for renewal of the license [~~17 hours~~], the licensee will be placed on regular license status but must complete twice as many [~~34 hours of~~] continuing education hours as is required to renew the license in the twelve months immediately following the licensee's attaining of regular license status.

(2) For the year of reactivation, proof [~~of 17 hours~~] of continuing education shall not be required for an active [~~veterinary~~] license renewal in the year following reactivation.

(3) For purposes of this subsection, the terms "year" and "annual" mean the calendar year.

(e) Cancellation of Inactive License. A [~~veterinary~~] license maintained on inactive status will be automatically cancelled at the end of nine consecutive years. A new [~~veterinary~~] license will be issued only upon completion of all requirements for licensure. During the ninth consecutive year of inactive status, the Board will notify the

inactive [~~veterinary~~] licensee that during the following year, his or her license must be on regular status or the license will be cancelled.

(f) Annual Renewal Fees. The annual fee for a [~~veterinary~~] license on inactive status shall be as set by the Board in §577.15 of this title (relating to Fee Schedule).

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §571.62

(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 Board of Veterinary Medical Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Veterinary Medical Examiners (Board) proposes the repeal of §571.62, concerning Inactive Equine Dental Provider License Status.

The Board proposes the repeal as it is now consolidated with proposed §571.61, which is contemporaneously published elsewhere in this issue of the *Texas Register.*

Nicole Oria, Executive Director, has determined that for each year of the first five years that the repeal is in effect, there will be no impact on revenue to either state or local government as a result of the proposed repeal. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the repeal as proposed. Ms. Oria has further determined that the repeal will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit will be to clarify and standardize the rule for inactive status for all licenses issued by the Board.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the repeal. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed repeal from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The repeal is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the board shall adopt rules to protect the public, and ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian.

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

§571.62. Inactive Equine Dental Provider License Status.

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

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Executive Assistant
Texas Board of Veterinary Medical Examiners
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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROFESSIONAL ETHICS

22 TAC §573.2

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.2, concerning Avoidance of Encroachment on Another's Practice.

The Board proposes the amendment to add that a licensee who makes a complaint against another licensee that is groundless and brought in bad faith, for the purpose of harassment, retaliation, or for any other improper purpose, shall be in violation of a rule of professional conduct.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to protect licensees from harassment and retaliation from other licensees and to avoid spending Board resources on unnecessary groundless complaints.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the board shall adopt rules to protect the public, provide regulation of veterinary technicians, and ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian.

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

§573.2. Avoidance of Encroachment on Another's Practice.

A licensee may not make any effort, direct or indirect, which in any manner is calculated to influence the sound professional judgment of another licensee. It is the right of any licensee, without fear or favor, to give proper advice to those seeking relief against substandard or neglectful veterinary or equine dentistry services, to make a complaint to the Board, or to act as a witness in a Board investigation or a contested hearing. A licensee who makes a complaint against another licensee that is groundless and brought in bad faith, for the purpose of harassment, retaliation, or for any other improper purpose shall be in violation of this rule.

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

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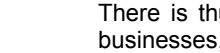

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.10

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.10, concerning Supervision of Non-Licensed Persons.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to change the title and the rule to add in provisions regarding Licensed Veterinary Technicians (LVTs). The proposed amendment provides the following: when determining the level of supervision and duties of non-veterinarians, veterinarians should consider whether the individual is licensed by the Board as well as the level of training and experience of the non-veterinarian; when feasible, a veterinarian should delegate greater responsibility to an LVT than to an unlicensed person. An LVT under direct or immediate supervision of a veterinarian may suture to close existing surgical skin incisions and skin lacerations, induce anesthesia, and in dogs and cats, extract loose teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator. Under general supervision, an LVT may draw blood and take samples for purposes of testing and diagnosis, except where otherwise prohibited by law. Under the immediate supervision of a veterinarian, an unlicensed employee of a veterinarian may suture to close existing surgical skin incisions and skin lacerations and induce anesthesia as well as perform other tasks assigned by the supervising veterinarian under a level of supervision determined by the supervising veterinarian. An unlicensed employee may not, under any level of veterinary supervision, extract loose teeth or dental fragments from a dog or cat. Under the immediate supervision of an LVT, an unlicensed employee of a veterinarian may suture to close existing surgical skin incisions and skin lacerations, induce anesthesia, draw blood, take samples for the purpose of testing and diagnosis and perform other tasks in veterinary medicine, not otherwise prohibited by rules or laws, as assigned by the supervising veterinarian and according to a protocol established by the supervising veterinarian. A non-veterinarian shall not perform invasive dental procedures except as allowed for licensed equine dental providers under §573.19 and as allowed for LVTs within this rule. A non-veterinarian shall also not initiate treatment without prior instruction by a veterinarian, except in an emergency without expectation of compensation.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to add, clarify, and standardize rules regarding LVTs, persons working under the supervision of veterinarians, and their responsibilities.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must

be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the Board shall adopt rules to protect the public and regulate veterinary technicians; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

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

§573.10. Supervision of Non-Veterinarians [~~Licensed Persons~~].

(a) With appropriate supervision and after establishing a veterinarian-client-patient relationship, a veterinarian may delegate veterinary care and treatment duties to non-veterinarian employees, or to the following independent contractors:

(1) licensed equine dental providers, in accordance with §573.19 of this title (relating to Dentistry); or

(2) individuals performing any form of musculoskeletal manipulation, including but not limited to animal chiropractic, in accordance with §573.14 of this title (relating to Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation).

(b) A veterinarian shall determine when general, direct, or immediate supervision of a non-veterinarian's actions is appropriate, except where such actions of the non-veterinarian may otherwise be prohibited by law. A veterinarian shall consider whether the individual is licensed by the Board, as well as [~~both~~] the level of training and experience of the non-veterinarian, when determining the level of supervision and duties of non-veterinarians.

(c) A veterinarian is subject to discipline if he or she improperly delegates care and/or treatment duties to a non-veterinarian, or fails to properly supervise the non-veterinarian performing delegated duties.

(d) When feasible, a veterinarian should delegate greater responsibility to a licensed veterinary technician than to an unlicensed person.

(1) Veterinary supervision of licensed veterinary technicians

(A) Under the direct or immediate supervision of a veterinarian, a licensed veterinary technician may:

(i) suture to close existing surgical skin incisions and skin lacerations;

(ii) induce anesthesia; and

(iii) in dogs and cats, extract loose teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator.

(B) Except where otherwise prohibited by law, under general veterinary supervision, a licensed veterinary technician may:

(i) draw blood; and

(ii) take samples for purposes of testing and diagnosis.

(2) Veterinary supervision of unlicensed employees

(A) Under the immediate supervision of a veterinarian, an unlicensed employee of a veterinarian may:

(i) suture to close existing surgical skin incisions and skin lacerations; and

(ii) induce anesthesia.

(B) An unlicensed employee of a veterinarian may perform other tasks assigned by the supervising veterinarian under a level of supervision determined by the supervising veterinarian.

(C) An unlicensed employee may not, under any level of veterinary supervision, extract loose teeth or dental fragments from a dog or cat.

(e) Under the immediate supervision of a licensed veterinary technician, an unlicensed employee of a veterinarian may:

(1) suture to close existing skin incisions and skin lacerations;

(2) induce anesthesia;

(3) draw blood;

(4) take samples for the purpose of testing and diagnosis and;

(5) perform other tasks in veterinary medicine, not otherwise prohibited by other subsections of this section or other laws, as assigned by the supervising veterinarian and according to a protocol established by the supervising veterinarian.

(f) [~~(d)~~] A non-veterinarian shall not perform the following health care services:

(1) surgery;

(2) invasive dental procedures except as allowed for licensed equine dental providers under §573.19 of this title, and as allowed for licensed veterinary technicians under subsection (d)(1) of this section;

(3) diagnosis and prognosis of animal diseases and/or conditions; [~~or~~]

(4) prescribing drugs and appliances; or[~~.~~]

(5) initiate treatment without prior instruction by a veterinarian, except in an emergency without expectation of compensation.

(g) [~~(e)~~] Euthanasia may be performed by a non-veterinarian only under the immediate supervision of a veterinarian.

(h) [~~(f)~~] A non-veterinarian may administer a rabies vaccine only under the direct supervision of a veterinarian, and only after the veterinarian has properly established a veterinarian-client-patient relationship.

(i) [~~(g)~~] The use of a veterinarian's signature stamp or electronic signature pad on an official health document by a non-veterinarian shall be authorized only under the direct supervision of the vaccinating veterinarian.

[~~(h) When feasible, a veterinarian should delegate greater responsibility to a registered veterinary technician (RVT) registered by the Texas Veterinary Medical Association than to an unlicensed person that is not a RVT.~~]

[~~(1) Under the direct or immediate supervision of a veterinarian, an RVT may:~~]

[~~(A) suture to close existing surgical skin incisions and skin lacerations; and~~]

[(B) induce anesthesia.]

[(2) The procedures authorized to be performed by an RVT in paragraph (1) of this subsection may be performed by a non-RVT only under the immediate supervision of a veterinarian.]

(j) [(i)] Exception for Emergency Care. In an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, a veterinarian may, after determining the nature of the emergency and the condition of the animal, issue treatment directions to a non-veterinarian by means of telephone, electronic mail or messaging, radio, or facsimile communication. The Board may take action against a veterinarian if, in the Board's sole discretion, the veterinarian uses this authorization to circumvent this rule. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a veterinarian to accept an animal treated under this rule as a patient under these circumstances.

(k) [(j)] Exception for Care of Hospitalized Animals. A non-veterinarian may, in the absence of direct supervision, follow the oral or written treatment orders of a veterinarian who is caring for a hospitalized animal, so long as the veterinarian has examined the animal(s) and a valid veterinarian-client-patient relationship exists.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: February 9, 2014
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22 TAC §573.11

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.11, concerning Responsibility for Unlicensed Employees.

The Board proposes the amendment to add that a Licensed Veterinary Technician (LVT) supervising an unlicensed employee of a veterinarian is responsible for any acts committed by that unlicensed employee of a veterinarian related to the practice of veterinary medicine. The proposed amendment also states that when an LVT is acting under the supervision of a veterinarian and violates a law, regulation, or board rule, both the veterinarian and the LVT are subject to discipline by the Board.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules regarding LVTs.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

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

§573.11. Responsibility for Unlicensed Employees.

(a) A veterinarian shall be responsible for any acts a non-veterinarian employee commits within the scope of the employee's employment.

(b) A licensed veterinary technician supervising an unlicensed employee of a veterinarian shall be responsible for any acts committed by that unlicensed employee of a veterinarian related to the practice of veterinary medicine.

(c) If a licensed veterinary technician acting under supervision of a veterinarian violates a law, regulation or board rule, both the veterinarian and the licensed veterinary technician are subject to discipline by the Board.

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

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22 TAC §573.12

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.12, concerning Responsibility for Licensure of Licensed Persons.

The Board proposes the amendment to add Licensed Veterinary Technicians (LVTs) to the responsibility of a veterinarian to ensure they are actively licensed by the board if the veterinarian employs or supervises them.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will to clarify and standardize the rules regarding LVTs.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

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

§573.12. Responsibility for Licensure of Licensed Persons.

(a) A veterinarian who employs and/or supervises another veterinarian practicing veterinary medicine shall assure that the person is:

(1) actively licensed; and

(2) meets the requirements of §573.43 of this title (relating to Controlled Substances Registration) for registration with the federal Drug Enforcement Administration (DEA) and the Texas Department of Public Safety (DPS).

(b) A veterinarian who employs and/or supervises an equine dental provider or a licensed veterinary technician shall ensure that each licensee [~~the equine dental provider~~] is actively licensed.

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

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Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §573.13

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.13, concerning Delegation and Supervision Relating to Official Health Documents.

The Board proposes the amendment to allow a veterinarian to permit a non-licensed employee under the immediate supervision of a Licensed Veterinary Technician (LVT) to collect samples from animals for official tests unless otherwise prohibited by law.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to allow LVTs to collect samples from animals for official tests, thereby freeing the veterinarian's time and potentially reduce costs to the public.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

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

§573.13. Delegation and Supervision Relating to Official Health Documents.

(a) A veterinarian must personally sign any official health documents issued by the veterinarian, and/or any official health documents for which the veterinarian has received compensation, regardless of whether said compensation is ultimately refunded, provided, however, that rabies certificates may be authenticated by either:

(1) the veterinarian's personal signature; or

(2) the use of a signature stamp or electronic signature by a non-licensed employee under direct supervision of the veterinarian.

(b) The issuance of any pre-signed or pre-stamped official health documents by a veterinarian is prohibited.

(c) Unless otherwise prohibited by law, and except as provided in subsection (d) of this section, a veterinarian may permit a non-licensed employee under the veterinarian's direct supervision, or under the immediate supervision of a licensed veterinary technician, to collect samples from animals for official tests.

(d) A person approved by the Texas Animal Health Commission (TAHC) and under the general supervision of a TAHC approved veterinarian may perform testing for brucellosis at a livestock market or collect blood samples on animals to be consigned directly from the ranch to slaughter and submit them to the state/federal laboratory for brucellosis testing.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §573.14

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.14, concerning Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation.

The Board proposes the amendment to delete the reference to "diagnosis" in the definition of animal chiropractic and other forms of musculoskeletal manipulation. Diagnosis is specifically the domain of licensed veterinarians on nonhuman animals under §801.364(d) of the Texas Occupations Code and 22 TAC §573.10.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the Board's rules in accordance with current rules and statutes.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public.

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

§573.14. Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation.

(a) Definition. For the purpose of this rule, animal chiropractic and other forms of musculoskeletal manipulation (MSM) are systems of therapeutic application of mechanical forces applied manually through the hands or any mechanical device to [~~diagnose,~~] treat[~~,~~] and/or alleviate impaired or altered function of related components of the musculoskeletal system of nonhuman animals. Animal chiropractic and other forms of MSM in nonhuman animals are considered to be alternate therapies in the practice of veterinary medicine.

(b) Treatment using animal chiropractic and other forms of MSM. Animal chiropractic and other forms of MSM may only be performed by the following.

(1) A licensed veterinarian. Animal chiropractic and MSM may be performed by a licensed veterinarian under the following conditions:

(A) a valid veterinarian/client/patient relationship has been established as defined in the Act;

(B) an examination has been made by the licensee to determine that animal chiropractic/MSM will not likely be harmful to the patient; and

(C) the licensee obtains as a part of the patient's permanent record a signed acknowledgment by the owner or other caretaker of the patient that animal chiropractic or MSM is considered by Texas law to be an alternate therapy.

(2) A non-veterinarian employee or an independent contractor. A non-veterinarian employee or an independent contractor may perform these procedures on an animal under the direct or general supervision of the veterinarian if the conditions in paragraph (1)(A) - (C) of this subsection have been met.

(3) An individual to whom the exceptions of the Act, §801.004, apply.

(c) Responsibility. Whether the animal chiropractic/MSM is performed by a veterinarian or a non-veterinarian employee or an in-

dependent contractor working under the supervision of a licensee, the Board will hold the veterinarian to a level of professional judgment as would be exercised by the average Texas veterinarian who performs or recommends chiropractic/MSM treatments in his/her practice.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §573.19

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.19, concerning Dentistry.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to allow a Licensed Veterinary Technician (LVT) under the direct or immediate supervision of a veterinarian to extract loose teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator in dogs or cats only.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs, allow LVTs to have additional responsibilities, and potentially reduce costs for the public.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians; and §801.151(d), which states the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

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

§573.19. Dentistry.

(a) Dentistry, a subset of the practice of veterinary medicine, is:

(1) The application or use of any instrument or device to any portion of an animal's tooth, gum or any related tissue for the prevention, cure or relief of any wound, fracture, injury or disease of an animal's tooth, gum or related tissue; and

(2) Preventive dental procedures including, but not limited to, the removal of calculus, soft deposits, plaque, stains or the smoothing, filing or polishing of tooth surfaces.

(b) A non-licensed person may not perform any invasive dental procedure, as defined in §573.80 of this title (relating to Definitions), and as limited by subsection (e) [~~(d)~~] of this section.

(c) Nothing in this regulation shall prohibit any person from utilizing cotton swabs, gauze, dental floss, dentifrice, or toothbrushes to clean an animal's teeth.

(d) In dogs and cats, a licensed veterinary technician under direct or immediate supervision of a veterinarian may extract loose teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator.

(e) [~~(d)~~] The following treatments may be performed to an equid by a licensed equine dental provider under general supervision by a veterinarian, and by a non-veterinarian employee under direct supervision by the veterinarian:

(1) removing sharp enamel points;

(2) removing small dental overgrowths;

(3) rostral profiling of the first cheek teeth;

(4) reducing incisors;

(5) extracting loose, deciduous teeth;

(6) removing supragingival calculus;

(7) extracting loose, mobile, or diseased teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator; and

(8) removing erupted, non-displaced wolf teeth.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.64, concerning Continuing Education Requirements.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add continuing education requirements for Licensed Veterinary Technicians (LVTs) and make non-substantive changes in titles of subsections within the rule. The proposal requires an LVT to obtain 10 hours of acceptable continuing education annually for renewal of his or her veterinary technician license.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs and ensure proper training of LVTs.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

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

§573.64. Continuing Education Requirements.

(a) Required Continuing Education Hours.

(1) Licensed Veterinarians [~~Veterinary Licensees~~]. Seventeen (17) hours of acceptable continuing education shall be required annually for renewal of all types of Texas veterinary licenses, except as provided in subsection (b) of this section. Veterinary licensees who successfully complete the Texas State Board Licensing Examination shall receive credit for 17 continuing education hours for the calendar year in which they were examined and licensed.

(2) Licensed Equine Dental Providers [~~Provider Licensees~~]. Six (6) hours of acceptable continuing education shall be required annually for renewal of Texas equine dental provider licenses.

(3) Licensed Veterinary Technicians. Ten (10) hours of acceptable continuing education shall be required annually for renewal of Texas veterinary technician licenses.

(4) [~~(3)~~] A licensee shall earn the required hours of acceptable continuing education during the calendar year immediately preceding the licensee's application for license renewal. Should a licensee earn acceptable continuing education hours during the year in excess of the required hours, the licensee may carry over and apply the excess hours to the requirement for the next year. Licensees may carry over excess hours to the following year only, and may not carry over more hours than the licensee is required to earn in a calendar year.

(5) [~~(4)~~] Hardship extensions may be granted by appeal to the Executive Director of the Board. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due to circumstances beyond the licensee's control. A hardship extension generally will not be allowed due to financial hardship or lack of time due to a busy professional or personal schedule. Requests for a hardship extension must be received in writing and in the Board offices by no later than December 15. Should such extension be granted, twice the number of hours of continuing education required for a standard annual license renewal shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the [~~of~~] continuing education obtained and shall file copies of these records with the Board by attaching the records to the license renewal application submitted following the extension year, or by sending them to the Board separately if the licensee submits his or her renewal application electronically (on-line).

(b) Exemption from Continuing Education Requirements for Veterinary Licensees. A veterinary licensee is not required to obtain or report continuing education hours, provided that the veterinary licensee submits to the Board sufficient proof that during the preceding year the veterinary licensee was:

(1) in retired status;

(2) a veterinary intern or resident; or

(3) out-of-country on charitable, military, or special government assignments for at least nine (9) months in a year; or

(4) on inactive status. Veterinary licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.

(c) Make up Hours. The Board may require a licensee who does not complete the required hours of continuing education to make up the missed hours in later years. Hours required to be made up in a later year are in addition to the continuing education hours required to be completed in that year.

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

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Loris Jones
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22 TAC §573.65

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.65, concerning Proof of Acceptable Continuing Education.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add continuing education requirements for Licensed Veterinary Technicians (LVTs). The proposal provides that LVTs may only get two out of the 10 required continuing education hours in practice management; may have no more than four hours of continuing education from correspondence courses; may have no more than two hours of self-study continuing education; and may have no more than four hours of online interactive participatory continuing education. Notwithstanding all of those requirements, at least six hours of continuing education for LVTs must be obtained from personal attendance at live courses and seminars providing continuing education.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs and ensure proper and relevant training of licensed veterinary technicians.

Ms. Oria has determined that there will a slight increase in economic cost to persons required to comply with the amended rule; however, that cost will be outweighed by the benefits provided by obtaining and maintaining a license. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

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

§573.65. Proof of Acceptable Continuing Education.

(a) Acceptable Continuing Education.

(1) Continuing Education hours shall be acceptable if they relate to clinical matters. For veterinary licensees, continuing education hours shall be acceptable if they relate to practice management.

(2) Acceptable continuing education hours shall be earned by:

(A) veterinary licensees and licensed veterinary technicians attending meetings sponsored or co-sponsored by the American Veterinary Medical Association (AVMA), AVMA's affiliated state veterinary medical associations and/or their continuing education organizations, AVMA recognized specialty groups, regional veterinary medical associations, local veterinary medical associations, and AVMA-accredited veterinary medical colleges and veterinary technician programs;

(B) equine dental provider licensees attending meetings sponsored or co-sponsored by the International Association of Equine Dentistry;

(C) veterinary licensees taking correspondence courses that require the licensee to take a test at the conclusion of the course and yield a certificate of completion;

(D) all licensees participating in verifiable, monitored on-line and video programs or other telecommunication discussions yield a certificate of completion and meet the following minimum standards:

(i) Inclusion of the following interactive experiences:

(I) direct, two-way verbal communication between attendees and the instructor at all times;

(II) direct, two way verbal communication between attendees at all times; and

(III) visual communication with the instructor;

(ii) The ability to document active participation by attendees through:

(I) verbal interaction and software documentation; and

(II) the use of real time on-line surveys that promote audience interaction and document the attendance and engagement of the participants;

(E) all licensees' self study, through any form of continuing education from which the licensee does not receive a certificate of completion, including reading articles in professional journals or periodicals, listening to audio tapes or CD's or viewing video tapes or similar devices that transmit a video image; or

(F) any other methods approved by the Executive Director and a Board member appointed by the Board president, by an advisory committee appointed by the Board president, or approved for veterinary licensees and licensed veterinary technicians by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB).

(b) Distribution of Continuing Education Hours.

(1) Veterinary Licensees.

(A) Of the required seventeen (17) hours of continuing education for veterinary licensees, no more than five (5) hours may be derived from either:

(i) correspondence courses; or

(ii) practice management courses.

(B) Hours claimed for self study shall not exceed three (3) hours.

(C) Hours claimed for online interactive, participatory programs shall not exceed 10 hours.

(D) Notwithstanding the allowable hours provided in subparagraphs (A) - (C) of this paragraph, at least seven (7) hours must be obtained from personal attendance at live courses, seminars and meetings providing continuing education.

(2) Equine Dental Provider Licensees.

(A) None of the required six (6) hours of continuing education for equine dental provider licensees may be derived from either correspondence courses or practice management courses.

(B) Hours claimed from self study shall not exceed one (1) hour.

(C) Hours claimed from online interactive, participatory programs shall not exceed two (2) hours.

(D) Notwithstanding the allowable hours provided in subparagraphs (A) - (C) of this paragraph, at least four (4) hours must be obtained from personal attendance at live courses and seminars providing continuing education.

(3) Licensed Veterinary Technicians.

(A) Licensed veterinary technicians are required to complete ten (10) hours of continuing education annually. Of the required ten (10) hours, no more than two (2) hours of continuing education for licensed veterinary technicians may be derived from practice management.

(B) No more than four (4) hours of continuing education for licensed veterinary technicians may be derived from correspondence courses.

(C) Hours claimed from self study shall not exceed two (2) hours.

(D) Hours claimed from online interactive, participatory programs shall not exceed four (4) hours.

(E) Notwithstanding the allowable hours provided in subparagraphs (A) - (D) of this paragraph, at least six (6) hours must be obtained from personal attendance at live courses and seminars providing continuing education.

(c) Proof of Continuing Education.

(1) The licensee shall sign a statement on the licensee's annual license renewal form attesting to the fact that the required continuing education hours have been obtained. If the licensee renews his license electronically (on-line), the licensee shall input an affirmation that the required continuing education hours have been obtained.

(2) The licensee shall maintain records which support the signed statement or affirmation. These documents must be maintained for the last four (4) calendar years and shall be available at the practice location for inspection to Board investigators upon request.

(3) Proof of attendance at live, on-site courses may require sign-in procedures, course checklists, certificates of course completion and other measures as directed by the Board. If the licensee attends a multi-day course and the certificate of completion reflects only a total number of continuing education credits that can be earned, proof of attendance must include a pre-printed schedule, agenda, or brochure on which the licensee marks the actual courses or seminars the licensee personally attended.

(4) For proof of on-line interactive courses, the licensee must provide a certificate from the provider showing the nature of the course, date taken, and the hours given.

(5) For proof of self-study, the licensee must provide a signed statement showing details, including dates, of the articles or courses read, videos observed, or audios listened to, and hours claimed.

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

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22 TAC §573.71

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.71, concerning Operation of Temporary Limited-Service Veterinary Services.

The Board proposes the amendment to remove the ability for a veterinarian to notify the Board of the operation of temporary limited-service veterinary services by telephone call. This type of notification has become difficult for staff to maintain. The Board will continue to accept notification by facsimile, electronic transmission, or mail. Notification must be made in writing to ensure that the proper information is recorded.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to facilitate the Board's ability to accurately and efficiently maintain

notifications of the operation of temporary limited-service veterinary services.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

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

§573.71. Operation of Temporary Limited-Service Veterinary Services.

(a) Requirements for operation. Veterinarians operating temporary limited service clinics shall:

(1) maintain sanitary conditions at the clinic site, including, but not limited to, removal of animal solid waste and sanitizing/disinfecting of urine and solid waste sites;

(2) provide injections with sterile disposable needles and syringes;

(3) utilize a non-porous table for examining and/or injecting small animals;

(4) maintain biologics and injectable medications between temperature ranges of 35 to 45 degrees Fahrenheit;

(5) perform and complete blood and fecal examinations before dispensing relevant federal legend medications;

(6) maintain rabies vaccination records and treatment records for five years, indexed alphabetically by the client's last name and by vaccination tag numbers, if issued; and

(7) provide clients with a printed form that contains the identity of the administering veterinarian and the address of the places where the records are to be maintained.

(b) Required notification to the Board prior to operation. Before any temporary limited-service clinic may be operated, the veterinarian is required to provide notification to the Board office at least 48 hours before the clinic begins operation. Notice must include the veterinarian's full name, license number, and daytime phone number; the date the clinic will be held, the specific location of where the clinic will be held, and times of operation; and the permanent address where records for the clinic will be kept. Notice may be by [~~telephone call,~~] facsimile, electronic transmission, or mail. Mailed notice will be considered to have met the notification requirement if the written notice is postmarked at least five days prior to the operation of the clinic.

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

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Executive Assistant
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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.8

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.8, concerning Final Decision and Orders.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add Licensed Veterinary Technicians (LVTs) to the rule regarding the Board's ability to change findings of fact and conclusions of law or vacate or modify any proposed order of an Administrative Law Judge under certain circumstances. The proposal would allow the rule to apply to LVTs, veterinarians, and equine dental providers alike.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs and to conform to the rules for veterinarians and equine dental providers.

Ms. Oria has also determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states

that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

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

§575.8. Final Decision and Orders.

(a) Board action. A copy of the final decision or order shall be delivered or mailed to any party and to the attorney of record.

(b) Recorded. All final decisions and orders of the Board shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Imminent peril. If the Board finds that imminent peril to the public's health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) Changes to findings of fact and conclusions of law.

(1) Reasons to change findings of fact and conclusions of law [~~Change Findings of Fact and Conclusions of Law~~]. The Board is charged by the legislature to protect the public interest, is an independent agency of the executive branch of the government of the State of Texas, and is the primary means of licensing, regulating and disciplining veterinarians, licensed veterinary technicians, and equine dental providers. Therefore, to ensure that sound veterinary medical principles govern the decisions of the Board, it is the policy of the Board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ only when the Board determines:

(A) that the ALJ did not properly apply or interpret applicable law, Board rules, written policies, or prior administrative decisions;

(B) that a prior administrative decision on which the ALJ relied is incorrect or should be changed; or

(C) that a technical error in a finding of fact should be changed.

(2) Recommendations regarding the appropriate sanction. Section 801.456(a) of the Veterinary Licensing Act requires that, after receiving the ALJ's findings of fact and conclusions of law, the Board may determine that a violation occurred and impose an administrative penalty. The Board interprets this requirement as imposing on the Board the responsibility of assessing the proper sanction. While the Board welcomes the recommendations of ALJs regarding the appropriate sanction, the Board does not consider the findings of fact and conclusions of law to be appropriate for stating such recommendations. Therefore, sanction recommendations in the form of findings of fact and conclusions of law are considered to be an improper application of applicable law and these rules.

(3) Changes stated in final order [~~Stated in Final Order~~]. If the Board modifies, amends, or changes the ALJ's proposed findings of fact or conclusions of law, an order shall be prepared reflecting the specific reason and legal basis for each change made.

(e) Administrative finality. A final order or Board decision is administratively final:

(1) upon a finding of imminent peril to the public's health, safety or welfare, as outlined in subsection (c) of this section;

(2) when no motion for rehearing has been filed within 20 days after the date the final order or Board decision is entered; or

(3) when a timely motion for rehearing is filed and the motion for rehearing is denied by Board order or operation of law as outlined in §575.9 of this title (relating to Motions for Rehearing).

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §575.22

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.22, concerning Reinstatement of Licenses.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add Licensed Veterinary Technicians (LVTs) to the rule regarding the reinstatement of licenses. The proposal would allow the rule to apply to LVTs, veterinarians, and equine dental providers alike.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs and to conform with the rules for veterinarians and equine dental providers.

Ms. Oria has also determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and

maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

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

§575.22. Reinstatement of Licenses.

(a) A person whose [~~veterinary~~ ~~license~~ ~~or~~ ~~equine~~ ~~dental provider~~] license has been cancelled or revoked, whether by voluntary action or by disciplinary action of the Board, may after five (5) years from the effective date of such cancellation or revocation, petition the Board for reinstatement of the license, unless another time is provided in the cancellation or revocation order, or unless no provision was made in the order for reinstatement. This section [~~rule~~] does not apply to licensees who let their licenses lapse for non-payment of renewal fees or licensees against whom a cancellation or revocation proceeding is not pending before the Board or in any other jurisdiction.

(b) The petition shall be in writing and in the form prescribed by the Board.

(c) After consideration of the petition for reinstatement, the Board may:

(1) deny reinstatement of the license;

(2) reinstate and probate the licensee for a specified period of time under specified conditions; or

(3) authorize reinstatement of the licensee.

(d) If the petition is denied by the Board, a subsequent petition may not be considered by the Board until twelve (12) months have lapsed from the date of denial of the previous petition.

(e) The petitioner or their legal representative must appear before the Board to present the request for reinstatement of the license.

(f) The petitioner shall have the burden of showing good cause why the license should be reinstated.

(g) In considering a petition for reinstatement, the Board may consider the petitioner's:

(1) moral character;

(2) employment history;

(3) status of financial support to petitioner's family;

(4) participation in continuing education programs or other methods of staying current with the individual's area of practice [~~of veterinary medicine or the practice of equine dentistry~~];

(5) criminal history record, including felonies or misdemeanors relating to the practice of veterinary medicine, the practice of equine dentistry, and/or moral turpitude;

(6) offers of employment as a veterinarian, licensed veterinary technician, or equine dental practitioner;

(7) involvement in public service activities in the community;

(8) compliance with the provisions of the Board order revoking or canceling the petitioner's license;

(9) compliance with provisions of the Veterinary Licensing Act regarding unauthorized practice;

(10) history of acts or actions by any other state and federal regulatory agencies; and

(11) any physical, chemical, emotional, or mental impairment.

(h) In considering a petition, the Board may also consider:

(1) the gravity of the offense for which the petitioner's license was cancelled, revoked or restricted and the impact the offense had upon the public health, safety, and welfare;

(2) the length of time since the petitioner's license was cancelled, revoked, or restricted, as a factor in determining whether the time period has been sufficient for the petitioner to have been rehabilitated sufficiently to be able to practice in a manner consistent with the public health, safety and welfare;

(3) whether the license was submitted voluntarily for cancellation at the request of the licensee; and

(4) other rehabilitative actions taken by the petitioner.

(i) If the Board grants the petition for reinstatement, the petitioner must successfully complete the Texas State Board Licensing Examination in their area of practice during the regularly scheduled examination times. The Board may also require the petitioner to complete additional testing to assure the petitioner's competency to practice.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §575.24

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.24, concerning Reprimands.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add Licensed Veterinary Technicians (LVTs) to the rule providing that a formal reprimand from the Board will be reported to the American Association of Veterinary State Boards for inclusion in the national database. The proposal would allow the rule to apply to LVTs and veterinarians alike.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs to conform to rules for veterinarians and to allow the public in other states access to orders of Texas LVTs.

Ms. Oria has also determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

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

§575.24. Reprimands.

(a) A licensee subject to disciplinary action by the Board may be reprimanded. A reprimand:

(1) may be formal or informal;

(2) is contained in a written order of the Board; and

(3) is available upon request as public information.

(b) A formal reprimand will be:

(1) published in the Board's newsletter; and

(2) for a veterinary licensee or a licensed veterinary technician, routinely reported to the American Association of Veterinary State Boards (AAVSB) for inclusion in the national reporting database [~~of veterinarians~~].

(c) An informal reprimand will not be published in the Board's newsletter and will not be routinely reported to the AAVSB for inclusion in the national reporting database [~~of veterinarians~~]. A copy of an informal reprimand of a [~~veterinary~~] licensee will be forwarded to the AAVSB if specifically requested by that organization.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §575.25

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.25, concerning Recommended Schedule of Sanctions.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add Licensed Veterinary Technicians (LVTs) in the recommended schedule of sanctions. This proposal also adds having to take the Licensed Veterinary Technician jurisprudence examination as a possible penalty in the different classes of violations.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs to conform to the rules for veterinarians and equine dental providers.

Ms. Oria has also determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

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

§575.25. Recommended Schedule of Sanctions.

(a) Class A violations. Licensees considered as presenting imminent peril to the public will be considered Class A violators. In determining whether a violation is a Class A, consideration will be given to the disposition of any previously docketed cases, and to the combination of charges which might involve Class B and/or C violations.

(1) Class A violations may include, but are not limited to:

(A) conviction of a felony, including a felony conviction under the Health and Safety Code, §485.032 (formerly numbered; §485.033) relating to Delivery of an Abusable Volatile Chemical to a Minor, or Chapter 481 relating to Controlled Substances, or Chapter 483 relating to Dangerous Drugs;

(B) gross malpractice with a pattern of acts indicating consistent malpractice, negligence, or incompetence in the licensee's area of practice [~~of veterinary medicine or equine dentistry~~];

(C) revocation of a veterinary license, a veterinary technician license, or an equine dental provider license [~~to practice veterinary medicine or equine dentistry~~] in another jurisdiction;

(D) mental incompetence found by a court of competent jurisdiction;

(E) chronic or habitual intoxication or chemical dependency, or addiction to drugs;

(F) issuance of a false certificate relating to the sale for human consumption of animal products;

(G) presentation of dishonest or fraudulent evidence of qualifications or a determination of fraud or deception in the process of examination, or for the purpose of securing a license;

(H) engaging in practices which are violative of the Rules of Professional Conduct; and/or

(I) fraudulent issuance of health certificates, vaccination certificates, test charts, or other blank forms used in the practice of veterinary medicine that relate to the presence or absence of animal disease.

(2) In assessing sanctions and/or penalties, consideration shall be given to the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

(3) Maximum penalties:

(A) revocation of the license;

(B) a penalty not exceeding $5,000 for each violation per day;

(C) continuing education in a specified field related to the licensee's practice [~~of veterinary medicine or equine dentistry~~] that the Board deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the license;

(D) quarterly reporting certifying compliance with board orders; and/or

(E) Licensee sit for, and pass, the SBE, LVTE, or EDPE.

(b) Class B violations. Involves licensees who either have violated rules and/or statutes, and committed a prior Class C violation; or have violated rules and/or statutes and have not committed a prior violation, but the nature and severity of the violation(s) necessitates a greater penalty than that available for a Class C violation, but does not rise to the level of creating an imminent peril to the public. In determining whether a violation is a Class B, consideration will be given to the disposition of the previously docketed cases, and to the combination of charges which might invoke Class A and/or C violations.

(1) Class B violations may include, but are not limited to:

(A) engaging in dishonest or illegal practices in or connected with the licensee's practice [~~of veterinary medicine or equine dentistry~~];

(B) engaging in practices which are violative of the Rules of Professional Conduct;

(C) permitting or allowing another to use his/her license or certificate to practice [~~veterinary medicine or equine dentistry~~];

(D) committing fraud in application or reporting of any test of animal disease;

(E) paying or receiving any kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary services or goods;

(F) fraudulent issuance of health certificates, vaccination certificates, test charts, or other blank forms used in the practice of veterinary medicine that relate to the presence or absence of animal disease;

(G) performing or prescribing unnecessary or unauthorized treatment;

(H) ordering prescription drugs or controlled substances for the treatment of an animal without first establishing a valid veterinarian-patient-client relationship;

(I) failure to maintain equipment and business premises in a sanitary condition; and/or

(J) refusal to admit a representative of the Board to inspect the client and patient records and business premises of the licensee during regular business hours.

(2) In assessing sanctions and/or penalties, consideration shall be given to: the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts; the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; the history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

(3) Maximum penalties:

(A) one to 10-year license suspension with none, all, or part probated;

(B) a penalty not exceeding $5,000 for each violation per day;

(C) continuing education in a specified field related to the licensee's practice [~~of veterinary medicine or equine dentistry~~] that the Board deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the license;

(D) quarterly reporting certifying compliance with board orders; and/or

(E) Licensee sit for, and pass, the SBE, LVTE, or EDPE.

(c) Class C violations. Involve licensees who have violated the rules and/or statutes, but do not have a history of previous violations. Consideration should be given to the nature and severity of the violation(s).

(1) Class C violations may include, but are not limited to, minor violations included in Class A and/or B in which there is no hazard or potential hazard created to the health, safety, or economic welfare of the public and no economic harm to property or to the environment.

(2) In assessing sanctions, consideration should be given to the good or bad faith exhibited by the cited person; evidence that the violation was willful; extent to which the cited individual has cooper-

ated with the investigation; and the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused.

(3) Maximum penalties:

(A) six months to one-year suspension with the entire period probated;

(B) an administrative penalty not to exceed $500 for each violation per day; and/or

(C) Licensee sit for, and pass, the SBE, LVTE, or EDPE.

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

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Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §575.35

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.35, concerning Temporary License Suspension Proceedings.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add Licensed Veterinary Technicians (LVTs) to the procedure for temporary license suspension proceedings. This amendment also changes the language in regard to the documents necessary to file for an administrative hearing by replacing the Board's option of filing a "complaint affidavit" with the State Office of Administrative Hearings (SOAH) with the filing of a "notice of hearing" with SOAH. This change comports with the Board's current pleading practice.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs and to have the Board's current pleading practice reflected in the rules.

Ms. Oria has also determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

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

§575.35. Temporary License Suspension Proceedings.

(a) Annually, the president of the Board shall appoint a three-member executive disciplinary committee (EDC) consisting of the president, the Board secretary, and one public member, to determine whether a person's license to practice [~~veterinary medicine or equine dentistry~~] in this state should be temporarily suspended under the Occupations Code, §801.409. The president shall serve as the chairman of the EDC, except in their absence the Board secretary shall serve as chairman. If a member of the EDC is recused, or a member is unable to attend the EDC's meeting, an alternate Board member may serve in the member's place on the EDC if the alternate was previously appointed by the president of the Board and approved by the Board.

(b) The EDC shall meet to receive information on a complaint indicating that a licensee's continued practice [~~of veterinary medicine or equine dentistry~~] may constitute a continuing or imminent threat to the public welfare. At the conclusion of the meeting, if the EDC concludes that the licensee's continued practice would constitute a continuing or imminent threat to the public welfare, the EDC shall suspend the licensee's license for a temporary, stated period of time.

(c) In accordance with the APA, [~~Section~~] §2001.081, the determination of the EDC may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

(d) In receiving information on which to base its determination of a continuing threat to the public welfare, the EDC may accept the testimony of witnesses by telephone.

(e) The EDC and the enforcement committee (EC) [~~EC~~] may receive testimony and evidence in oral or written form. Written statements may be sworn or unsworn. The committee members may question witnesses at the members' discretion. Evidence or information that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered.

(f) The EDC may suspend a license under this section without notice or a hearing on the complaint, provided the Board's EC [~~enforcement committee (EC)~~] (established pursuant to §575.29(b) of this title (relating to Informal Conferences)) shall meet in an informal conference within 14 days of the date of suspension, to determine if formal disciplinary proceedings should be initiated against the licensee. The licensee must receive notice of the conference at least 72 hours prior to the conference.

(g) Following the informal conference, the EC shall take one of the following actions:

(1) Lift the temporary suspension and reinstate the license without conditions.

(2) Negotiate with the licensee an agreed settlement order that will lift the suspension, continue the suspension, or impose other sanctions as appropriate. The agreed order would be presented to the next available Board meeting for adoption.

(3) Prepare a notice of hearing [~~complaint affidavit~~] setting out the details of the complaint and recommended sanctions, and forward the notice of hearing [~~complaint affidavit~~] to the State Office of Administrative Hearings for setting of an administrative hearing. Following the hearing, the administrative law judge will prepare a proposal for decision for adoption, in the form of an order, by the Board.

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

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Loris Jones
Executive Assistant
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22 TAC §575.50

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.50, concerning Criminal Convictions.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add Licensed Veterinary Technicians (LVTs) to the process whereby the Board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an LVT. This proposed amendment also adds LVTs as a professional practice that places LVTs in a position of public trust.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs and conforms to veterinarians and equine dental providers.

Ms. Oria has also determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

Section 801.401 and §801.402 of the Texas Occupations Code are affected by the proposal. No other statutes, articles, or codes are affected by the proposal.

§575.50. Criminal Convictions.

(a) In a process under Chapter 53, Occupations Code, the Board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of [~~either~~] a veterinarian, a licensed veterinary technician, or an equine dental provider. This subsection applies to persons who are not imprisoned at the time the Board considers the conviction.

(b) The Board shall revoke a license upon the imprisonment of a licensee following a felony conviction or revocation or felony community supervision, parole, or mandatory supervision. A person currently incarcerated because of a felony conviction may not sit for license examination, obtain a license under the Veterinary Licensing Act, Occupations Code, Chapter 801, or renew a previously issued license.

(c) The Board shall, in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensee, consider the factors listed in the Occupations Code, §53.022.

(d) In determining the present fitness to perform the duties and discharge the responsibilities of a licensee who has been convicted of a crime, the Board shall consider, in addition to the factors referenced in subsection (c) of this section, the factors listed in the Occupations Code, §53.023.

(e) Under Occupations Code §801.402, a person is subject to denial of a license or to disciplinary action under Occupations Code §801.401 if the person engages in illegal practices connected with the practice of veterinary medicine or the practice of equine dentistry.

(f) The professional practices of veterinarians, licensed veterinary technicians, and equine dental providers place those licensees in positions [~~Both the practice of veterinary medicine and the practice of equine dentistry places the licensee in a position~~] of public trust. A licensee practices in an autonomous role in the treating and safekeeping of animals; preparing and safeguarding confidential records and information; accepting client funds; and, if the licensee is a veterinarian, prescribing, administering and safely storing controlled sub-

stances. The following crimes therefore relate to and are connected with the practices of veterinarians, licensed veterinary technicians, and equine dental providers [~~veterinary medicine and equine dentistry~~] because the commission of each indicates a violation of the public trust, and a lack of integrity and respect for one's fellow human beings and the community at large:

(1) any felony or misdemeanor conviction of which fraud, dishonesty or deceit is an essential element;

(2) any criminal violation of the Veterinary Licensing Act, or other statutes regulating or pertaining to the licensee's practice or profession [~~of veterinary medicine or equine dentistry~~];

(3) any criminal violation of statutes regulating other professions in the healing arts;

(4) deceptive business practices;

(5) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child or to an elderly person;

(H) child abuse or neglect;

(I) tampering with a government record;

(J) animal cruelty;

(K) forgery;

(L) perjury;

(M) bribery;

(N) mail fraud;

(O) diversion or abuse of controlled substances, dangerous drug, or narcotic; or

(P) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency of the person to be unable to perform as a licensee or to be unfit for licensure, if action by the Board will promote the intent of the Veterinary Licensing Act, Board rules, including this chapter, and the Occupations Code, Chapter 53.

(g) Notwithstanding the provisions of subsections (a) - (f) [~~(e)~~] of this section, the Board shall suspend or revoke a licensee's license in accordance with the Occupations Code, §801.406, where the licensee has been convicted of a felony under the Health and Safety Code, §485.033, or the Health and Safety Code, Chapter 481 or 483.

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

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TRD-201306140

Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER A. BOARD MEMBERS AND MEETINGS--DUTIES

22 TAC §577.5

The Texas Board of Veterinary Medical Examiners (Board) proposes new §577.5, concerning Advisory Committees.

The Board proposes the new rule to implement §801.163 of the Occupations Code, allowing the Board to have advisory committees. This proposed rule provides: with statutory or Board authorization, the Board president may appoint, disband, or reconvene advisory committees as necessary; the advisory committees shall have and exercise such authority as may be granted by the Board; at the time the Board president creates an advisory committee, he or she assigns it a purpose, role, responsibility, and goal; the Board president determines the composition of the advisory committee and the necessary qualifications of the members to ensure the committee is made up of members with experience or backgrounds necessary to represent stakeholder viewpoints on the issue before the advisory committee; advisory committee members shall serve one year terms, unless the Board president disbands the advisory committee before one year has elapsed; advisory committee members may be reappointed at the end of their term at the discretion of the Board president; advisory committees will have no less than three members and no more than six members; a quorum is a simple majority of the total number of advisory committee members; a Board member or Board members appointed to an advisory committee by the Board president or the Board may serve as a liaison to the Board and report the recommendations to the Board; each committee shall select a chairperson from among its members who shall report to the agency or Board as needed; each advisory committee's work and usefulness shall be evaluated annually; advisory committee members are expected to attend meetings; the advisory committee chairperson has the discretion to recommend the dismissal of a member who does not regularly attend meetings; the Board or the Executive Director has the authority to approve the dismissal of a member; advisory committee chairs may invite individuals as expert resources to participate in advisory committee discussions and deliberations; invited experts serve as ad hoc members and do not have voting privileges; advisory committees meet as needed and meeting times are scheduled by the advisory committee's chairperson who shall determine when a majority of members can attend to establish a quorum; advisory committees will provide notice of meetings, as feasible, on the Secretary of State's website to allow public participation as feasible; and the decisions of advisory committees are advisory only.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or

local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the new rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to provide necessary independent expertise to the Board on Board functions and policies.

Ms. Oria has also determined that there will not be any economic cost to persons required to comply with the new rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the board shall adopt rules to protect the public; and §801.163, which states that the Board shall adopt rules regarding the purposed, structure, and use of advisory committees.

Section 801.163 of the Occupations Code is affected by the proposal. No other statutes, articles, or codes are affected by the proposal.

§577.5. Advisory Committees.

(a) With statutory or board authorization, the president may appoint, disband, or reconvene advisory committees as deemed necessary. Such committees shall have and exercise such authority as may be granted by the board. At the time the president creates an advisory committee, the president will assign it a purpose, role, responsibility and goal.

(b) The president will determine the composition of the advisory committee, and determine the necessary qualifications of advisory committee members, to ensure that the advisory committee is made up of members with experience or backgrounds necessary to represent stakeholder viewpoints on the issue before the advisory committee.

(c) Advisory committee members will serve one year terms, unless the president chooses to disband the advisory committee before one year has elapsed. Committee members may be reappointed at the end of their terms, at the discretion of the president.

(d) Advisory committees will be composed of no less than three and no more than six members. A quorum is a simple majority of the total number of appointed committee members.

(e) A board member or members appointed by the President of the Board or the Board may serve as a liaison(s) to a committee and report to the Board the recommendations of the committee for consideration by the Board.

(f) Each committee shall select from among its members a chairperson who shall report to the agency or Board as needed.

(g) Each committee's work and usefulness shall be evaluated annually.

(h) Committee members will be expected to attend meetings. The chairperson has the discretion to recommend the dismissal of a member who does not regularly attend. The Board or Executive Director has the authority to approve the dismissal of a member.

(i) Advisory committees chairs may invite individuals as expert resources to participate in committee discussions and deliberations. Invited experts serve as ad hoc members and do not have voting privileges.

(j) The committees will meet as needed. Meeting times will be scheduled by the chairperson of each committee who shall determine whether a majority of the members will be in attendance to establish a quorum.

(k) Advisory committees will provide notice of meetings, as feasible, on the Secretary of State's web site to allow the public an opportunity to participate.

(l) The decisions of the committee are advisory only.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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SUBCHAPTER B. STAFF

22 TAC §577.12

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §577.12, concerning Directory of Licensees.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add Licensed Veterinary Technicians (LVTs) in the Board's directory of licensees available to the public in printed or electronic format.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs to conform to the rules for veterinarians and equine dental providers.

Ms. Oria has also determined that there will not be any economic cost to persons required to comply with the amended rule.

There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

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

§577.12. Directory of Licensees.

Upon request the Board will furnish a complete or partial listing of currently licensed veterinarians, equine dental providers, and licensed veterinary technicians, in printed or electronic format. Costs for the directory will vary depending on the information requested and will be in accordance with the Office of the Attorney General 1 TAC §§70.1 - 70.11 (relating to Cost of Copies of Public Information).

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

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Executive Assistant
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22 TAC §577.16

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §577.16, concerning Responsibilities of Board and Staff.

During the last legislative session, the Texas Legislature granted the Board authority to license and to regulate veterinary technicians. The Board, therefore, proposes the amendment to add Licensed Veterinary Technicians (LVTs) to the responsibilities of the Board and Staff for establishing policies and promulgating rules to establish and maintain a high standard of integrity, skills, and practice in the professions of veterinarians and equine dental providers.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules for LVTs and conform to the rules for veterinarians and equine dental providers.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and provide for the regulation of veterinary technicians.

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

§577.16. Responsibilities of Board and Staff.

(a) The Texas Board of Veterinary Medical Examiners is responsible for establishing policies and promulgating rules to establish and maintain a high standard of integrity, skills, and practice in the professions of veterinarians, licensed veterinary technicians, and equine dental providers [~~veterinary medicine and equine dentistry~~] in accordance with the Veterinary Licensing Act.

(b) The board may employ an executive director to be responsible for administering policies, rules, and directives as set by the board.

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

Filed with the Office of the Secretary of State on December 30, 2013.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The General Land Office (GLO) proposes an amendment to 31 TAC §3.31, concerning Fees.

The proposed amendment to §3.31(b)(5)(G)(i) - (ii) and (8), changes the fees charged for digital transfer of images of maps and archival documents. The proposed amendment will conform to a more standard method of transferring digital images by providing a fee for a flash drive and for transferring large images via the internet. In addition, the hourly fee is omitted and a set cost per image is included.

Larry Laine, Chief Clerk/Deputy Commissioner, has determined that for each year of the first five years the amendment as proposed is in effect there will be no fiscal implications for state or local government. This rule does not have a fiscal impact or affect on state or local government.

Mr. Laine has also determined that for each year of the first five years the amendment as proposed is in effect, the public will benefit from the establishment of reasonable fees for digital transfer of images. There will be no effect on individuals, small businesses, or local economies as the result of the proposed amendment.

To comment on the proposed amendment, please send a written comment to Walter Talley, GLO Texas Register Liaison, at General Land Office, P.O. Box 12873, Austin, Texas 78711-2873; by fax to (512) 463-6311; or by email to walter.talley@glo.texas.gov.

The amendment is proposed under the Texas Natural Resources Code §51.174 which authorizes the commissioner to set and collect certain fees.

Chapters 31, 32, 51 and 52 of the Texas Natural Resources Code are affected by the proposed amendment.

§3.31. Fees.

(a) (No change.)

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

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

(5) Duplication fees - archival records: For purposes of this section the term archival records is defined as records maintained in the Archives and Records Division of the Texas General Land Office. The Archives and Records Division reserves the right to deny duplication of any document or map considered too fragile or brittle to safely copy. In addition, the Archives and Records Division reserves the right to specify what method(s) of reproduction may be used. Archival records for all original records affecting land titles, including original land grant files, Spanish Collection materials, school land and scrap files and maps, sketches and plats:

(A) - (F) (No change.)

(G) Digital Media for Archival Image Digital Duplication or Transfer.

(i) Digital Media of File Transfer Service, including: CD, DVD, Flash Drive, or transfer over the internet: $16 per order;

[~~(G) Digitally reproduced archival map collection on CD-ROM/DVD-ROM.~~]

~~(i)~~ ~~cost of disk: CD: $11, DVD: $16 plus labor at $40 per hour (prorated at 15 minute intervals);~~]

(ii) cost per image: $50 [~~$10~~];

(iii) (No change.)

(6) - (7) (No change.)

[~~(8) Digital Transfer Fee, for the transfer of large files over the Internet by the use of a File Transfer Service: $16 per order.~~]

(8) [~~(9)~~] Rush Fee: At General Land Office staff discretion, expedited preparation of photocopies, GIS products, maps and items scanned may be provided for a fee. Payment of the rush fee does not guarantee that requested services will be completed by a specific time. Payment of the rush fee will allow the rush order to be completed ahead of non-rush items: per order $50.

(9) [~~(10)~~] Digital mapping (GIS):

(A) GIS maps printed on special printer paper:

(i) Plotting standard products:

(I) Small maps: Labor, paper and supplies: $15 per map;

(II) 18 inch by 24 inch: Labor, paper and supplies: $20 per map;

(III) 24 inch by 36 inch: Labor, paper and supplies: $25 per map;

(IV) 36 inch by 48 inch: Labor, paper and supplies: $30 per map;

(V) Large maps: Labor, paper and supplies: $40 per map.

(ii) Plotting custom products:

(I) Labor: $50 per hour (one hour minimum);

(II) Paper and Supplies: $10 per map.

(B) Digital GIS data placed on CD-ROM: Each CD: $11, DVD: $16 - plus labor at $40 per hour (prorated at 15 minute intervals).

(10) [~~(11)~~] Vacancies:

(A) Application fee: $150.

(B) Filing fee for original field notes: $25.

(C) Affidavit Filing Fee: $25.

(D) Each deed, title opinion, or other document needed to satisfy the commissioner of claimant's status. Filing fee for each document submitted as required: $25.

(E) Petition for [~~For~~] Disqualification of Surveyor costs associated including hearing, mailing copies, other expenses, non-refundable: $250.

(F) Copying Fees, related to vacancy application only:

(i) Black and white photocopies, per page:

(I) 8.5 inch by 11 inch: $.10.

(II) 8.5 inch by 14 inch: $.10.

(III) 11 inch by 17 inch: $.25.

(ii) Color photocopies, per page:

(I) 8.5 inch by 11 inch: $.25.

(II) 8.5 inch by 14 inch: $.25.

(III) 11 inch by 17 inch: $.50.

(iii) Sketches, plats and survey maps (larger than 11 inch by 17 inch): $2.00 per linear foot.

(11) [~~(12)~~] Appraisal fees. Appraisal fees are charged for appraisals required to be paid by the applicant for the purchase of excess acreage and vacancies: For each appraisal: $500.

(12) [~~(13)~~] Recorded media:

(A) VHS videotape, each $10, other video formats $20 per 30 minutes, $30 per 60 minutes;

(B) Audio cassettes, each: $7.50, audio transfer fee, $25 per hour, 1/2 hour minimum;

(C) Video Transfer Fee, 1/2 hour - $25, 1/2 hour minimum;

(D) Recorded media placed on CD/DVD: CD $11, DVD: $16 - plus labor at $40 per hour (prorated at 15 minute intervals);

(E) Video/Audio encoding fee: 1/2 hour - $25, 1/2 hour minimum.

(13) [~~(14)~~] Records research, research of official records of the General Land Office, per hour $50 (minimum 1/2 hour).

(A) Genealogy search, per name: $20.

(B) Other research of official records, i.e., field notes, sketches, maps: per hour $50, minimum 1/2 hour.

(14) [~~(15)~~] Mailing fees:

(A) Mailing tubes, each $3.

(B) Handling and preparation for mailing, each item: $15 per package (optional).

(C) Postage and handling: $15 per package.

(D) Registered mail, each item: $11.50 or current United States Postal Service rate.

(E) Certified mail, each item: $5.10 or current United States Postal Service rate plus current USPS rate for postage.

(15) [~~(16)~~] Publications:

(A) Abstract volume (digital on CD): $11.

(B) Abstract volume supplement (digital on CD): $11.

(C) Spanish Collection Catalogue (Part I): $15.

(D) Spanish Collection Catalogue (Part II): $15.

(E) New Guide to Spanish and Mexican Land Grants in South Texas: $15.

(16) [~~(17)~~] Publication or Broadcast Fee (Image Use Fee): For use of a GLO archival image (map or document) in a book, magazine, motion picture, television broadcast, video, website, reproduction for resale, or other promotional advertising use:

(A) Non-profit organizations, college or university presses, governmental entities, news media, private individuals: no charge.

(B) For profit organizations: $50 per image per use.

(17) [~~(18)~~] Geophysical and geochemical exploration:

(A) Non-Relinquishment Act lands:

(i) permit application filing fee: $100;[~~.~~]

(ii) exploration and surface/bottom damage fees for unleased tracts in bays, other tideland areas, and the Gulf of Mexico:[~~.~~]

(I) high velocity energy sources:

(-a-) $5.00 per acre in bays and other tideland areas;

(-b-) $2.00 per acre in the Gulf of Mexico;

(II) low velocity energy sources:

(-a-) $2.50 per acre in bays and other tideland areas;

(-b-) $1.00 per acre in the Gulf of Mexico;

(III) other exploration techniques: negotiable;

(iii) surface damage fees for unleased uplands:

(I) vibroseis: $2.50 per acre;

(II) high velocity energy sources: $5.00 per acre;

(III) gravity meter and/or magnetometer: fair market value, but not less than $2.50 per acre;

(iv) other exploration techniques: negotiable.

(B) Relinquishment Act lands:

(i) permit application filing fee: $100;

(ii) all fees for actual surface damages to personal property, improvements, livestock, and crops on unleased Relinquishment Act lands, if any, are to be negotiated with the surface owner. Any fees in excess of those attributable to the types of surface damages listed in this paragraph must be shared equally with the state.

(18) [~~(19)~~] Miscellaneous services and fees:

(A) In-kind contract maintenance fee. Processing and accounting for in-kind oil, gas, and other related product contracts, from purchaser of state-owned products unless deemed unnecessary by the Commissioner: per barrel delivered: $.05; per MMBTU delivered: $.03.

(B) Relinquishment Act lease processing fee: $100.

(C) Highway [~~highway~~] right-of-way lease processing fee, including preparation of lease: $500.

(D) Pooling [~~pooling~~] application processing fee, including preparation and filing of pooling agreements: $500.

(E) Oil [~~oil~~], gas, and mineral lease application and filing fee, including processing, lease preparation, and filing of any oil, gas, or mineral lease not subject to other processing or nomination fees: $100.

(F) Tract [~~tract~~] nomination fee, oil, gas, or mineral sealed bid lease sale fee: $100.

(G) Prospect [~~prospect~~] permit filing fee: $50.

(H) Insufficient [~~insufficient~~] check fee (for each check returned): $25.

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

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TRD-201306110
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
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For further information, please call: (512) 475-1859

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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) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §19.2322, concerning Medicaid bed allocation requirements, and new §19.345, concerning small house and household facility requirements, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

BACKGROUND AND PURPOSE

The proposed amendment to §19.2322 and new §19.345 promote a resident-centered care culture in nursing facilities. The proposed amendment to §19.2322 creates a small house bed allocation waiver, designed to promote smaller nursing facilities that provide a homelike environment. New §19.345 is proposed to establish construction requirements for small house and household nursing facilities, which provide a homelike environment and promote resident-centered care.

SECTION-BY-SECTION SUMMARY

Proposed new §19.345 sets forth the requirements for new construction to a small house or household nursing facility, including a conversion, an addition, or remodeling. The new section includes requirements that must be met for a facility to be a small house or household facility and describes the three models of small house and household facilities. The new section sets forth requirements for the physical plant and environment of a small house or household facility and allows DADS to waive certain requirements in other sections if DADS determines that those requirements would prevent implementation of resident-centered care in a small house or household facility.

The proposed amendment to §19.2322 provides that DADS gives priority to a small house waiver application over a pending community needs waiver application filed in the same county. It also states that DADS does not approve more than 16 beds for a small house facility or a household in a facility that is granted a small house waiver. The proposed amendment requires an applicant to submit schematic building plans with the waiver application and submit final construction documents after the waiver application is approved. The proposed amendment provides local nursing facilities the opportunity to submit comments when a small house waiver application is received. The proposed amendment specifies that a waiver application is considered withdrawn if it is not completed within 90 days. The proposed amendment also provides that DADS approves the replacement or transfer of beds certified at a small house or household facility only to another small house or household facility.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment and new section is in effect, enforcing or administering the amendments and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment and new section will not have an adverse economic effect on small businesses or micro-businesses because performing construction as a small house or household facility and applying for a small house Medicaid bed allocation waiver is voluntary. However, providers that want to perform construction as a small house or household facility or apply for a small house Medicaid bed allocation waiver will sustain a cost for the plan review and final construction documents.

PUBLIC BENEFIT AND COSTS

Mary Taylor Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment and new section are in effect, the public benefit expected as a result of enforcing the amendment and new section is nursing facility residents may have the option of a more homelike environment instead of the traditional nursing facility setting.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendment and new section will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sharon Wallace at (512) 438-4624 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R18, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R18" in the subject line.

SUBCHAPTER D. FACILITY CONSTRUCTION

40 TAC §19.345

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; 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; 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 Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Human Resources Code, §32.0213, which authorizes DADS to control the number of Medicaid-certified nursing facility beds; and Texas Health and Safety Code, §242.037, which authorizes the adoption of rules for licensure of nursing facilities.

The new section affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §§161.021, 32.021, and 32.0213; and Texas Health and Safety Code, §242.037.

§19.345. Small House and Household Facilities.

(a) A small house or household facility is a facility that is designed to provide a non-institutional environment to promote resident-centered care and that meets the requirements of this section. New construction to a small house or household facility, including a conversion, an addition, or remodeling, must meet the requirements of this section.

(b) A small house or household facility must comply with this chapter, except it is not required to comply with a requirement in §§19.330 - 19.343 of this subchapter (relating to Construction and Initial Survey of Completed Construction; Construction Standards for Additions, Remodeling, and New Nursing Facilities; Location and Site; General Considerations; Architectural Space Planning and Utilization; Exit Provisions; Smoke Compartmentation (Subdivision of Building Spaces); Fire Protection Systems; Hazardous Areas; Structural Requirements; Mechanical Requirements; Electrical Requirements; Miscellaneous Details; and Elevators) if DADS waives the requirement in accordance with subsection (c) of this section or if the requirement is modified by subsection (g) of this section.

(c) DADS may waive a requirement in §§19.330 - 19.343 of this subchapter if DADS determines a waiver of the requirement would facilitate the implementation of resident-centered care. To request a waiver of a requirement, a facility must submit plans to DADS in accordance with §19.344 of this subchapter (relating to Plans, Approvals, and Construction Procedures). The plans must include a statement from an architect identifying which requirements the facility is requesting to be waived and explaining how the waiver would contribute to the goals of resident-centered care.

(d) A small house or household facility must be designed and equipped to provide a homelike environment that promotes resident-centered care.

(e) A small house facility or a household within a facility must:

(1) have no more than 16 bedrooms;

(2) have living, dining, social, and staffing areas exclusively within and for the house or household; and

(3) have a kitchen or food service area exclusively within and for the house or household.

(f) A small house or household facility must be:

(1) a single small house model, which is a single licensed building having no more than 16 residents that meets the licensing requirements for architectural spaces provided within the same licensed building;

(2) a multiple small house model, which is a single licensed group of two or more small houses located in close proximity to each other that meets the licensing requirements for architectural spaces in each house and that may include a stand-alone central building that provides social-diversional space, a treatment area, or an administrative area; or

(3) a household model, which is a single licensed building that contains multiple households having no more than 16 residents each; that may include a central area that provides social-diversional space, a treatment area, or an administrative area; and that must be arranged to avoid travel through the household by persons who are not residing in, visiting, or providing services for the household.

(g) A small house or household facility must comply with the requirements in this section and is not required to request a waiver for an exception described in this subsection.

(1) The interior finish requirements in §19.333(e) of this subchapter must be met, except combustible decorations on walls, doors, and ceilings may be installed as permitted by the 2012 edition of the Life Safety Code.

(2) The outdoor activity, recreational, and sitting spaces required in §19.332(f) of this subchapter must include a porch area under a roof with suitable furniture for sitting and space for wheelchairs.

(3) The resident bedroom requirements in §19.334(a) of this subchapter must be met, except;

(A) a bedroom must be occupied:

(i) by only one resident; or

(ii) by two residents, if they are members of the same family and the bedroom size, furniture, and headboard wall requirements for double occupancy are met;

(B) the toilet requirements §19.334(a)(8) of this subchapter must be met, except a bathroom must serve no more than one resident room and must include a lavatory, toilet, and a shower or bathing unit;

(C) the night lighting requirement in §19.334(a)(6) of this subchapter must be met, except it must be a recessed wall mounted fixture just inside the entry door to the room and must not be obstructed by the door or furniture; and

(D) the electrical receptacle requirements in §19.334(a)(7) of this subchapter must be met and additional receptacles must be provided to meet the requirements for dwelling units in NFPA 70, 210-54.

(4) The nursing service area requirements in §19.334(b) of this subchapter must be met, except:

(A) a nursing staff lounge is not required in a small house facility;

(B) the nursing staff toilet room may also be a toilet room for:

(i) kitchen staff;

(ii) the public; or

(iii) a general bathing room, if the toilet room opens into the general bathing room and common areas; and

(C) the nourishment station may be part of the residential kitchen area.

(5) Resident bathing and toilet facility requirements in §19.334(c) of this subchapter must be met, except the door between a bathroom and a resident bedroom:

(A) is not required to be a side-hinged swinging door;

(B) may be an externally mounted by-pass door;

(C) must have substantial hardware;

(D) must not be equipped with a bottom door track that is a tripping hazard; and

(E) if it swings open into the bedroom, must not interfere with the swing of any other door that opens into the bedroom.

(6) The living area requirements in §19.334(e) of this subchapter must be met, except the distance between the floor and the window sill of a window in the living or dining room must not exceed 36 inches, to allow a view to the outside from a seated position.

(7) The dietary facility requirements in §19.334(g) of this subchapter must be met, except a kitchen serving 16 or fewer non-employees per meal:

(A) may be open to the facility in compliance with the 2012 edition of the Life Safety Code;

(B) must meet the general food service needs of the residents;

(C) must provide for the storage, refrigeration, preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal;

(D) must contain a multi-compartment sink, vegetable sink, and hand washing sink;

(E) must provide a supply of hot water that, if used for sanitizing purposes is 180 degrees Fahrenheit or at the manufacturer's suggested temperature for chemical sanitizers;

(F) must provide a supply of cold water;

(G) must have janitorial facilities exclusively for the kitchen and located in close proximity to the kitchen;

(H) must have kitchen floors, walls, and ceilings with nonabsorbent smooth finishes or surfaces that are capable of being routinely cleaned and sanitized to maintain a healthful environment;

(I) must have counter and cabinet surfaces, inside and outside, with smooth, cleanable, relatively nonporous finishes; and

(J) must have a toilet for the kitchen staff that is in close proximity to the kitchen and that may also be a toilet room for the public or the general bathing room.

(8) The exit requirements in §19.335(3) of this subchapter must be met except for fixed furniture and wheeled equipment as permitted by the 2012 edition of the Life Safety Code.

(9) The nurse call system requirements in §19.341(d)(4) of this subchapter must be met, and the system:

(A) must meet UL 1069 for the core system of power units, annunciator control units, corridor dome lights, emergency calling stations, bedside call stations, and activating devices; and

(B) is not required to meet UL 1069 for ancillary or supplementary devices, including pocket pagers and other portable devices.

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

Filed with the Office of the Secretary of State on December 20, 2013.

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SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2322

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; 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; 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 Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Human Resources Code, §32.0213, which authorizes DADS to control the number of Medicaid-certified nursing facility beds; and Texas Health and Safety Code, §242.037, which authorizes the adoption of rules for licensure of nursing facilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §§161.021, 32.021, and 32.0213; and Texas Health and Safety Code, §242.037.

§19.2322. Medicaid Bed Allocation Requirements.

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

(1) Applicant--An individual or entity requesting a bed allocation waiver or exemption.

(2) Assignment of rights--The Department of Aging and Disability Services (DADS) conveyance of a specific number of allocated Medicaid beds from a nursing facility or entity to another entity for purposes of constructing a new nursing facility or for any other use as authorized by this chapter.

(3) Bed allocation--The process by which DADS controls the number of nursing facility beds that are eligible to become Medicaid-certified in each nursing facility.

(4) Bed certification--The process by which DADS certifies compliance with state and federal Medicaid requirements for a specified number of Medicaid beds allocated to a nursing facility.

(5) County or precinct occupancy rate--The number of residents, regardless of source of payment, occupying certified Medicaid beds in a county divided by the number of Medicaid beds allocated in the county, including Medicaid beds that are certified and Medicaid beds that have been allocated but are not certified. In the four most populous counties in the state, the occupancy rate is calculated for each county commissioner precinct.

(6) Licensee--The individual or entity, including a controlling person, that is:

(A) an applicant for licensure by DADS under Chapter 242 of the Texas Health and Safety Code and for Medicaid certification;

(B) licensed by DADS under Chapter 242 of the Texas Health and Safety Code; or

(C) licensed under Chapter 242 of the Texas Health and Safety Code and holds the contract to provide Medicaid services.

(7) Lien holder--The individual or entity that holds a lien against a physical plant.

(8) Multiple-facility owner--An individual or entity that owns, controls, or operates under lease two or more nursing facilities within or across state lines.

(9) Occupancy rate--The number of residents occupying certified Medicaid beds divided by the number of certified Medicaid beds in a nursing facility.

(10) Open solicitation period--A period during which an individual or entity may apply for an allocation of Medicaid beds in a high-occupancy county or precinct.

(11) Physical plant--The land and attached structures to which beds are allocated or for which an application for bed allocation has been submitted.

(12) Property owner--The individual or entity that owns a physical plant.

(13) Transfer of beds--DADS conveyance of a specific number of allocated Medicaid beds from an existing nursing facility or entity to another existing licensed nursing facility. The nursing facility may use the transferred Medicaid beds to increase the number of Medicaid-certified beds currently licensed or to increase the number of Medicaid-certified beds when additional licensed beds are added to the nursing facility in the future.

(b) Purpose. The purpose of this section is to control the number of Medicaid beds that DADS contracts, to improve the quality of resident care by selective and limited allocation of Medicaid beds, and to promote competition.

(c) Bed allocation general requirements. The allocation of Medicaid beds is an opportunity for the property owner or the lessee of a nursing facility to obtain a Medicaid nursing facility contract for a specific number of Medicaid-certified beds.

(1) Medicaid beds are allocated to a nursing facility and remain at the physical plant where they were originally allocated, unless DADS transfers or assigns the beds.

(2) When DADS allocates Medicaid beds to a nursing facility as a result of actions by the licensee, DADS requires that the beds remain allocated to the physical plant, even when the licensee ceases operating the nursing facility, unless DADS assigns or transfers the beds.

(3) Notwithstanding any language in subsections (f) and (g) of this section and the fact that applicants for bed allocation waivers and exemptions may be licensees or property owners, DADS allocates beds to the physical plant and the owner of that property controls the Medicaid beds subject to DADS rules and requirements and all valid physical plant liens.

(d) Control of beds. Except as specified in this section, DADS does not accept applications for a Medicaid contract for nursing facility beds from any nursing facility that was not granted:

(1) a valid certificate of need (CON) by the Texas Health Facilities Commission before September 1, 1985;

(2) a waiver or exemption approved by the Department of Human Services before January 1, 1993; or

(3) a valid order that had the effect of authorizing the operation of the nursing facility at the bed capacity for which participation is sought.

(e) Level of acceptable care. Unless specifically exempted from this requirement, applicants and controlling persons of an applicant for Medicaid bed allocation waivers or exemptions must comply with level of acceptable care requirements. Level of acceptable care requirements apply only in determining bed allocation waiver and exemption eligibility and have no effect on other sections of this chapter.

(1) DADS determines a waiver or exemption applicant or a controlling person of an applicant complies with level of acceptable care requirements if, within the preceding 24 months, the applicant or controlling person:

(A) has not received any of the following sanctions:

(i) termination of Medicaid or Medicare certification;

(ii) termination of Medicaid contract;

(iii) denial, suspension, or revocation of a nursing facility license;

(iv) cumulative Medicaid or Medicare civil monetary penalties totaling more than $5,000 per facility;

(v) civil penalties pursuant to §242.065 of the Texas Health and Safety Code; or

(vi) denial of payment for new admissions;

(B) does not have a pattern of substantial or repeated licensing and Medicaid sanctions, including administrative penalties or other sanctions; and

(C) does not have a condition listed in §19.214(a) of this chapter (relating to Criteria for Denying a License or Renewal of a License).

(2) DADS considers the criteria in paragraph (1) of this subsection to determine if local facilities provide a level of acceptable

care in counties, communities, ZIP codes or other geographic areas that are the subject of a waiver application. DADS only considers sanctions that are final and are not subject to appeal when determining if a local facility complies with level of acceptable care requirements.

(3) Nursing facilities that have received any of the sanctions listed in paragraph (1) of this subsection within the previous 24 months are not eligible for an allocation of Medicaid beds under subsection (h) of this section or an allocation of additional Medicaid beds under subsection (f) of this section. In the case of sanctions against the nursing facility to which the beds would be allocated that are appealed, either administratively or judicially, an application will be suspended until the appeal has been resolved. Sanctions that have been administratively withdrawn or were subsequently reversed upon administrative or judicial appeal are not considered.

(4) When the applicant for an allocation of additional Medicaid beds is a multiple-facility owner or a multiple-facility owner owns an applicant nursing facility, the multiple-facility owner must demonstrate an overall record of complying with level of acceptable care requirements. DADS only considers sanctions that are final and are not subject to appeal when determining whether the multi-facility owner's facilities not receiving the new bed allocation comply with level of care requirements.

(5) When the applicant is a licensee that has operated a nursing facility less than 24 months, the nursing facility must establish at least a 12-month compliance record immediately preceding the application in which the nursing facility has not received any of the sanctions listed under paragraph (1) of this subsection.

(6) When the applicant has no history of operating nursing facilities, DADS will review the compliance record of health-care facilities operated, managed, or otherwise controlled by controlling parties of the applicant. If a controlling party or the applicant has never operated, managed, or otherwise controlled any health-care facilities, a compliance review is not required.

(7) The commissioner, or the commissioner's designee, may make an exception to any of the requirements in this subsection if the commissioner or the commissioner's designee determines the needs of Medicaid recipients in a local community will be served best by granting a Medicaid bed allocation waiver or exemption. In determining whether to make an exception to the requirements, the commissioner or the commissioner's designee may consider the following:

(A) the overall compliance record of the waiver or exemption applicant;

(B) the current availability of Medicaid beds in facilities that comply with level of acceptable care requirements in the local community;

(C) the level of support for the waiver or exemption from the local community;

(D) the way a waiver or exemption will improve the overall quality of care for nursing facility residents; and

(E) the age and condition of nursing facility physical plants in the local community.

(f) Exemptions. DADS may grant an exemption from the requirements in subsection (d) of this section. All exemption actions must comply with the requirements in this subsection and with requirements of the Centers for Medicare and Medicaid Services (CMS) regarding bed capacity increases and decreases. When a bed allocation exemption is approved, the licensee must comply with the requirements in §19.201 of this chapter (relating to Criteria for Licensing) at the time of licensure and Medicaid certification of the new beds or nursing facility.

(1) Replacement Medicaid nursing facilities and beds. An applicant may request that DADS approve replacement of allocated Medicaid beds by the construction of one or more new nursing facilities.

(A) The applicant must own the physical plant where the beds are allocated or possess a valid assignment of rights to the Medicaid beds.

(B) The applicant must obtain written approval by all lien holders of the physical plant where the beds are allocated before requesting DADS approval to relocate the Medicaid beds to the replacement facility if the replacement facility will be constructed at a different address than the current facility. The applicant must submit the lien holder approval with the replacement nursing facility request. If the physical plant where the Medicaid beds are allocated does not have a lien, the applicant must submit a written attestation of that fact with the replacement nursing facility request.

(C) Replacement nursing facility applicants, including those who obtained the rights to the beds through a DADS assignment of beds, must comply with the level of acceptable care requirements in subsection (e) of this section, unless the applicant for a replacement nursing facility is the current property owner.

(D) DADS may grant a replacement facility an increase of up to 25 percent of the currently allocated Medicaid beds, if the applicant complies with the level of acceptable care requirements in subsection (e) of this section. DADS will not transfer or assign the additional allocation of beds until they are certified at the replacement facility.

(E) The physical plant of the replacement nursing facility must be located in the same county in which the Medicaid beds currently are allocated.

(2) Transfer of Medicaid beds. An applicant may request DADS transfer allocated Medicaid beds certified or previously certified to another physical plant.

(A) The applicant must own the physical plant where the beds are allocated, or the applicant must present DADS with:

(i) a valid Medicaid bed transfer agreement that specifies the number of additional Medicaid beds the applicant is requesting DADS allocate to the receiving nursing facility; or

(ii) a valid Medicaid bed assignment that specifies the number of additional Medicaid beds the applicant is requesting DADS allocate to the receiving nursing facility.

(B) If the Medicaid beds are allocated to a specific physical plant, the applicant must obtain and submit written approval from the property owner and, if the physical plant has a lien, written approval from all lien holders to obtain a DADS transfer of the Medicaid beds to another facility. If the physical plant where the Medicaid beds are allocated does not have a lien, the applicant must submit a written attestation of that fact with the transfer request.

(C) The receiving licensee must comply with level of acceptable care requirements in subsection (e) of this section.

(D) Both facilities must be located in the same county.

(3) High-occupancy facilities. Medicaid-certified nursing facilities with high occupancy rates may periodically apply to DADS to receive bed allocation increases.

(A) The occupancy rate of the Medicaid beds of the applicant nursing facility must be at least 90.0 percent for nine of the previous 12 months prior to the application.

(B) The application for additional Medicaid beds may be for no more than 10 percent (rounded to the nearest whole number) of the facility's Medicaid-certified nursing facility beds.

(C) The applicant nursing facility must comply with level of acceptable care requirements in subsection (e) of this section.

(D) The applicant nursing facility may reapply for additional Medicaid beds no sooner than nine months from the date of the previous allocation increase.

(E) Medicaid beds allocated to a nursing facility under this requirement may only be certified at the applicant nursing facility. DADS does not transfer or assign the additional allocation of beds until they are certified at the applicant nursing facility.

(4) Non-certified nursing facilities. Licensed nursing facilities that do not have Medicaid-certified beds may apply to DADS for an initial allocation of Medicaid beds.

(A) The application for Medicaid beds may be for no more than 10 percent (rounded to the nearest whole number) of the facility's licensed nursing facility beds.

(B) The applicant nursing facility must comply with level of acceptable care requirements in subsection (e) of this section.

(C) After the applicant nursing facility receives an allocation of Medicaid beds, the facility may apply for additional Medicaid beds in accordance with paragraph (3) of this subsection.

(D) Facilities that have Medicaid beds allocated under provisions of an Alzheimer's waiver may apply for general Medicaid beds in accordance with paragraph (3) or (4) of this subsection. DADS does not count the beds allocated under an Alzheimer's waiver provision in determining the allowable bed allocation increase. For example, a 120-bed nursing facility with 60 Alzheimer waiver beds would be eligible for 10 percent of the 60 remaining beds or six additional Medicaid beds.

(5) Low-capacity facilities. For purposes of efficiency, nursing facilities with a Medicaid bed capacity of less than 60 may receive additional Medicaid beds to increase their capacity up to a total of 60 Medicaid beds.

(A) The nursing facility must be licensed for less than 60 beds and have a current certification of less than 60 Medicaid beds.

(B) The nursing facility must have been Medicaid-certified before June 1, 1998.

(C) The applicant licensee must comply with level of acceptable care requirements in subsection (e) of this section.

(D) Facilities that have a Medicaid capacity of less than 60 beds due to the loss of Medicaid beds under provisions in subsection (j) of this section are not eligible for this exemption.

(6) Spend-down Medicaid beds. Licensed nursing facilities may apply to DADS for temporary spend-down Medicaid beds for residents who have "spent down" their resources to become eligible for Medicaid, but for whom no Medicaid bed is available. A DADS approval of spend-down Medicaid beds allows a nursing facility to exceed temporarily its allocated Medicaid bed capacity.

(A) The applicant nursing facility must have a Medicaid contract with a Medicaid bed capacity of at least 10 percent of licensed capacity authorized in paragraph (4) of this subsection. If the nursing facility is not currently Medicaid-certified, the licensee must be approved for Medicaid certification and obtain a Medicaid contract with a Medicaid bed capacity at least as large as that authorized in paragraph (4) of this subsection.

(B) All Medicaid or dually certified beds must be occupied by Medicaid or Medicare recipients at the time of application.

(C) The application for a spend-down Medicaid bed must include documentation that the person for whom the spend-down bed is requested:

(i) was not eligible for Medicaid at the time of the resident's most recent admission to the nursing facility; and

(ii) was a resident of the nursing facility for at least the immediate three months before becoming eligible for Medicaid, excluding hospitalizations.

(D) The nursing facility is eligible to receive Medicaid benefits effective the date the resident meets Medicaid eligibility requirements.

(E) The nursing facility must assign a permanent Medicaid bed to the resident as soon as one becomes available.

(F) Facilities with multiple residents in spend-down beds must assign permanent Medicaid beds to those residents in the same order the residents were admitted to spend-down beds.

(G) The assignment of residents in spend-down beds to permanent Medicaid beds must precede the admission of new residents to permanent beds.

(H) The nursing facility must notify DADS immediately upon the death or permanent discharge of the resident or transfer of the resident to a permanent Medicaid bed. Failure of the nursing facility to notify DADS of these occurrences in a timely manner is basis for denying applications for spend-down Medicaid beds.

(I) The nursing facility is not required to comply with level of acceptable care requirements in subsection (e) of this section.

(g) Waivers. The commissioner or the commissioner's designee may grant a waiver of the requirements stated in subsection (d) of this section under certain conditions.

(1) Applicants must meet the following conditions to be eligible for the specific waivers in subsection (h) of this section.

(A) The applicant must meet the level of acceptable care requirement in subsection (e) of this section.

(B) The applicant must submit a complete DADS waiver application.

(C) At the time of licensure and Medicaid certification of the allocated beds, the licensee must comply with the requirements in §19.201 of this chapter.

(D) A waiver recipient or a subsequent waiver assignee must, at the time of licensure and Medicaid certification, be the property owner or the licensee of the facility where Medicaid beds allocated through the waiver process are certified.

(2) A waiver recipient may request that DADS approve the assignment of an approved waiver to another entity in accordance with this paragraph. A waiver recipient may request DADS approval of only one assignment. A waiver assignment is not valid unless and until it is approved by DADS.

(A) The waiver recipient or the owner of the waiver recipient must maintain majority ownership and management control of the assignee.

(B) The assignee must not have an owner or controlling person who was not an owner or controlling person of the waiver recipient.

(C) The assignee must own the physical plant of the waiver facility at the time of licensure and certification (as landlord) or be the licensee at the time of licensure and certification (as the licensed operator). Under either circumstance, the allocated beds are subject to subsection (c) of this section.

(D) The assignee must meet the requirements in subsection (e) of this section regarding level of acceptable care.

(3) A waiver recipient entity may remove a controlling person from ownership of the entity, but the waiver recipient entity must not add an owner after the waiver is approved by DADS. A change to the ownership of the waiver recipient entity or the waiver assignment entity must be reported to DADS.

(4) DADS may in its sole discretion determine that a waiver applicant that submits false or fraudulent information is not eligible for a waiver. DADS may, in its sole discretion, revoke a waiver issued and decertify Medicaid beds issued based on false or fraudulent information provided by the applicant.

(5) Except as provided in paragraphs (6) - (9) of this subsection, DADS considers waiver applications in the order in which they are received. A waiver applicant may request that review of its application be deferred until one or more applications submitted after its application has been reviewed. This request must be in writing.

(6) DADS gives priority to a small house waiver application submitted in accordance with subsection (h)(9) of this section over a pending community needs waiver application submitted in accordance with subsection (h)(2) of this section for the same county. If approved, DADS includes the small house facility beds when determining the need for a community needs waiver.

(7) [~~(6)~~] During any period in which DADS is processing a waiver application in accordance with subsection (h)(2), (4), [~~or~~] (5), or (9) of this section, DADS may suspend processing the waiver application for up to six months if DADS determines the county or precinct occupancy rate of the county or precinct in which the site of the proposed waiver is located is at least 85 percent during at least six of the previous nine months. DADS calculates the occupancy rate based on the monthly Medicaid occupancy reports submitted to DADS by Medicaid-certified nursing facilities and includes the occupancy rate of certified Medicaid beds and allocated Medicaid beds that are encumbered for future certification as a result of approval of a waiver or exemption in the subject county or precinct.

(8) [~~(7)~~] DADS initiates the high occupancy county or precinct waiver process referenced in subsection (h)(1) of this section if DADS determines requirements for the open solicitation process for a high occupancy county or precinct waiver are met during the temporary suspension period referenced in paragraph (7) [~~(6)~~] of this subsection. DADS does not process any pending waiver applications in the affected county or precinct until the open solicitation process referenced in subsection (h)(1) of this section is complete.

(9) [~~(8)~~] DADS continues to process a suspended waiver application in the affected county or precinct if DADS determines requirements for the open solicitation process of the high occupancy county or precinct waiver are not met during the suspension period referenced in paragraph (7) [~~(6)~~] of this subsection.

(h) Specific waiver types. DADS may grant a waiver if it determines that Medicaid beds are necessary for the following circumstances.

(1) High occupancy waiver. A high occupancy waiver is designed to meet the needs of counties and certain precincts that have a high county or precinct occupancy rate for multiple months.

(A) DADS monitors monthly county or precinct occupancy rates. If DADS determines that a county or precinct occupancy rate equals or exceeds 85 percent for at least nine of the previous twelve months, DADS may initiate a waiver process by placing a public notice in the *Texas Register* and the Electronic State Business Daily (ESBD) to announce an open solicitation period.

(B) The public notice announces that DADS may allocate 90 additional Medicaid beds in the county or precinct.

(C) The notice identifies the county or precinct and the beginning and end dates of the solicitation period. The notice also includes the DADS address to which the application for additional Medicaid beds must be submitted and specifies that the application must be received by DADS before the close of business on the end date of the solicitation period.

(D) An applicant for additional Medicaid beds must comply with the level of acceptable care requirements in subsection (e) of this section.

(E) An applicant must submit a complete DADS waiver application.

(F) At the end of the solicitation period, DADS determines if an applicant is eligible for additional Medicaid beds. If multiple applicants are eligible, the applicant who will receive the allocation of beds will be chosen by a lottery selection.

(G) If no application for the waiver process is received or if no applicant meets the requirements in this section, DADS conducts no further solicitation. DADS closes the process without allocating Medicaid beds.

(2) Community needs waiver. A community needs waiver is designed to meet the needs of communities that do not have reasonable access to acceptable nursing facility care.

(A) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic or health needs studies, that documents:

(i) an immediate need for additional Medicaid beds in the community; and

(ii) Medicaid residents in the community do not have reasonable access to acceptable nursing facility care.

(B) The application must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.

(C) The demographic or health needs study must include at least the following information pertaining to the community's population:

(i) population growth trends;

(ii) population growth trends specific to the elderly, including income or financial condition;

(iii) Medicaid bed occupancy data;

(iv) level of acceptable care provided by local nursing facilities; and

(v) any existing allocated Medicaid beds not currently certified but that could be used for a new Medicaid nursing facility.

(D) The applicant must submit documentation of substantial community support for the new nursing facility or beds.

(E) When determining the immediate need for additional Medicaid beds, and whether residents have reasonable access to acceptable nursing facility care, DADS considers:

(i) the number and occupancy rate of certified Medicaid beds that comply with level of acceptable care requirements; and

(ii) the number of encumbered Medicaid beds that have been approved by DADS but are not yet certified.

(F) Replacement beds or waiver beds approved in accordance with subsection (f)(1) or (h) of this section will not be considered in the calculation in subparagraph (D) of this paragraph if the owner of the replacement beds or waiver beds has not purchased land for a new construction site within 24 months after the date DADS initially approves the replacement request or the waiver for the beds.

(G) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(H) DADS notifies local nursing facilities when a complete community needs waiver application is received and affords local nursing facilities an opportunity to comment on the waiver application. The notification includes a deadline for submission of comments. DADS limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

(3) Criminal justice waiver. The criminal justice waiver is designed to meet the needs of the Texas Department of Criminal Justice (TDCJ). The applicant must document that:

(A) the waiver is needed to meet the identified and determined nursing facility needs of TDCJ; and

(B) the new nursing facility is approved by TDCJ to serve persons under their supervision who have been released on parole, mandatory supervision, or special needs parole in accordance with Texas Government Code, Chapter 508, Parole and Mandatory Supervision.

(4) Economically disadvantaged waiver. The economically disadvantaged waiver is designed to meet the needs of residents of ZIP codes located in communities where a majority of residents have an average income below the countywide average income and do not have reasonable access to acceptable nursing facility care.

(A) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic or health needs studies that documents:

(i) the ZIP code in which the new nursing facility will be constructed has a population with an income that is at least 20 percent below the average income of the county according to the most recent U.S. census or more recent census projection;

(ii) an immediate need for additional Medicaid beds in the ZIP code in which the new nursing facility will be constructed; and

(iii) residents in the ZIP code in which the nursing facility or beds will be located do not have reasonable access to acceptable nursing facility care.

(B) The application must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.

(C) The demographic or health needs study must include at least the following information pertaining to the community's population:

(i) population growth trends;

(ii) population growth trends specific to the elderly, including income or financial condition;

(iii) Medicaid bed occupancy data;

(iv) level of acceptable care provided by local facilities; and

(v) any existing allocated Medicaid beds not currently certified but could be used for a new Medicaid nursing facility.

(D) When determining the immediate need for additional Medicaid beds, and whether residents have reasonable access to acceptable nursing facility care, DADS considers:

(i) the number and occupancy rate of certified Medicaid beds that comply with level of acceptable care requirements; and

(ii) the number of encumbered Medicaid beds that have been approved by DADS but are not yet certified.

(E) Replacement beds or waiver beds approved in accordance with subsection (f)(1) or (h) of this section will not be considered in the calculation in subparagraph (D) of this paragraph if the owner of the replacement beds or waiver beds has not purchased land for a new construction site within 24 months after the date DADS initially approves the replacement request or the waiver for the beds.

(F) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(G) DADS notifies local nursing facilities when a complete economically disadvantaged waiver application is received and affords local nursing facilities an opportunity to comment on the waiver application. The notification includes a deadline for submission of comments. DADS limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

(5) Alzheimer's waiver. The Alzheimer's waiver is designed to meet the needs of communities that do not have reasonable access to Alzheimer's nursing facility services.

(A) The applicant must document that:

(i) the nursing facility is affiliated with a medical school operated by the state;

(ii) the nursing facility will participate in ongoing research programs for the care and treatment of persons with Alzheimer's disease;

(iii) the nursing facility will be designed to separate and treat residents with Alzheimer's disease by stage and functional level;

(iv) the nursing facility will obtain and maintain voluntary certification as an Alzheimer's nursing facility in accordance with §§19.2204, 19.2206, and 19.2208 of this chapter (relating to Voluntary Certification of Facilities for Care of Persons with Alzheimer's Disease; General Requirements for a Certified Facility; and Standards for Certified Alzheimer's Facilities); and

(v) only residents with Alzheimer's disease or related dementia will be admitted to the Alzheimer's Medicaid beds.

(B) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic studies that documents the need for the number of Medicaid Alzheimer's beds requested. The study must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.

(C) DADS notifies local nursing facilities when a complete Alzheimer's waiver application is received and afford local nursing facilities an opportunity to comment on the waiver application. The notification will include a deadline for submission of comments. DADS limits subsequent comments during [~~curing~~] the review process to facilities that submit timely comments in response to the notification of a completed application.

(D) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(6) Teaching nursing facility waiver. A teaching nursing facility waiver is designed to meet the statewide needs for providing training and practical experience for health-care professionals. The applicant must submit documentation that the nursing facility:

(A) is affiliated with a state-supported medical school;

(B) is located on land owned or controlled by the state-supported medical school; and

(C) serves as a teaching nursing facility for physicians and related health-care professionals.

(7) Rural county waiver. A rural county waiver is designed to meet the needs of rural areas of the state that do not have reasonable access to acceptable nursing facility care. For purposes of this waiver, a rural county is one that has a population of 100,000 or less according to the most recent census, and has no more than two Medicaid-certified nursing facilities. DADS approves no more than 120 additional Medicaid beds per county per year and no more than 500 additional Medicaid beds statewide in a calendar year under this waiver provision. DADS considers a waiver application on a first-come, first-served basis. Requests received in a year in which the 500-bed limit has been met will be carried over to the next year. The county commissioner's court must request the waiver.

(A) The commissioner's court must notify DADS of its intent to consider a rural county waiver and obtain verification from DADS that the county complies with the definition of rural county.

(B) The commissioner's court must publish a notice in the Texas Register and in a newspaper of general circulation in the county. The notice must seek:

(i) comments on whether a new Medicaid nursing facility should be requested; and

(ii) proposals from persons or entities interested in providing additional Medicaid-certified beds in the county, including persons or entities currently operating Medicaid-certified facilities with high occupancy rates. DADS, in its sole discretion, may eliminate from participating in the process persons or entities that submit false or fraudulent information.

(C) The commissioner's court must determine whether to proceed with the waiver request after considering all comments and proposals received in response to the notices provided under subparagraph (B) of this paragraph. In determining whether to proceed with the waiver request, the commissioner's court must consider:

(i) the demographic and economic needs of the county;

(ii) the quality of existing Medicaid nursing facilities in the county;

(iii) the quality of the proposals submitted, including a review of the past history of care provided, if any, by the person or entity submitting the proposal; and

(iv) the degree of community support for additional Medicaid nursing facility services.

(D) The commissioner's court must document the comments received, proposals offered and factors considered in subparagraph (C) of this paragraph.

(E) If the commissioner's court decides to proceed with the waiver request, it must submit a recommendation that DADS issue a waiver to a person or entity who submitted a proposal for new or additional Medicaid beds. The recommendation must include:

(i) the name, address, and telephone number of the person or entity recommended for contracting for the Medicaid beds;

(ii) the location, if the commissioner's court desires to identify one, of the recommended nursing facility;

(iii) the number of beds recommended; and

(iv) the information listed in subparagraph (D) of this paragraph used to make the recommendation.

(8) State veterans homes. State veterans homes, authorized and built under the auspices of the Texas Veterans Land Board, must meet all requirements for Medicaid participation.

(9) Small house waiver. A small house waiver is designed to promote the construction of smaller nursing facility buildings that provide a homelike environment.

(A) A facility must meet the requirements in §19.345 of this chapter (relating to Small House and Household Facilities) for DADS to grant a small house waiver for the facility.

(B) An applicant for a small house waiver must submit an application to DADS and a schematic building plan of the proposed facility with sufficient detail to demonstrate that the proposed project meets the requirements in §19.345 of this chapter.

(C) An applicant that is granted a small house waiver must submit final construction documents in accordance with §19.344 of this chapter (relating to Plans, Approvals, and Construction Procedures) before facility construction begins.

(D) DADS notifies local nursing facilities when a complete small house waiver application is received and allows the local nursing facilities to comment on the waiver application. The notification includes the deadline for submitting comments. DADS limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

(E) DADS does not approve more than 16 beds for a small house facility or for a household in a facility that is granted a small house waiver.

(F) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(G) Subject to subparagraph (E) of this paragraph, DADS approves the replacement or transfer of beds certified at a small

house nursing facility in accordance with subsection (f)(1) or (f)(2) of this section only to another small house or household facility.

(i) Time Limits and Extensions.

(1) Medicaid beds transferred in accordance with subsection (f)(2) of this section must be certified within six months after DADS grants the exemption.

(2) Time limits applicable to temporary Medicaid beds are specified in subsection (f)(6) of this section.

(3) All facilities and beds approved in accordance with waiver provisions of subsection (h) of this section and replacement nursing facilities approved in accordance with subsection (f)(1) of this section, must be constructed, licensed, and Medicaid-certified within 42 months after the waiver or replacement exemption is granted.

(4) Recipients of a waiver approval or a replacement nursing facility approval must comply with the following benchmarks and submit evidence of compliance to DADS at the time of compliance.

(A) The land must be under contract within 12 months after DADS approval of the waiver or replacement.

(B) An architect or engineer must be under contract within 15 months after DADS approval of the waiver or replacement.

(C) The facility's preliminary plans must be completed within 18 months after DADS approval of the waiver or replacement.

(D) The land must be purchased and a progress report submitted to DADS within 24 months after DADS approval of the waiver or replacement.

(E) Entitlements (including municipality, planning and zoning, building permit) and the facility's foundation must be completed within six months after land purchase or 30 months after DADS approval of the waiver or replacement, whichever is later.

(F) A construction progress report confirming active and ongoing construction must be submitted within 12 months after land purchase or 36 months after DADS approval of the waiver or replacement, whichever is later, if the facility is not constructed, licensed and certified by that date.

(G) The facility must be constructed, licensed, and certified within 18 months after land purchase or 42 months after DADS approval of the waiver or replacement, whichever is later.

(5) DADS, in its sole discretion, may declare the exemption or the waiver void if the applicant fails or refuses to provide evidence of compliance with each benchmark or deadline, or the evidence of compliance submitted to DADS in accordance with paragraph (4) of this subsection contains false or fraudulent information.

(6) Waiver or exemption recipients may request an extension of the deadlines in this section. At the discretion of the commissioner or the commissioner's designee, deadlines specified in this section may be extended. The applicant must substantiate every element of its extension request with evidence of good-faith efforts to meet the benchmarks and construction deadlines or evidence confirming that delays were beyond the applicant's control.

(7) Waiver or exemption recipients who receive an extension of their waiver or exemption must submit a progress report every six months after approval of the extension until the nursing facility beds are certified. DADS may declare the waiver or exemption void if the applicant fails or refuses to provide the progress report as required or if the progress report contains false or fraudulent information.

(8) DADS may revoke a bed allocation for failure to meet the requirements of this section.

(j) Loss of Medicaid Beds.

(1) Loss of Medicaid beds that are not available to be occupied.

(A) Medicaid nursing facilities must report certified Medicaid beds that do not comply with requirements of §19.1701 of this chapter (relating to Physical Environment) and are not available for occupancy on monthly Medicaid occupancy reports.

(B) DADS decertifies and de-allocates Medicaid beds that are intended for use in bedrooms that have been converted to other uses if the rooms are not being used for bedroom occupancy use on two consecutive standard surveys.

(C) DADS does not decertify and de-allocate Medicaid beds that are intended for use in rooms that are licensed and certified for multi-occupancy use but are being used for single occupancy only.

(2) Loss of Medicaid beds based on sanctions.

(A) A Medicaid nursing facility operated by the person or entity who also owns the property will lose the allocation of all Medicaid beds assigned to the nursing facility property if the nursing facility's license is denied or revoked.

(B) A Medicaid nursing facility operated by one person or entity and owned by another person or entity will lose the allocation of Medicaid beds if two or more of the following actions occur within a 42-month period:

(i) licensure denial;

(ii) licensure revocation; or

(iii) Medicaid termination.

(C) DADS may waive this loss of allocation of Medicaid beds in order to facilitate a change of ownership or other actions that would protect the health and safety of residents or assure reasonable access to acceptable nursing facility care.

(3) Voluntary decertification of Medicaid beds.

(A) Facilities may request to voluntarily decertify Medicaid beds.

(B) The licensee must submit written approval of the Medicaid bed reduction signed by the property owner and all physical plant lien holders.

(C) DADS reduces the number of allocated Medicaid beds equal to the number of beds voluntarily decertified.

(D) Facilities that voluntarily decertify Medicaid beds are eligible to receive an increased allocation of Medicaid beds if the facility qualifies for a bed allocation waiver or exemption.

(4) Nursing facility ceases to operate or participate in Medicaid.

(A) The property owner of a nursing facility that closes or ceases to participate in the Medicaid program must inform DADS in writing of the intended future use of the Medicaid beds within 90 days after closure or ceasing participation in Medicaid.

(B) Unless the Medicaid beds will be used for a replacement nursing facility, the allocated beds must be re-certified within 12 months of the date the Medicaid contract was terminated.

(C) Time limits in subparagraphs (A) and (B) of this paragraph may be extended in accordance with subsection (i)(6) of this section.

(D) DADS may de-allocate Medicaid beds for failure to meet the requirements of this paragraph.

(5) Loss of Medicaid beds based on low occupancy.

(A) DADS may review Medicaid bed occupancy rates annually for the purpose of de-allocating and decertifying unused Medicaid beds. The Medicaid bed occupancy reports for the most recent six-month period that DADS has validated are used to determine the bed occupancy rate of each nursing facility.

(B) DADS de-allocates and decertifies Medicaid beds in facilities with an average occupancy rate below 70 percent. The number of beds decertified is calculated by subtracting the preceding six-month average occupancy rate of Medicaid-certified beds from 70 percent of the number of allocated certified beds and dividing the difference by 2, rounding the final figure down if necessary. For example, for a facility with 100 Medicaid-certified beds and a 50 percent occupancy rate, the difference between 70 percent (70 beds) and 50 percent (50 beds) is 20 beds, divided by 2, is 10 beds to be decertified.

(C) Medicaid beds in a nursing facility that has obtained a replacement nursing facility exemption are not subject to the de-allocation and decertification process.

(D) Medicaid beds in a new or replacement physical plant or a newly constructed wing of an existing physical plant are exempt from this de-allocation and decertification process until the new physical plant or new wing has been certified for 24 months.

(E) Medicaid beds that have been subject to a change of ownership within the past 24 months are exempt from the de-allocation and decertification process.

(F) Medicaid beds in a county or in a precinct in one of the four most populous counties in the state in which a facility approved through the waiver process is constructed are exempt from the de-allocation and decertification process for 24 months after licensure and certification of the facility.

(G) Medicaid beds allocated to a closed nursing facility are exempt from this de-allocation and decertification process.

(H) Nursing facilities that lose Medicaid beds through this process are eligible to receive an additional allocation of Medicaid beds at a later date if the facility qualifies for a bed allocation waiver or exemption.

(I) The de-allocation and decertification of unused beds does not affect the licensed capacity of a nursing facility.

(k) Informal review procedures.

(1) Applicants may request an informal review of DADS actions regarding bed allocations. The request must be submitted within 30 days after the date referenced on the notification of the proposed action.

(2) An applicant must submit a request for an informal review and all documentation or evidence that forms the basis for the informal review in writing.

(3) The commissioner or the commissioner's designee conducts the informal review.

(l) Medicaid occupancy reports.

(1) Medicaid nursing facilities must submit occupancy reports to DADS each month.

(A) The occupancy data must be reported on a form prescribed by DADS. The form must be completed in accordance with instructions and the occupancy data must be accurate and verifiable. The completed report must be received by DADS no later than the fifth day of the month following the reporting period.

(B) DADS determines the Medicaid occupancy rate by calculating the monthly average of the number of persons who occupy Medicaid beds.

(C) DADS includes all persons residing in Medicaid-certified beds, including Medicaid recipients, Medicare recipients, private-pay residents, or residents with other sources of payment, in the calculation.

(D) Failure or refusal to submit accurate occupancy reports in a timely manner may result in the nursing facility's vendor payment being held in abeyance until the report is submitted.

(2) DADS determines nursing facility and county occupancy rates based on the data submitted by the nursing facilities.

(A) DADS uses the occupancy data to determine eligibility for or compliance with waiver and exemption requirements. DADS also uses the occupancy data to determine if Medicaid beds should be decertified based on low occupancy.

(B) DADS makes the occupancy data available to nursing facilities, licensees, property owners, waiver or exemption applicants, and others in accordance with public disclosure requirements.

(C) DADS may disqualify a facility that provides inaccurate or falsified occupancy data from eligibility for bed allocation exemptions and waivers. DADS may refuse to accept corrections to bed occupancy data submitted more than six months after the due date of the occupancy report.

(m) School-age residents. Any bed allocation waiver or exemption applicant that serves or plans to serve school-age residents must provide written notice to the affected local education agency(LEA) of its intent to establish or expand a nursing facility within the LEA's boundary.

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

Filed with the Office of the Secretary of State on December 20, 2013.

TRD-201306104
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 9, 2014
For further information, please call: (512) 438-3734

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CHAPTER 61. VOLUNTEER AND COMMUNITY ENGAGEMENT

40 TAC §61.103, §61.106

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §61.103, concerning definitions; and §61.106, concerning the relationship of private orga-

nizations to DADS and employees of DADS, in Chapter 61, Volunteer and Community Engagement.

BACKGROUND AND PURPOSE

The Volunteer Services State Council, Inc. (VSSC), a corporation under the Texas Non-Profit Corporation Act, was formed in 1993 to provide assistance to the member volunteer groups that provide fundraising assistance to the DADS state supported living centers. The VSSC filed articles of dissolution with the Secretary of State in December 2007 and is no longer an active council.

The proposed amendments to §61.103 and §61.106 delete references to the VSSC because it no longer exists. The proposed amendments also change references to "state school or state center" to "state supported living center" to reflect current terminology.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §61.103 deletes the definition of VSSC and replaces the term "state school or state center" with "state supported living center."

The proposed amendment to §61.106 deletes subsection (b) regarding the VSSC and replaces the term "state school or state center superintendent" with "state supported living center director" to reflect current terminology.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because the amendments do not impose any new requirements.

PUBLIC BENEFIT AND COSTS

Kristi Jordan, DADS Associate Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is to delete information that is no longer relevant from rules in the DADS rule base.

Ms. Jordan anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Susan Lish at (512) 438-4213 in DADS Volunteer and Community Engagement unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R21, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R21" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §§2109.001 - 2109.006, which authorizes DADS to implement a volunteer program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§61.103. Definitions.

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

(1) 501(c)(3) organization--An organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(2) Community relations director--The employee responsible for coordinating a state supported living [~~school's or state~~] center's community relations functions, volunteer programs, fund-raising, and donations.

(3) Consumer--A person receiving a DADS service.

(4) DADS--The Department of Aging and Disability Services.

(5) Donation--A contribution of anything of value (for example, funds or in-kind goods and services) freely given to DADS or a private organization.

(6) Employee--An individual who is legally employed to perform work and who is paid a salary or wage by DADS.

(7) Private donor--A person or private organization that makes a donation to DADS or to a private organization.

(8) Private organization--An organization created and operated to further the purposes and duties of DADS.

(9) Volunteer--An individual who provides time, personal attention, or services to consumers, DADS, a facility, or a VSC without payment. Volunteers may include:

(A) community citizens;

(B) family members of consumers when not acting on behalf of the consumer;

(C) employees when not performing the same types of services they perform as employees;

(D) consumers when not acting solely on behalf of themselves; and

(E) community restitution volunteers who are required by a court to provide a specified number of hours of volunteer services.

(10) Volunteer and Community Engagement--The DADS division responsible for promoting individual and community awareness and involvement in volunteerism, community collaborations, and partnerships.

(11) VSC (Volunteer Services Council)--A 501(c)(3) organization that is formed to generate resources on behalf of a state supported living [~~school or state~~] center.

[~~(12) VSSC (Volunteer Services State Council)--A 501(c)(3) statewide service organization that assists member volunteer groups to provide fund-raising support to state schools, state hospitals, and community mental health and mental retardation centers.~~]

§61.106. Relationship of Private Organizations to DADS and Employees of DADS.

[~~(a)~~] Volunteer Services Councils.

(1) The state supported living [~~school or state~~] center director [~~superintendent~~] and community relations director are nonvoting members of the VSC board and executive committee.

(2) The community relations director may make expenditures of up to $300 on behalf of the VSC for the benefit of consumers.

(3) The community relations department may process and issue receipts for donations to the VSC.

(4) No employee may sign a VSC check or use a VSC debit or credit card.

(5) The community relations department may maintain a VSC petty cash fund of up to $300 to be used for the benefit of consumers.

(A) The community relations director must appoint a primary and alternate custodian for the VSC petty cash fund.

(B) The primary custodian of the petty cash fund is responsible for maintaining receipts and accurate documentation of all funds disbursed and for furnishing this documentation to the treasurer of the VSC.

(C) An officer of the VSC, or an employee outside of the community relations department, must reconcile the petty cash fund at least once every two months.

(6) DADS may provide the following items of support for the VSC:

(A) office space;

(B) fund-raising assistance;

(C) annual training for volunteers, board members, and officers;

(D) clerical and administrative services; and

(E) assistance in the coordination of activities.

(7) Funds generated by the VSC may be used only for:

(A) the needs of consumers;

(B) the enhancement of state supported living [~~school or state~~] center operations;

(C) recognition and education projects;

(D) new initiatives that improve the quality of life for consumers; and

(E) other legitimate expenses.

(8) Funds generated by the VSC must not be used for:

(A) recognition events, receptions, or gifts for a legislator;

(B) recognition events, receptions, or gifts for an employee that are not part of an established award program;

(C) political contributions or lobbying efforts;

(D) alcoholic beverages, unless used at a fund-raising event;

(E) loans, including travel advances;

(F) operating programs, or contracting for programs on behalf of DADS;

(G) cash awards or salary supplementation for employees; or

(H) other purposes determined by DADS to be unethical, unlawful, or inappropriate.

(9) The VSC must not hold funds on behalf of employees for non-VSC-sponsored events.

(10) All funds donated to the VSC remain the property of the VSC until DADS accepts them.

[~~(b) Volunteer Services State Council.~~]

[~~(1) The DADS commissioner designates the manager of Volunteer and Community Engagement as a nonvoting member of the VSSC board of trustees and executive committee.~~]

[~~(2) No employee has expenditure authority for the VSSC.~~]

[~~(3) No employee may process or issue receipts for donations to the VSSC.~~]

[~~(4) No employee may sign a VSSC check or use a VSSC debit or credit card.~~]

[~~(5) DADS may provide the following items of support for the VSSC:~~]

[~~(A) ongoing technical support, including resource development and design;~~]

[~~(B) media assistance, including:~~]

[~~*(i)* media relations;~~]

[~~*(ii)* website development and maintenance; and~~]

[~~*(iii)* graphic design;~~]

[~~(C) employee assistance for coordination of activities;~~]

[~~(D) fund-raising assistance; and~~]

[~~(E) training for volunteers, board members, and officers.~~]

[~~(6) Funds generated by the VSSC may be used only for:~~]

[~~(A) the benefit of the individuals served by its member volunteer groups;~~]

[~~(B) the enhancement of existing operations;~~]

[~~(C) recognition and education projects;~~]

[~~(D) new initiatives that improve the quality of life for individuals served by its member volunteer groups; and~~]

[~~(E) other legitimate expenses.~~]

[(7) VSSC funds must not be used for:]

[(A) recognition events, receptions, or gifts for a legislator;]

[(B) recognition events, receptions, or gifts for an employee that are not part of an established award program;]

[(C) political contributions or lobbying efforts;]

[(D) alcoholic beverages, unless used at a fund-raising event;]

[(E) loans, including travel advances;]

[(F) operating programs, or contracting for programs on behalf of DADS;]

[(G) cash awards or salary supplementation for employees; or]

[(H) other purposes determined by DADS to be unethical, unlawful, or inappropriate.]

[(8) The VSSC must not hold funds on behalf of employees for non-VSSC-sponsored events.]

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

Filed with the Office of the Secretary of State on December 30, 2013.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-4162

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WITHDRAWN RULES

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

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.3

Proposed amended §161.3, published in the June 21, 2013, issue of the *Texas Register* (38 TexReg 3881), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on December 30, 2013.

TRD-201306144

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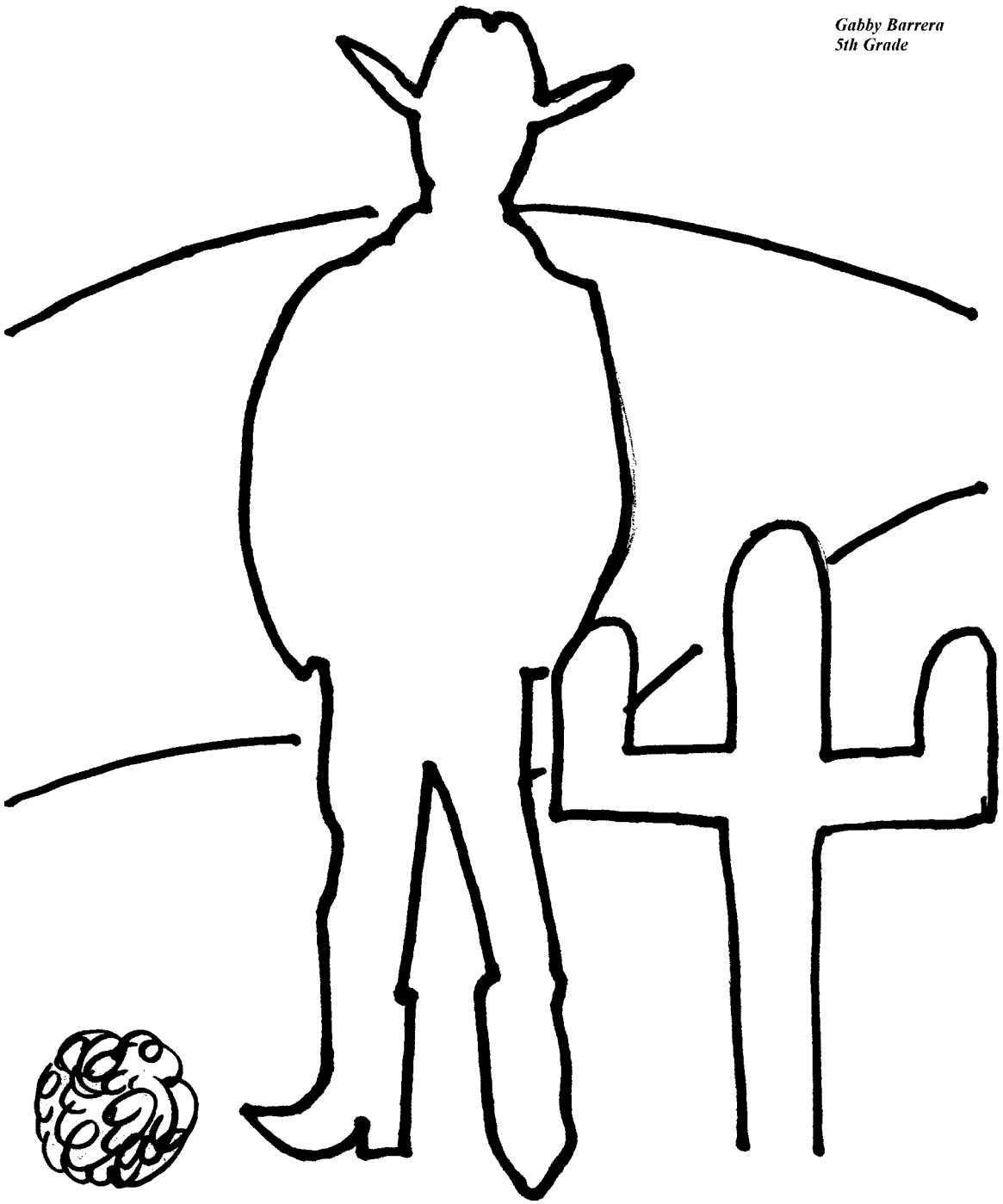
Gabby Barrera
5th Grade



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.56

The Texas Ethics Commission (the commission) adopts the repeal of §20.56, relating to contribution pledges, without changes to the proposed text as published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8321). The repeal will be effective January 1, 2015.

The repeal of §20.56 deletes the rule relating to reporting a pledge of a contribution. The rule will no longer apply once §20.54 becomes effective on January 1, 2015.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201306106
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Proposal publication date: November 22, 2013
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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

The Office of the Secretary of State adopts amendments to §§81.101, 81.103, 81.105 - 81.111, 81.115, 81.116, 81.119, 81.120, 81.123 - 81.125, 81.127 - 81.132, 81.148, 81.152, 81.153, 81.155 and 81.157; the repeal of §81.112 and §81.134; and new §81.112 and §81.134. Amended §81.103 and §81.127 and new §81.112 are adopted with changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7531) and will be republished. The other amendments, repeals and new sections are adopted without changes.

The amendments concern the financing of the 2014 primary elections, including the determination of necessary and proper expenses relating to the proper conduct of primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The adopted changes to §§81.103, 81.112, and 81.127 are not substantive. Section 81.103, which requires payments from a primary fund to include a void statement after a designated period of time, has been modified to provide 180 days as an example only. The actual period of time can be adjusted as deemed necessary by the chair.

The adopted changes to §81.112 clarify that if the chair fails to electronically submit candidate information to the Secretary of State's Office for all candidates who have been accepted for a place on the ballot, then the chair is directly responsible for delivering a certified list of all candidates to: (i) the applicable county chairs, if the submitting chair is a state chair; or (ii) the applicable county clerk and state chair, if the submitting chair is a county chair. In addition, the deadline for submitting the candidate information to the Secretary of State's Office is extended from not later than 12:00 p.m. on the 81st day before general primary election day to not later than 5:00 p.m. on the 81st day before general primary election day.

The adopted change to §81.127 clarifies that non-paperback versions of the Texas Election Code are reimbursable with primary funds.

The changes in the adoptions have been made in consultation with the Democratic and Republican State Parties of Texas and Secretary of State staff. There were other comments received from county chairs who expressed concerns about hardship due to the limitations on administrative costs set forth in §81.123. In large part, these comments were expressed verbally at an SOS educational seminar and during various communications with Secretary of State staff. The administrative cost limitations were first imposed for the 2012 primary election due to funding cuts incurred during the 82nd Legislature's appropriations process. The 83rd Legislature did not increase the funding for primary elections. Accordingly, the administrative cost limitations will remain as proposed. However, county chairs may request additional compensation for eligible administrative costs beyond the limitations set forth in §81.123 after the SOS concludes it has received a sufficient number of final cost reports to determine if additional funding is available.

SUBCHAPTER F. PRIMARY ELECTIONS

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

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

No other sections are affected by the adoption.

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

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

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

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

(d) Each payment issued from a primary-funds account must include a statement regarding the payment being void after a period of time, such as "VOID AFTER 180 DAYS."

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

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

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

§81.112. List of Candidates and Filing Fees.

(a) Generally.

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

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

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

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

(b) Candidates Filing by Regular Filing Deadline.

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

(2) State chair: notification of submission. Upon submission of information for all candidates who filed on or before the regular filing deadline and whose applications have been reviewed and accepted for a place on the ballot, the state chair shall notify the applicable county chairs that candidate information has been submitted for all candidates, in accordance with §172.028 and §172.029 of the Code. Notification may be sent by email, regular mail, or personal delivery, so long as it is delivered by no later than the 81st day before general election primary day.

(3) County chair: delivery of candidate list. Upon submission of information for all candidates who filed on or before the regular filing deadline and whose applications have been reviewed and accepted for a place on the ballot, the county chair shall deliver a copy of the list to the applicable county clerk and state chair, in accordance with §172.029 of the Code. The list must be delivered to the applicable county clerk and state chair by no later than the 81st day before general election primary day.

(4) Failure to submit information. If a chair fails to electronically submit candidate information for all candidates who filed on or before the regular filing deadline and whose applications have been reviewed and accepted for a place on the ballot, then the chair is directly responsible for delivering a certified list of all candidates to:

(A) the applicable county chairs, if the submitting chair is a state chair; or

(B) the applicable county clerk and state chair, if the submitting chair is a county chair.

(c) Candidates Filing by Extended Filing Deadline.

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

(2) Submission of new candidate. If a candidate files an application with the chair for an office sought by a withdrawn, deceased,

or ineligible candidate, and the candidate files an application that complies with the applicable requirements during the extended filing period, the chair shall immediately notify the SOS of the candidate's filing.

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

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

§81.127. Office Equipment and Supplies.

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

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

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

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

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Wroe Jackson
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5650

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1 TAC §81.112, §81.134

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

No other sections are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. JOINT PRIMARY ELECTIONS

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

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

No other sections are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to §25.21, relating to General Provisions of Customer Service and Protection Rules, §25.28, relating to Bill Payment and Adjustments, and §25.471, relating to General Provisions of Customer Protection Rules, without changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6456). The commission adopts an amendment to §25.480, relating to Bill Payment and Adjustments, with changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6457). The amendments will establish a voluntary electric utility bill payment assistance program for burned veterans, delete dated language, and make minor grammatical changes. These amendments constitute competition rules subject to judicial review as specified in PURA §39.001(e). Project Number 41613 is assigned to this proceeding.

The commission received comments on the proposed amendments from Southwestern Electric Power Company (SWEPCO), El Paso Electric Company (EPE), and the Retail Electric Provider Coalition (REP Coalition). The REP Coalition was composed of Alliance for Retail Markets (ARM); Reliant Energy Retail Services, LLC; the Texas Energy Association of Marketers (TEAM); and TXU Energy Retail Company LLC. The participating members of ARM were: Direct Energy, LP and Green Mountain Energy Company. The participating members of TEAM were: Accent Energy d/b/a IGS Energy, Cirro Energy, Just Energy, Spark Energy, StarTex Power, Stream Energy, TriEagle Energy, and TruSmart Energy. The commission did not receive a request for a public hearing.

General Position of Commenters

SWEPCO had no comments but reserved the right to make reply comments. El Paso Electric stated that it generally supports this rulemaking and did not recommend any changes in response to the proposed amendments. The REP Coalition submitted comments to clarify rule language and emphasized the voluntary nature of the payment assistance program.

Section 25.480

REP Coalition Comments

Subsection (d)(2)

While proposed §25.471(d)(2) defines the term "burned veteran" consistent with SB 981, the REP Coalition noted that this term is not used anywhere in the proposed changes to §25.480. Rather, "veterans severely burned in combat" is the term used throughout the proposed amendments to §25.480. For clarity, the REP Coalition recommended that the phrase "veterans severely burned in combat" be replaced with the defined term.

Commission Response

The commission agrees with REP Coalition's comments and will substitute "burned veteran" for "veterans severely burned in combat" to avoid confusion.

Subsection (g)(1)

The REP Coalition recommended the deletion of information about "bill payment assistance for veterans severely burned in combat" from the list of applicable payment options and payment assistance programs offered by or available from the retail electric provider (REP) provided in response to a customer inquiry. The REP Coalition asserted that because of the small number of burned veterans, providing this information would cause potential confusion to customers. The REP Coalition also stated that a REP initiating a voluntary bill assistance program specific to burned veterans, or including such customers in an existing program, would likely take proactive measures to locate and target eligible customers, rather than wait to inform these customers of the program's existence in a communication initiated by the customer. Additionally, the REP Coalition stated that the commission website will provide burned veterans a listing of those retailers offering an assistance program.

Commission Response

The commission agrees with the REP Coalition that given the small number of customers that would meet the requirement relating to bill assistance for burned veterans, this requirement should be removed. Therefore, the commission agrees to modify the language in this subsection to remove this requirement.

Subsection (g)(3)

The REP Coalition proposed certain modifications to the reporting requirements that require a REP to include in its annual report the number of electric service identifiers (ESI ID) served under a voluntary bill assistance program for burned veterans. The REP Coalition argued that this proposed requirement is not mandated by SB 981. The REP Coalition asserted that the reporting requirements currently proposed in subsection (g)(3)(A) could act as a disincentive for REPs to offer voluntary billing assistance programs. The REP Coalition stated that the relevant information to report would be whether a REP voluntarily offers a burned veterans bill payment assistance program, not the number of burned veterans who ultimately take advantage of the program. The REP Coalition further stated that it has concerns that burned veterans receiving assistance would not necessarily desire to have that fact reported to the commission or possibly published on the commission's website. Additionally, the REP Coalition asked for the inclusion of language that stated the voluntary bill payment assistance program may also include customers who are not burned veterans.

Commission Response

The commission agrees with the REP Coalition regarding the requirement to include the number of ESI IDs served under a voluntary bill assistance program for burned veterans is not man-

dated by SB 981. Therefore the commission agrees to delete the requirement. The commission disagrees that additional language stating voluntary bill payment assistance programs may include customers who are not burned veterans is necessary and, therefore, declines to adopt the proposed modification.

Other Minor Amendments

The REP Coalition proposed other minor amendments, including the insertion of the word "voluntary" to describe a REP's bill assistance program for burned veterans, consistent with the intent of SB 981. The REP Coalition also suggested the commission establish a project for the receipt of contact information to be reported on the commission website regarding a REP's voluntary bill payment assistance program for burned veterans. Finally, the REP Coalition proposed a minor amendment to allow REPs the option to provide a toll free telephone number or website address, or both, to the commission in the information provided about its voluntary bill payment assistance program for burned veterans.

Commission Response

The commission agrees with the REP Coalition and will include the term voluntary to describe the bill payment assistance program for burned veterans. Additionally, the commission agrees to establish a project for the receipt of contact information, including the REP certification number, a toll free telephone number, and a website address, to be reported on the commission website relating to the REP's burned veterans bill payment assistance program. The commission declines to adopt the REP Coalition's proposed modification to require a toll free telephone number and/or website address where customers can obtain additional information. The commission believes that it is important that information be available by both methods.

All comments, including any not specifically referenced herein, were fully considered by the commission.

SUBCHAPTER B. CUSTOMER SERVICE PROTECTION

16 TAC §25.21, §25.28

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction: and specifically, PURA §39.101, which requires the commission to ensure that retail customer protections are established to entitle a customer to safe, reliable, and reasonably priced electricity, and other protections.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 36.061, 39.101, 39.359, 182.201, and 182.202.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Adriana A. Gonzales
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Public Utility Commission of Texas
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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.471, §25.480

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction: and specifically, PURA §39.101, which requires the commission to ensure that retail customer protections are established to entitle a customer to safe, reliable, and reasonably priced electricity, and other protections.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 36.061, 39.101, 39.359, 182.201, and 182.202.

§25.480. Bill Payment and Adjustments.

(a) Application. This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. In addition, this section applies to a transmission and distribution utility (TDU) where specifically stated. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.

(b) Bill due date. A REP shall state a payment due date on the bill which shall not be less than 16 days after issuance. A bill is considered to be issued on the issuance date stated on the bill or the postmark date on the envelope, whichever is later. A payment for electric service is delinquent if not received by the REP or at the REP's authorized payment agency by the close of business on the due date. If the 16th day falls on a holiday or weekend, then the due date shall be the next business day after the 16th day.

(c) Penalty on delinquent bills for electric service. A REP may charge a one-time penalty not to exceed 5.0% on a delinquent bill for electric service. No such penalty shall apply to residential or small commercial customers served by the provider of last resort (POLR), or to customers receiving a low-income discount pursuant to the Public Utility Regulatory Act (PURA) §39.903(h). The one-time penalty, not to exceed 5.0%, may not be applied to any balance to which the penalty has already been applied.

(d) Overbilling. If charges are found to be higher than authorized in the REP's terms and conditions for service or other applicable commission rules, then the customer's bill shall be corrected.

(1) The correction shall be made for the entire period of the overbilling.

(2) If the REP corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.

(3) If the REP does not correct the overcharge within three billing cycles of the error, it shall pay interest on the amount of the overcharge at the rate set by the commission.

(A) Interest on overcharges that are not adjusted by the REP within three billing cycles of the bill in error shall accrue from the date of payment by the customer.

(B) All interest shall be compounded monthly at the approved annual rate set by the commission.

(C) Interest shall not apply to leveling plans or estimated billings.

(4) If the REP rebills for a prior billing cycle, the adjustments shall be identified by account and billing date or service period.

(e) Underbilling by a REP. If charges are found to be lower than authorized by the REP's terms and conditions of service, or if the REP fails to bill the customer for service, then the customer's bill may be corrected.

(1) The customer shall not be responsible for corrected charges billed by the REP unless such charges are billed by the REP within 180 days from the date of issuance of the bill in which the underbilling occurred The REP may backbill a customer for the amount that was underbilled beyond the timelines provided in this paragraph if:

(A) the underbilling is found to be the result of meter tampering by the customer; or

(B) the TDU bills the REP for an underbilling as a result of meter error as provided in §25.126 of this title (relating to Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced).

(2) The REP may disconnect service pursuant to §25.483 of this title (relating to Disconnection of Service) if the customer fails to pay the additional charges within a reasonable time.

(3) If the underbilling is $50 or more, the REP shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer when the underpayment is due to theft of service.

(4) The REP shall not charge interest on underbilled amounts unless such amounts are found to be the result of theft of service (meter tampering, bypass, or diversion) by the customer. Interest on underbilled amounts shall be compounded monthly at the annual rate, as set by the commission. Interest shall accrue from the day the customer is found to have first stolen the service.

(5) If the REP adjusts the bills for a prior billing cycle, the adjustments shall be identified by account and billing date or service period.

(f) Disputed bills. If there is a dispute between a customer and a REP about the REP's bill for any service billed on the retail electric bill, the REP shall promptly investigate and report the results to the customer. The REP shall inform the customer of the complaint procedures of the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling).

(g) Alternate payment programs or payment assistance.

(1) Notice required. When a customer contacts a REP and indicates inability to pay a bill or a need for assistance with the bill payment, the REP shall inform the customer of all applicable payment options and payment assistance programs that are offered by or available from the REP, such as bill payment assistance, deferred payment plans, disconnection moratoriums for the ill, or low-income energy assistance programs, and of the eligibility requirements and procedure for applying for each.

(2) Bill payment assistance programs.

(A) All REPs shall implement a bill payment assistance program for residential electric customers. At a minimum, such a program shall solicit voluntary donations from customers through the retail electric bills.

(B) In its annual report filed pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)), each REP shall summarize:

(i) the total amount of customer donations;

(ii) the amount of money set aside for bill payment assistance;

(iii) the assistance agency or agencies selected to disburse funds to residential customers;

(iv) the amount of money disbursed by the REP or provided to each assistance agency to disburse funds to residential customers; and

(v) the number of customers who had a switch-hold applied during the year.

(C) A REP shall obtain a commitment from an assistance agency selected to disburse bill payment assistance funds that the agency will not discriminate in the distribution of such funds to customers based on the customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for the low-income discount program or energy efficiency services.

(3) A REP shall provide, in a project established by the commission, information about its voluntary bill payment assistance program for burned veterans. This information shall include the REP's name, the REP's certification number, and a toll free telephone number and website address where customers can obtain additional information. The commission will publish such information on the commission website.

(h) Level and average payment plans. A REP shall make a level or average payment plan available to its customers consistent with this subsection. A customer receiving service from a provider of last resort (POLR) may be required to select a competitive product offered by the POLR REP to receive the level or average payment plan.

(1) A REP shall make a level or average payment plan available to a residential customer receiving a rate reduction pursuant to §25.454 of this title (relating to Rate Reduction Program), even if the customer is delinquent in payment to the REP.

(2) A REP shall make a level or average payment plan available to a customer who is not currently delinquent in payment to the REP. A customer is delinquent in payment in the following circumstances:

(A) A customer whose normal billing arrangement provides for payment after the rendition of service is delinquent if the date specified for payment of a bill has passed and the customer has not paid the full amount due.

(B) A customer whose normal billing arrangement provides for payment before the rendition of service is delinquent if the customer has a negative balance on the account for electric service.

(3) A REP shall reconcile any over- or under-payment consistent with the applicable terms of service, which shall provide for reconciliation at least every twelve months. For a customer with an average payment plan, a REP may recalculate the average consumption or average bill and adjust the customer's required minimum payment as frequently as every billing period. A REP may collect under-payments associated with a level payment plan from a customer over a period no less than the reconciliation period or upon termination of service to the customer. A REP shall credit or refund any over-payments associated with a level payment plan to the customer at each reconciliation and upon termination of service to the customer. A REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a level or average payment plan. All details concerning a level or average payment program shall be disclosed in the customer's terms of service document.

(4) If the customer is delinquent in payment when the level or average payment plan is established, the REP may require the customer to pay no greater than 50% of the delinquent amount due. The REP may require the remaining delinquent amount to be paid by the customer in equal installments over at least five billing cycles unless the customer agrees to fewer installments or may include the remaining delinquent amount in the calculation of the level or average payment amount. If the REP requires installment payments, the REP shall provide the customer a copy of the deferred payment plan in writing as described in subsection (j)(5) of this section.

(5) If the amount of the deferred balance does not appear on each bill the customer receives, the REP shall inform the customer that the customer may call the REP at any time to determine the amount that must be paid to be removed from the level or average payment plan.

(6) If the customer is delinquent in payment when the level or average payment plan is established, the REP may apply a switch-hold at that time.

(7) Before the REP applies a switch-hold to a customer on a level or average payment plan, the REP shall provide orally or in writing a clear explanation of the switch-hold process to the customer, prior to the customer's agreement to the plan. The explanation shall inform the customer as follows: "If you enter into this plan concerning your past due amount, we will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay the total deferred balance. If we put a switch-hold on your account, it will be removed after your deferred balance is paid and processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."

(8) If the customer is not delinquent in payment when the level or average payment plan is established, a switch-hold shall not be applied unless the plan is established pursuant to subsection (j)(2)(B)(ii) of this section.

(9) The REP, through a standard market process, shall submit a request to remove the switch-hold, pursuant to subsection (m) of this section, when the customer satisfies either subparagraph (A) or (B) of this paragraph, whichever occurs earlier. On the date the REP submits the request to remove the switch-hold, the REP shall notify or send notice to the customer that the customer has satisfied the obligation to pay any deferred balance owed and the removal of the switch-hold is being processed.

(A) The customer's deferred balance, including any deferred delinquent amount described in paragraph (4) of this subsection, is either zero or in an over-payment status.

(B) The customer satisfies the terms of any deferred delinquent amount described in paragraph (4) of this subsection and has paid bills for 12 consecutive billings without having been disconnected and without having more than one late payment.

(i) Payment arrangements. A payment arrangement is any agreement between the REP and a customer that allows a customer to pay the outstanding bill after its due date, but before the due date of the next bill. If the REP issues a disconnection notice before a payment arrangement was made, that disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be disconnected after the later of the due date for the payment arrangement or the disconnection date indicated in the notice, without issuing an additional disconnection notice.

(j) Deferred payment plans and other alternate payment arrangements.

(1) A deferred payment plan is an agreement between the REP and a customer that allows a customer to pay an outstanding balance in installments that extend beyond the due date of the current bill. A deferred payment plan may be established in person, by telephone, or online, but all deferred payment plans shall be confirmed in writing by the REP in accordance with paragraph (5) of this subsection. Before the REP applies a switch-hold to a customer on a deferred payment plan, the REP shall provide a clear explanation of the switch-hold process to the customer. The explanation shall inform the customer as follows: "If you enter into this plan concerning your past due amount, we will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay the total deferred balance. If we put a switch-hold on your account, it will be removed after your deferred balance is paid and processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."

(A) A REP shall offer a deferred payment plan to customers, upon request, for bills that become due during an extreme weather emergency, pursuant to §25.483(j) of this title.

(B) As directed by the commission, during a state of disaster declared by the governor pursuant to Texas Government Code §418.014, a REP shall offer a deferred payment plan to customers, upon request, in the area covered by the declaration.

(C) A REP shall offer a deferred payment plan to a customer who has been underbilled, pursuant to subsection (e) of this section.

(2) A REP shall make a payment plan available, upon request, to a residential customer that meets the requirements of subparagraph (A) of this paragraph for a bill that becomes due in July, August, or September. A REP shall make a payment plan available, upon request, to a residential customer that meets the requirements of subparagraph (A) of this paragraph for a bill that becomes due in January or February if in the prior month a TDU notified the commission pursuant to §25.483(j) of this title of an extreme weather emergency for the residential customer's county in the TDU service area for at least five consecutive days during the month. A REP is not required to offer a payment plan to a customer pursuant to this paragraph if the customer is on an existing deferred, level, or average payment plan.

(A) The following residential customers are eligible for a payment plan under this paragraph:

(i) customers receiving the LITE-UP discount pursuant to §25.454 of this title;

(ii) customers designated as Critical Care Residential Customers or Chronic Condition Residential Customers under §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers); or

(iii) customers who have expressed an inability to pay unless the customer:

(I) has been disconnected during the preceding 12 months;

(II) has submitted more than two payments during the preceding 12 months that were found to have insufficient funds available; or

(III) has received service from the REP for less than three months, and the customer lacks:

(-a-) sufficient credit; or

(-b-) a satisfactory history of payment for electric service from a previous REP or utility.

(B) The REP shall make available, at the customer's option, the plans described in clauses (i) and (ii) of this subparagraph.

(i) A deferred payment plan with the initial payment amount no greater than 50% of the amount due. The deferred amount shall be paid by the customer in equal installments over at least five billing cycles unless the customer agrees to fewer installments.

(ii) A level or average payment plan instead of requiring the balance due to be paid. The level or average payment plan shall be offered subject to the requirements of subsection (h) of this section.

(C) The REP shall not seek an additional deposit as a result of a customer's entering into a deferred payment plan under this paragraph.

(3) A REP shall not refuse customer participation in a deferred payment plan on any basis set forth in §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(4) A REP may voluntarily offer a deferred payment plan to customers who have expressed an inability to pay.

(5) A copy of the deferred payment plan shall be provided to the customer and:

(A) shall include a statement, in a clear and conspicuous type, that states "If you are not satisfied with this agreement, or if the agreement was made by telephone and you feel this does not reflect your understanding of that agreement, contact (insert name and contact number of REP).";

(B) if a switch-hold will apply, shall include a statement, in a clear and conspicuous type, that states "By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on.".

(C) where the customer and the REP's representative or agent meets in person, the representative shall read the statements in subparagraph (A) and, if applicable, subparagraph (B) of this paragraph to the customer;

(D) may include the one-time penalty in accordance with subsection (c) of this section but shall not include a finance charge;

(E) shall state the length of time covered by the plan;

(F) shall state the total amount to be paid under the plan;

(G) shall state the specific amount of each installment;

(H) shall state whether the amount of the deferred balance will appear on each bill the customer receives and that the customer may call the REP at any time to determine the amount that must be paid to satisfy the terms of the deferred payment plan; and

(I) shall state whether there may be a disconnection of service if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection.

(6) A REP may pursue disconnection of service if a customer does not meet the terms of a deferred payment plan. However, service shall not be disconnected until appropriate notice has been issued, pursuant to §25.483 of this title, notifying the customer that the customer has not met the terms of the plan. The requirements of paragraph (2) of this subsection shall not apply with respect to a customer who has defaulted on a deferred payment plan.

(7) A REP may apply a switch-hold while the customer is on a deferred payment plan.

(8) The REP, through a standard market process, shall submit a request to remove the switch-hold, pursuant to subsection (m) of this section, after the customer's payment of the deferred balance owed to the REP. On the day the REP submits the request to remove the switch-hold, the REP shall notify or send notice to the customer that the customer has satisfied the obligation to pay any deferred balance owed and the removal of the switch-hold is being processed.

(k) Allocation of partial payments. A REP shall allocate a partial payment by the customer first to the oldest balance due for electric service, followed by the current amount due for electric service. When there is no longer a balance for electric service, payment may be applied to non-electric services billed by the REP. Electric service shall not be disconnected for non-payment of non-electric services.

(l) Switch-hold.

(1) A REP may request that the TDU place a switch-hold on an ESI ID to the extent allowed by subsection (h) or (j) of this section, which shall prevent a switch transaction from being completed for the ESI ID and shall prevent a move-in transaction from being completed pending documentation that the applicant for electric service is a new occupant not associated with the customer for which the switch-hold was imposed. If the REP exercises its right to disconnect service for non-payment pursuant to §25.483 of this title, the switch-hold shall continue to remain in place. The TDU shall create and maintain a secure list of ESI IDs with switch-holds that REPs may access. The list shall not include any customer information other than the ESI ID and date the switch-hold was placed. The list shall be updated daily, and made available through a secure means by the TDU. The TDU may provide this list in a secure format through the web portal developed as part of its AMS deployment.

(A) The REP via a standard market process may request a switch-hold.

(B) The REP shall submit a request to remove the switch-hold as required by subsections (h)(9) and (j)(8) of this section.

(C) When the REP of record issues a move-out request for the flagged ESI ID, the REP of record's relationship with the ESI ID is terminated and the switch-hold shall be removed.

(D) At the time of a mass transition, the TDU shall remove the switch-hold flag for any ESI ID that is transitioned to a provider of last resort (POLR) provider.

(E) When the applicant for electric service is shown to be a new occupant not associated with the customer for which the switch-hold was imposed using the switch-hold process described in §25.126 of this title, the switch-hold flag shall be removed.

(F) For a move-in transaction indicating that the ESI ID is subject to a continuous service agreement, the TDU shall remove any switch-hold on that ESI ID and complete the move-in.

(2) In the first TX SET release after January 1, 2011, market transactions shall be developed that support the following requirements.

(A) REPs may request a switch-hold as allowed by subsection (h) or (j) of this section.

(B) TDUs shall provide indication of which ESI IDs have switch-holds so that during a move-in enrollment a REP can identify whether a switch-hold applies and that specific documentation must be submitted to have the switch-hold removed.

(C) A move-in subject to a switch-hold can be submitted for processing when the customer initially requests the move-in and such transaction will be held in the system for final processing depending on the approval or rejection of the move-in documentation. The TDU shall notify the submitting REP that there is a switch-hold on the ESI ID.

(3) The requirements of §25.475 of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers) shall continue to apply while a customer is subject to a switch-hold. The notice required by §25.475(e) of this title shall include a statement reminding the customer that if a switch-hold is in effect, the balance deferred must be paid in full before the customer will be able to change to a new provider.

(4) A customer who is subject to a switch-hold shall not be charged any separate fees for a switch-hold or any customer service or administrative fees related to the switch-hold.

(5) A REP shall not discriminate against any customer that is on a switch-hold in the provision of services or pricing of products. A customer on a switch-hold shall be eligible for all services and products generally available to the REPs other customers.

(6) If a REP applies a switch-hold to a customer account and the customer's contract expires while under the switch-hold, the REP shall provide notice of the contract expiration as required by §25.475 of this title. Unless a customer affirmatively chooses a different product with the REP, a customer whose term product expires while the customer is subject to a switch-hold shall be moved to the lowest priced month-to-month product currently offered by the REP to new applicants, or, if the REP does not offer month-to-month products to new applicants, shall be served on a month-to-month basis at the price equivalent to the lowest price of the shortest term fixed product currently offered by the REP to new applicants. Otherwise, the REP shall request the removal of the switch-hold in compliance with subsection (m) of this section. The offers shall include those made on www.powertochoose.com. If the customer does not affirmatively choose a product, the customer shall not be required by the REP to enter into another contract term so long as the switch-hold remains on the customer account and no early termination fees shall be applied to the customer's account.

(m) Placement and Removal of Switch-Holds.

(1) A REP may request a switch-hold only as allowed under this section.

(2) A REP shall be responsible for requesting that the TDU remove a switch-hold after the customer's obligation to the REP related to the switch-hold is satisfied. If a customer's obligation to the REP is satisfied by 10:00 p.m. on a business day, the REP shall send a request to the TDU to remove the switch-hold by Noon (12:00 p.m.) of the next business day. If the TDU receives the request by 1:00 p.m. on a business day, the TDU shall remove the switch-hold by 8:00 p.m. of the same business day in which it receives the request to remove the switch-hold from the REP.

(3) The REP shall submit a request to remove a switch-hold pursuant to subsection (l)(6) of this section to the TDU, such that the TDU will remove the switch-hold on or before the customer's contract expiration date.

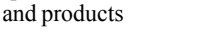
(4) If a REP erroneously places a switch-hold flag on an ESI ID, thus preventing a legitimate switch, or does not remove the switch-hold within the timeline described in paragraph (2) of this subsection, the REP shall be considered to have committed a Class B Violation (as defined in §25.8(b) of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers)) for purposes of any administrative penalties imposed by the commission.

(n) Effective date. The effective date of this section is June 1, 2011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2013.

TRD-201306098
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 9, 2014
Proposal publication date: September 27, 2013
For further information, please call: (512) 936-7223



SUBCHAPTER L. NUCLEAR DECOMMISSIONING

16 TAC §25.304

The Public Utility Commission of Texas (commission) adopts an amendment to §25.304, relating to Nuclear Decommissioning Funding and Requirements for Power Generation Companies, without changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6461). Pursuant to House Bill 994 of the 83rd Legislature, Regular Session in 2013 (HB 994), the amendment would extend from January 15, 2015 to January 1, 2033 the date by which construction of a qualifying nuclear generating unit shall start in order for the terms that are established in the rule to apply to

its decommissioning trust. Project Number 41747 is assigned to this proceeding.

The commission received no comments on the proposed amendment.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supplement 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, HB 994, which amends PURA §39.206(a)(3) and (b), effective May, 18, 2013, by extending the time period during which construction of a nuclear generating unit shall be started in order for the terms that are established in §25.304 to apply to its decommissioning trust.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §39.206 and HB 994 (which amends PURA §39.206(a)(3) and (b)).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2013.

TRD-201306095
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 9, 2014
Proposal publication date: September 27, 2013
For further information, please call: (512) 936-7223

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.22

The General Land Office (GLO) adopts an amendment to 31 TAC §15.22, concerning Certification Status of Brazoria County Dune Protection and Beach Access Plan (Plan). The GLO adopts the amendment without changes to the proposed text as published in the October 4, 2013, issue to the *Texas Register* (38 TexReg 6863) and the text of the rule will not be republished.

The amendment adopts a new subsection (c) certifying as consistent with state law an amendment to Brazoria County's (the County) Plan which was adopted by the County on April 23, 2013, in Order No. VII.B.2.f.

Copies of the County's Plan can be obtained by contacting Richard Hurd, Brazoria County Parks Director at (979) 864-1541 or rhurd@brazoria-county.com and GLO's Archives Division, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, telephone number (512) 463-5277.

BACKGROUND

The County is a coastal county consisting of areas bordering Harris, Galveston and Matagorda coastal counties. The County is accessible via State Highways 6, 36 and 332 from the northwest, State Highway 5 from the east and west, County Road 257 from Galveston Island, and State Highway 228 from Harris County. The County also borders the Gulf of Mexico to the southeast extending from the northeast at Follet's Island southwest to the San Bernard National Wildlife Refuge bordering Matagorda County. The Gulf Beaches within the unincorporated areas of the county are governed by the County's Plan. The Plan does not apply to the incorporated areas of the Village of Surfside Beach, the Town of Quintana, the City of Freeport, the San Bernard National Wildlife Refuge, and the Justin Hurst Management Area. The plan was previously amended to adopt an Erosion Response Plan and was certified by the GLO as consistent with state law and became effective March 7, 2013.

Pursuant to the Open Beaches Act (Texas Natural Resource Code, Chapter 61), and the Beach/Dune Rules (31 TAC §§15.1 - 15.12 and §§15.21 - 15.37), a local government with jurisdiction over Gulf Coast Beaches must submit its dune protection and beach access plan and any amendments to the plan to the GLO for certification pursuant to 31 TAC §15.3(o). The GLO reviews a local beach access and dune protection plan and amendments to the plan and, if appropriate, certifies that the plan is consistent with state law by amendment of a rule as authorized in Texas Natural Resource Code §61.011(d)(5) and §61.015(b). The certification by rule reflects the state's certification of the plan, but the text of the plan is not adopted by the GLO as provided in 31 TAC §15.3(o)(4).

THE BRAZORIA COUNTY BEACH AMENDMENT

The County adopted the amendment on April 23, 2013, in Order No. VII.B.2.f and submitted the amendment to the GLO with a request for certification of the amendment as consistent with state law. The amendment changes the beach access point and parking areas at San Luis Pass County Park to provide for vehicular restrictions for pedestrian-only traffic along sections of the San Luis Pass County Park Beach and on-beach parking. Specifically, the amendment modifies Section 7, Management of the Public Beach, Subsection II, and Exhibit C to change parking on and adjacent to the beach at San Luis Pass County Park to provide for vehicular restrictions for pedestrian-only traffic along sections of the beach and creates an on-beach parking area. The amendment to §15.22 adopts subsection (c) to certify the County's amendment to the Plan as consistent with state law. Based on the information provided by Brazoria, the GLO has determined that the amendment is consistent with the Open Beaches Act, the Dune Protection Act, and the 31 TAC Chapter 15. Therefore, the GLO finds that the approved amendment to the Plan are consistent with state law and hereby approves and certifies the amendment.

REASONED JUSTIFICATION

The justification for the adopted amendment is that the amendment provides for vehicular restrictions for pedestrian-only traffic along sections of the San Luis Pass County Park Beach and establishes on-beach parking in specified areas. The amendment updates the parking plan to conserve the natural resources and unique natural features in and around San Luis County Park while preserving public access to and enjoyment of the public beach.

SUMMARY AND RESPONSE TO COMMENTS

No public comments were received during the 30 day comment period.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendment to §15.22 is subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053, and 31 TAC §505.11(a)(1)(J) and (c), relating to the Actions and Rules Subject to the Coastal Management Program. GLO has reviewed this amendment for consistency with the CMP goals and policies in accordance with the regulations and has determined that the adopted action is consistent with the applicable CMP goals and policies. No comments were received from the public or the Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendment is consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY

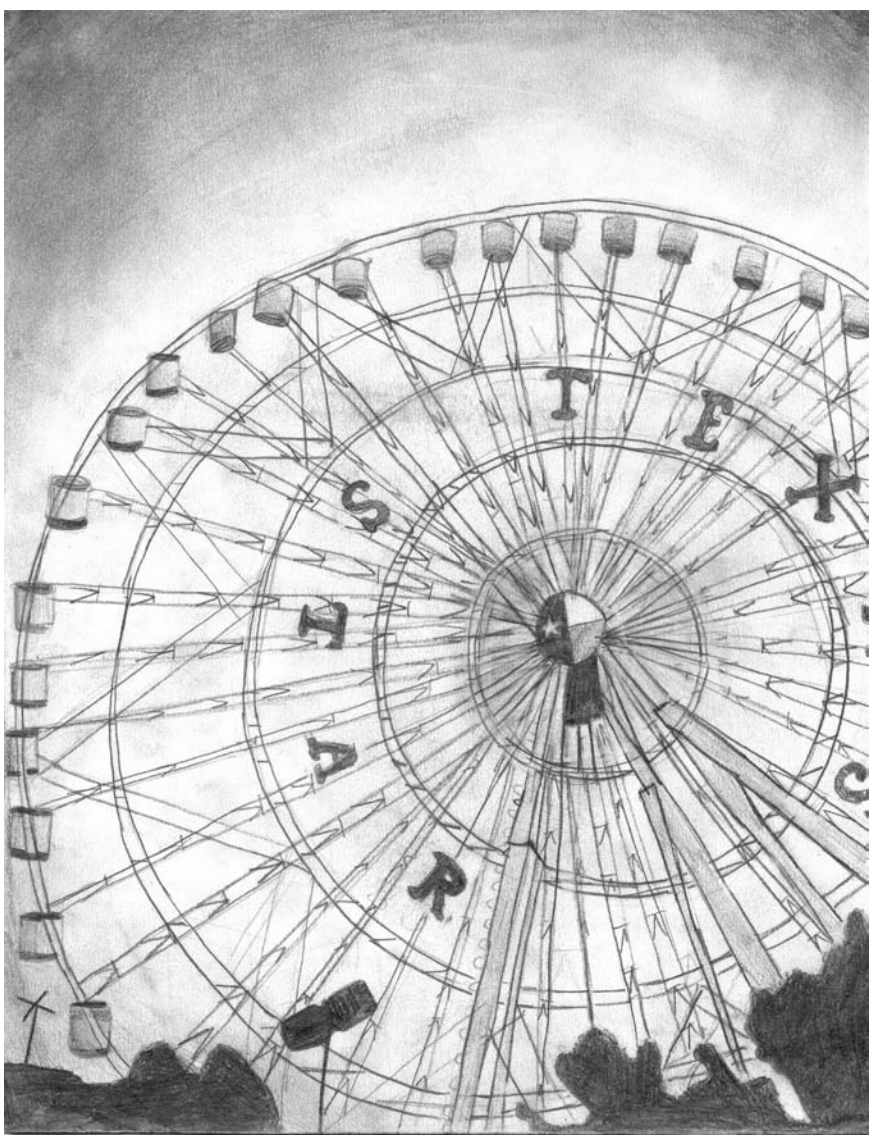
The amendment is adopted under Texas Natural Resources Code §61.011, relating to GLO's authority to adopt rules for the contents and certification of beach access and use plans.

Texas Natural Resources Code §§61.011 - 61.026 are affected by the adopted amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 30, 2013.

TRD-201306109
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: January 19, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 475-1859


TEXAS

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION UNDER TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 AND NOTICE OF HEARING

The staff of the Texas Department of Insurance filed Petition No. W-1213-01-I on December 30, 2013. The petition requests that the commissioner adopt the National Council on Compensation Insurance (NCCI) Basic Manual with Texas exceptions, and the national and Texas-specific endorsements and forms in the NCCI Forms Manual, to allow NCCI to assume certain workers' compensation functions in Texas, effective for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014.

NCCI is the largest provider of workers' compensation and employee injury data and workers' compensation statistics in the nation. It is a licensed advisory organization in Texas, and is Texas' workers' compensation statistical agent. As of December 2013, there are 34 states plus the District of Columbia that are "NCCI states," which means that NCCI administers certain workers' compensation functions in those states, 11 independent states, including Texas, and four monopolistic states. If Texas becomes an NCCI state, policyholders operating in other NCCI states and carriers writing workers' compensation coverage in multiple NCCI states would have more consistent rules.

Carriers would pay additional fees to NCCI for subscribing to NCCI services in Texas. For the top four national workers' compensation carriers, the current cost range for NCCI services is 11 to 18 cents per $100 of direct written premium. However, the additional fees may be offset by the reduction in the maintenance taxes for workers' compensation that are payable and due to the Comptroller of Public Accounts on March 1, 2014. NCCI has developed a transition plan through 2015 allowing discounts for additional Texas services.

Agents would pay an annual $50 fee to access the NCCI Basic Manual with Texas exceptions, and the national and Texas-specific endorsements and forms in the NCCI Forms Manual. NCCI will offer free access to agents to the NCCI Basic Manual with Texas exceptions, and the national and Texas-specific endorsements and forms in the NCCI Forms Manual, until June 1, 2015.

Adopting the cited NCCI manuals and exceptions would allow NCCI to operate in Texas by: 1) drafting new or revised manual rules and forms; 2) filing the rules and forms with the Texas Department of Insurance for acceptance as submitted, acceptance with changes, or rejection; 3) assigning classification codes to businesses upon request; and 4) responding to telephone and written inquiries regarding workers' compensation classification and premium calculation.

The NCCI Basic Manual and the Texas exceptions incorporate the Texas classifications currently in effect; so as a result of this rule, the current Texas classifications would remain in effect, and would not change to the national classifications used in most NCCI states.

The Texas exceptions include a more formal dispute resolution process than TDI's current process, for disputes about rules or classifications that cannot be resolved between the policyholders and carriers.

The Texas exceptions update the premium discount table that is currently available for carriers to use for policyholders who meet the eligibility requirements. They also include updated percentages and minimum premiums for increased limits for employers' liability coverage if a policyholder elects employers' liability limits above the standard limits. The updated percentages are based on NCCI's actuarial analysis of more recent historical loss experience, which results in percentages that more closely reflect what the additional premium should be for optional increased limits for employers' liability coverage.

The Texas exceptions replace the aggregate deductible and the per accident/aggregate deductible options with the per claim deductible and the medical-only deductible options to eliminate two options that are rarely chosen for Texas workers' compensation policies and add two other options that are used in other NCCI states. The Texas exception pages do not include tables for the premium credits for the per accident, per claim, and medical-only deductible options. Instead, the Texas exception pages direct carriers to use loss elimination ratios (LERs) to calculate premium credits for those deductible options. Many carriers that operate in Texas already use LERs to calculate their premium credits in other states. As part of its transition plan, NCCI will provide information to carriers and respond to inquiries on LERs.

With the adoption of the national and Texas-specific endorsements and forms in the NCCI Forms Manual, staff proposes to adopt 62 endorsements and forms, most of which already exist in the Texas Basic Manual, and two of which are new to Texas, but that clarify and standardize practices that are already common in Texas.

With this petition, staff proposes that policies with an effective date on or after 12:01 a.m., June 1, 2014, will use the rules, classifications, endorsements, and forms contained in the NCCI Basic Manual with Texas exceptions, and the national and Texas-specific endorsements and forms in the NCCI Forms Manual. The Texas Experience Rating Plan contained in the Texas Basic Manual will continue in effect until TDI adopts the NCCI Experience Rating Plan with Texas exceptions. Staff proposes that the commissioner consider any proposed revisions

to NCCI's manuals under either the procedure established in Insurance Code Article 5.96 or under an alternate procedure that also incorporates notice and opportunity for comment.

If Texas becomes an NCCI state, the commissioner of insurance and TDI will continue to fulfill all workers' compensation statutory requirements, such as: 1) prescribing standard policy forms and a uniform policy; 2) approving non-standard forms and endorsements; 3) determining hazards by classifications; 4) requiring carriers to use the classifications determined for Texas; 5) establishing classification relativities; 6) adopting a uniform experience rating plan; and 7) developing and updating statistical plans, as necessary.

In order for Texas to become an NCCI state for workers' compensation purposes, TDI must adopt the NCCI Basic Manual with Texas exceptions, and the national and Texas-specific endorsements and forms in the NCCI Forms Manual. The Texas exceptions to the NCCI rules and forms are necessary to preserve the rules that are unique to Texas and to make the transition to an NCCI state as seamless as possible for policyholders.

Insurance Code Article 5.96 and §§2051.002, 2051.201, 2052.002, 2053.051, and 2053.052 authorize staff to file this petition and the commissioner to take the requested action. Article 5.96(a) authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classifications plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance.

Article 5.96(b) allows any interested person to initiate proceedings with respect to any matter specified in section (a) by filing a written petition with the chief clerk.

Section 2051.002 requires that Insurance Code Chapter 2051, 251 (as it relates to workers' compensation insurance), 255, 426, 2052, 2053, and 2055 be construed and apply independently of any other law that relates to insurance rates and forms or prescribes the duties of the commissioner or TDI.

Section 2051.201 allows the commissioner to adopt and enforce all reasonable rules as are necessary to carry out the provisions of a law referenced in §2051.002(1), (2), (3), (4), or (5).

Section 2052.002 requires the commissioner to prescribe standard policy forms and a uniform policy for workers' compensation insurance.

Section 2053.051 requires TDI to determine hazards by class, establish classification relativities, and revise the classification system at least once every five years.

Section 2053.052 requires the commissioner to adopt a uniform experience rating plan for workers' compensation insurance and revise it at least once every five years. It also requires the commissioner to adopt reasonable rules and plans requiring the interchange of loss experience necessary for the application of the rating plan.

You may review a copy of the petition on the TDI website at www.tdi.texas.gov/rules/2013/exrules.html or they may review a copy of the petition and exhibits in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. For further information or to request copies of the petition and exhibits, please contact the Office of the Chief Clerk by email at ChiefClerk@tdi.texas.gov or by phone at (512) 463-6327 (Reference No. W-1213-01-I).

The commissioner has scheduled a hearing under Docket No. 2762 at 9 a.m. on January 24, 2014, in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe Street, Austin, Texas, to take action on the staff's petition. If you wish to comment on the petition and exhibits, please submit two copies of your comments to TDI by February 10, 2014. Send one copy to the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to Nancy Moore, Team Lead, Workers' Compensation Classification and Premium Calculation, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-2A, Austin, Texas 78714-9104. You may also present comments at the hearing.

TDI publishes this notification under Article 5.96 of the Texas Insurance Code, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-201306152
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: December 31, 2013

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 Board of Veterinary Medical Examiners

Title 22, Part 24

The Texas Board of Veterinary Medical Examiners (TBVME) proposes the review of 22 TAC Chapter 577, General Administrative Duties, §§577.1 - 577.3, 577.11, 577.12, 577.15 - 577.18 and 577.20, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, TBVME will accept comments as to whether the reasons for adopting 22 TAC Chapter 577 continue to exist. The assessment made by TBVME indicates that the reasons for initially adopting the chapter do continue to exist.

Elsewhere in this issue of the *Texas Register,* the TBVME contemporaneously proposes amendments to §577.12 and §577.16 and new §577.5. TBVME proposes to readopt the other sections of 22 TAC Chapter 577 without amendment.

Comments or questions regarding this rule review should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by email to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

TRD-201306150
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Filed: December 31, 2013

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum; Subchapter B, Graduation Requirements; Subchapter C, Other Provisions; Subchapter D, Graduation Requirements, Beginning with School Year 2001-2002; Subchapter E, Graduation Requirements, Beginning with School Year 2004-2005; Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008; and Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 74, Subchapters A-G, in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6933).

The SBOE finds that the reasons for adopting 19 TAC Chapter 74, Subchapters A-G, continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapters A-G. No changes are necessary as a result of the review. However, at its November 2013 meeting, the SBOE considered changes to Subchapters A-C in response to legislation from the 83rd Texas Legislature, 2013, and adopted amendments to Subchapters F and G to add additional course options to satisfy graduation requirements in mathematics and science.

TRD-201306153
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 31, 2013

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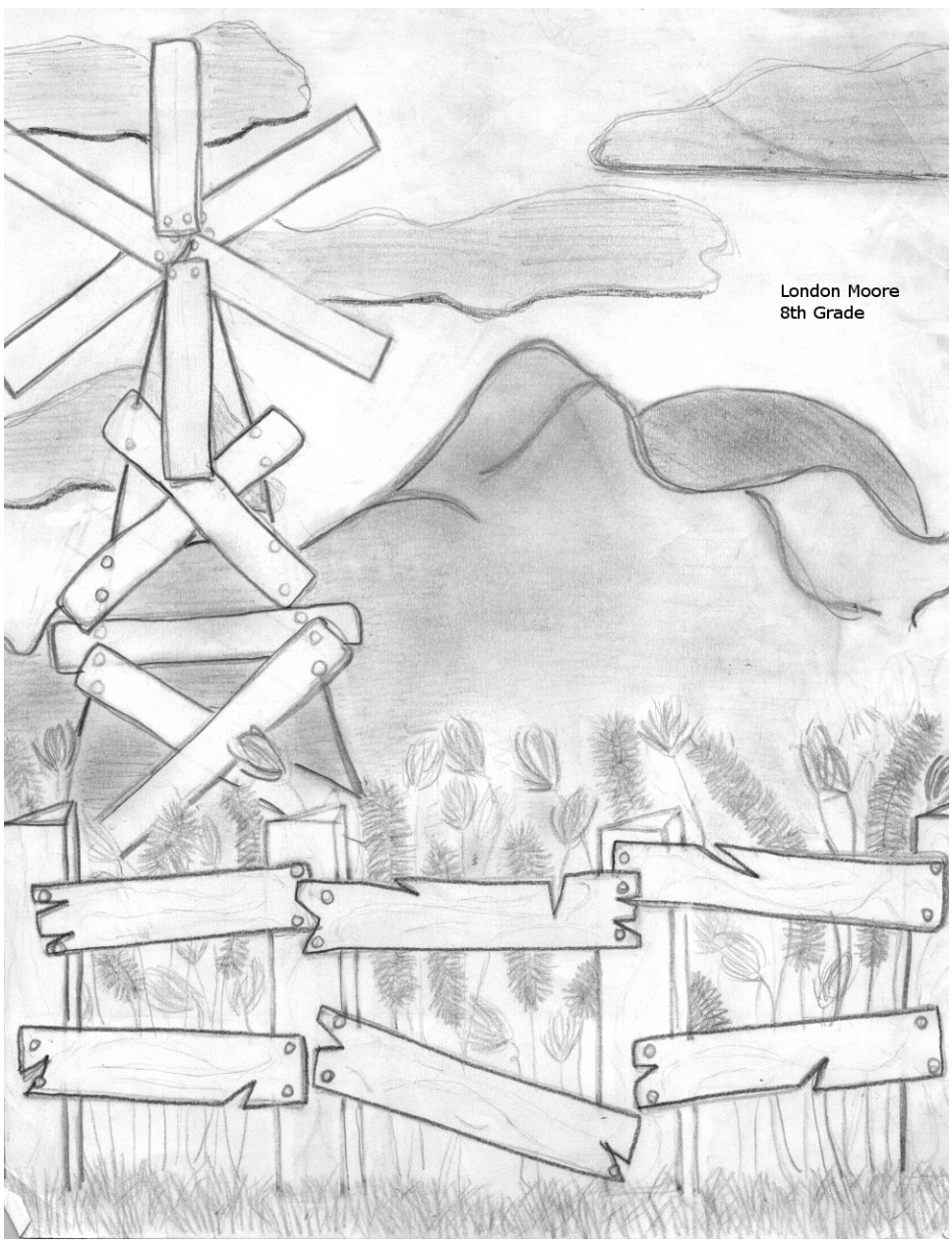
London Moore
8th Grade

Texas Department of Agriculture

Notice of Opportunity for Comment on Petition for Rulemaking and Draft Proposed Amendments

The Texas Department of Agriculture (department) received a Petition for Rulemaking from Mr. Andrew Chalk of Plano, Texas, submitted in accordance with 4 TAC Chapter 1, Subchapter A, §1.4. Accordingly, the department seeks public comments to determine whether or not to amend its rule based on this petitioner's proposed amendment to Chapter 17, Subchapter C, §17.52, concerning use of the GO TEXAN certification mark. Mr. Chalk, a concerned citizen, requests that the department amend §17.52(b)(3), regarding the use of the GO TEXAN certification mark on Texas wine to require that for the department's "Go Texan" mark to be applied to any wine, 100 percent of the grapes used to make that wine must have been grown in the State of Texas. The italicized text included following this paragraph is Mr. Chalk's petition, as submitted. Clarifying factual information provided by the Department of Agriculture regarding the proposal's potential impacts to the GO TEXAN program and its members follows Mr. Chalk's petition. The department believes that the concept proposed warrants consideration by the public, and is, therefore, seeking public comment on the concept and draft proposed rule change as a step towards the possible initiation of formal rulemaking. These comments are necessary in determining whether or not changes are needed, and would serve as the basis for developing any necessary amendments to the rule.

Mr. Chalk's petition is as follows:

REQUEST FOR A RULE CHANGE BY THE TEXAS DEPARTMENT OF AGRICULTURE

To: Commissioner Todd Staples

Texas Department of Agriculture

1700 N. Congress, 11th Floor

Austin, TX 78701

From: Andrew J. Chalk, Editor - CraveDFW

7000 Independence Pkwy., Ste 160-227

Plano, TX 75025

(214) 597-4659

Date: October 27th, 2013

The text below is numbered according to the section of the Texas Administrative Code ("TAC"), to which it is responsive,

3. BRIEF EXPLANATION OF THE PROPOSED RULE. To require that for the Texas Department of Agriculture (TDA) "Go Texan" mark to be applied to any wine, 100% of the grapes used to make that wine must have been grown in the State of Texas.

4. PRECISE TEXT OF THE PROPOSED RULE. Change TAC, Title 4, Part 1, Chapter 17, Subchapter C, Rule 17.52(b)(3) to read as follows:

(3) wine that is produced in Texas entirely from grapes grown in Texas.

5. REASONS OR POLICY FOR THE PROPOSED RULE. The current rule allows for products "processed" in Texas to carry the Go Texas mark. The relevant portion of TAC, Title 4, Part 1, Chapter 17, Subchapter C, Rule 17.52 is as follows:

(b) Unless permission is otherwise granted by the department, the GO TEXAN certification mark may only be used by registrants to certify and promote the following Texas products:

. . . (3) wine which is produced or processed in Texas, as defined in §17.51 of this chapter (relating to Definitions);

There are two reasons for the proposed rule change:

1) This corrects the current state of affairs under which the "Go Texan" mark may be used on wine produced elsewhere by simply claiming that it was "processed" in Texas. The vineyard's location defines a wine's character and quality as much as the grape variety, (it is the basis of the United States American Viticultural Area, AVA, system). By allowing out of state grape and wine producers to label their product with the "Go Texan" mark, renders the mark both misleading to consumers and damage to Texas wineries and grape growers. The current rule also provides an unfair advantage to out of state grape producers, which often grow huge volumes of grapes by allowing those out of state producers to dump excess product in Texas under the "Go Texan" mark. This practice, allowed under the current rule is both misleading to Texas Consumers and damaging to Texas wineries and Texas grape growers.

2) If the "Go Texan" mark required 100% Texas grapes it would be a reliable indication to the consumer of the source and quality of the grapes used in the product. Currently in Texas, each wine producer must place this information on their bottle using their own form of words and their own placement. Making the "Go Texan" mark a reliable indication of the source and quality of the grapes used in the wine will lead to an increase in demand for "Go Texan" mark wines. Globally mature wine producing areas have developed a system of indicating geographical purity for their best wines. For example, labeling an Italian wine 'Brunello' implies that 100% of the grapes were from the Brunello designated wine growing area in Italy (DOCG). With Texas now becoming a mature wine making area the advantages of the 'gold ring' mark can be realized here too.

6. STATUTORY OR OTHER AUTHORITY FOR THE PROPOSED RULE. The Texas Department of Agriculture is charged with establishing rules for the "Go Texan" program under V. T. C. A., Agriculture Code §46.012,

7. APPLICABLE FISCAL INFORMATION CONCERNING THE RULE'S IMPACT UPON STATE AND LOCAL GOVERNMENT, IF ADOPTED, SEPARATELY STATED FOR THE FIRST FIVE YEARS OF THE RULE'S OPERATION. Under the proposed rule change, consumers armed with a more reliable indicator of the source and quality of the grapes used in the wine would likely purchase a larger proportion of truly Texan wines. These would translate into sales at Texas wineries and Texas vineyards (vs. out-of-state or foreign sales) augmenting existing state and local tax revenue contributions (In 2011 these were $92.6m). Further, the disadvantage to Texas wineries and

grape growers from out of state producers diluting the Texas market with wines misleadingly labeled as "Go Texan" would be eliminated.

8. GIVE THE PUBLIC BENEFIT TO BE EXPECTED FROM THE PROPOSED RULE DURING THE FIRST FIVE YEARS OF ITS OPERATION

Vineyard acreage: This grew 33% between 2009 and 2011, or roughly 16% per year. Under the 100% rule we would expect to see further large growth for the following reasons:

a) Current Go Texan import wines and wines made in Texas from out of state grapes will be replaced with true Texas wine;

b) Currently, Federal regulations require a wine labeled as a state product must be made from a minimum of 75% of that state's grapes. As consumers are provided with more meaningful "Go Texan" label, which would require 100% of the grapes to be from Texas growers, there should be an increase in volume in the Texan wines using 100% Texas grapes in order to take advantage of the reliability of the mark. Even assuming no additional sales of Texas labeled wines, based on the new reliable mark, if all Texan wines are assumed to be currently at the Federal 75% minimum and decide to move to 100% then to increase that proportion to 100% Texas grown grapes would require production to increase by a similar margin. Based on 2011 data, that could increase grape production in Texas by approximately 1450 acres. A twenty five percent expansion of case output translates into an annual economic impact of over $375,000,000.

c) The largest effect in the long term would be the increase in public demand for true Texas wines. While difficult to quantify, total cases sold increased from 2005 to 2011 by approx. 7% a year, indicating the industry's capacity to produce if the demand is present. Using data from other states illustrates the potential jump in sales of Texas wine with a meaningful made in Texas mark. The data show that a larger percentage of California wine consumers regularly drink California wine and Oregon consumers regularly drink Oregon wine than Texas wine drinkers regularly consume Texas wine. If Texas could raise this figure closer to the levels in those other states, and we assume that "regularly" means that just 20% of a consumer's wine purchases are from Texas, then Texas wine sales would increase by orders of magnitude.

9. GIVE THE PROBABLE ECONOMIC COST TO PERSONS REQUIRED TO COMPLY WITH THE RULE DURING THE FIRST FIVE YEARS OF THE RULE'S OPERATION. The cost to Texas producers and growers, if any, would be offset by additional consumption brought about by a meaningful Go Texas mark. Other than Go Texan membership dues that they would otherwise not have paid. These dues would be more than offset by the newly acquired credibility of the program evidenced in wine sales

The department's clarifying comments are as follows:

Only wineries operating within the state of Texas may join the GO TEXAN program and use the GO TEXAN mark under current rules. In 2013, approximately one-third of all Texas wineries were GO TEXAN members. By law, any costs associated with the GO TEXAN program must be borne by GO TEXAN members. The department anticipates Mr. Chalk's proposed rule will result in increased costs to the program associated with: (1) enforcing the use of the mark only on wines meeting the petitioner's more narrow proposed qualifications; (2) dedicating resources toward marketing the different standard for GO TEXAN wine (as opposed to other commodities); and (3) loss of current and potential members in the GO TEXAN program. The department has also determined that, in order to educate the public effectively and increase sales as the petitioner contends, significant marketing expenditures are needed. Texas consumers would need to be educated on this change because other GO TEXAN commodities may qualify for certification based on creating jobs and economic impact in Texas by activities such as processing in Texas and do not require 100% Texas sourcing. Additionally, less than 25 of the 80 plus GO TEXAN member wineries consistently use the GO TEXAN certification mark on their labels. This means an additional cost to the state would be incurred from fewer wineries in Texas being eligible for the GO TEXAN program while the amended section is in effect, thus decreasing membership revenue for a program required by law to become a cost recovery program.

Mr. Chalk bases his economic impact predictions on a presumption that 75 percent of Texas wines are today produced from Texas grown grapes and that this rule change would result in 100 percent of Texas wines being produced from Texas grapes. The numbers do not support this presumption. In actuality, of the wine bottled each year in Texas, only 18.5 percent comes from Texas grown grapes. This is limited entirely by the grape production capacity of Texas and it is incorrect to assume that this proposal would cause all Texas winemakers to convert their production to be from 100 percent Texas grown grapes. Because the demand for the limited supply of Texas grapes will increase, and the supply will not be able to catch up for several years (it takes 3-5 years for grape acreage to reach full production), costs will greatly increase to individuals, micro-businesses and small businesses producing and purchasing Texas wine as a result of the amended section as set out in Mr. Chalk's proposal. Considering less than a quarter of all GO TEXAN member wineries report using 100 percent Texas grapes in their wines, these rule changes have the potential to significantly increase the cost of production for Texas wine while driving down the number of wineries producing that wine and greatly diminishing the GO TEXAN program's only revenue source - it's members. Additionally, for the GO TEXAN program to survive with fewer members, those members would face drastically increased membership fees should this change take effect.

The department has determined that for the first five years the amended section is in effect, the public will not benefit due to confusion relating to a new GO TEXAN wine standard versus the federal wine labeling regulations stipulating wine is legally 'Texas wine' if 75+% of the grapes are from Texas/Texas American Viticultural Areas. The amended section will confuse the two certifications.

This change would drastically change the intent of the GO TEXAN program. The intent of the GO TEXAN program is, and has always been, to encourage consumer purchases of products that will result in positive economic impact to the Texas economy due to various characteristics of the product. For a product to qualify for certification, it must be grown, processed, manufactured or otherwise value-added in the state. With regard to wine, it must undergo processing in the state to merit the GO TEXAN mark. The amended section would require GO TEXAN wine to be processed and produced entirely from grapes grown in Texas, which discounts the winemaker's contribution to the wine making process and end result, which the department knows is in fact a critical component.

The department requests public comments related to Mr. Chalk's petition to amend §17.52(b)(3) in order to assist the department in its determination of whether or not the amendment should be adopted. Comments on the amendment may be submitted to Mr. Bryan Daniel, chief administrator for trade and business development, 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 this notice in the *Texas Register.*

TRD-201306111
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 30, 2013

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/30/13 - 01/05/14 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/30/13 - 01/05/14 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201306108
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 23, 2013

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/06/14 - 01/12/14 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/06/14 - 01/12/14 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201306149
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 30, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 10, 2014.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 10, 2014.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: A.Z.H.E. CORPORATION dba Forest Conoco; DOCKET NUMBER: 2013-1230-PST-E; IDENTIFIER: RN102037157; 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: $3,563; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Angel Elias dba Judy K's Kountry Kitchen; DOCKET NUMBER: 2013-1807-PWS-E; IDENTIFIER: RN101237683; LOCATION: Odessa, Ector County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level for total coliform during the months of June, July, and August 2013; and 30 TAC §290.122(c)(2)(A), by failing to timely provide public notification regarding the failure to collect one triggered source monitoring sample from each of the facility's wells within 24 hours of notification of a distribution total coliform-positive sample for the month of January 2013; PENALTY: $656; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(3) COMPANY: Aqua Development, Incorporated; DOCKET NUMBER: 2013-1337-MWD-E; IDENTIFIER: RN102343035; LOCATION: Travis County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014061001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $1,937; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(4) COMPANY: CENTRAL FREIGHT LINES, INCORPORATED; DOCKET NUMBER: 2013-1446-PST-E; IDENTIFIER: RN100707314; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(5) COMPANY: East Texas Precast Company Ltd; DOCKET NUMBER: 2013-2164-WQ-E; IDENTIFIER: RN100889872; LOCATION: Hempstead, Waller County; TYPE OF FACILITY: cement construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Frito-Lay, Incorporated; DOCKET NUMBER: 2013-1539-IWD-E; IDENTIFIER: RN100219229; LOCATION: Rosenberg, Fort Bend County; TYPE OF FACILITY: snack food production facility; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0002443000, Effluent Limitations and Monitoring Requirements Number 1 Outfall Number 002, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits; and Texas Health and Safety Code, §361.134(c), by failing to pay Non-Hazardous Waste Generation fees for TCEQ Financial Administration Account Number 0301394N for Fiscal Year 2013; PENALTY: $18,300; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Imran Investments, Incorporated dba Pay & Save; DOCKET NUMBER: 2013-1595-PST-E; IDENTIFIER: RN102236866; LOCATION: Dickinson, Galveston 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: $3,563; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: LAKE LIVINGSTON WATER SUPPLY AND SEWER SERVICE CORPORATION; DOCKET NUMBER: 2013-1887-PWS-E; IDENTIFIER: RN101201960; LOCATION: Onalaska, Polk County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a water outage using the prescribed notification format as specified in 30 TAC §290.47(e); and 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: $350; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Land Tejas Texas City, Ltd; DOCKET NUMBER: 2013-2174-WQ-E; IDENTIFIER: RN105295562; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: LEAGUE CITY INTERESTS, INCORPORATED dba Super Food 1; DOCKET NUMBER: 2013-1543-PST-E; IDENTIFIER: RN101725331; LOCATION: Dickinson, Galveston 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; and 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; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Mainali Corporation dba Timeout Chevron; DOCKET NUMBER: 2013-1561-PST-E; IDENTIFIER: RN101765824; LOCATION: Decatur, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Mardini Holdings, Incorporated dba Quickie 1; DOCKET NUMBER: 2013-1738-PST-E; IDENTIFIER: RN101436574; LOCATION: Weatherford, Parker 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: $3,000; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: National Oilwell Varco, L.P.; DOCKET NUMBER: 2013-1673-AIR-E; IDENTIFIER: RN102602307; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: storage tank manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O2820, General Terms and Conditions (GTC), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.146(1) and (2), THSC, §382.085(b), and FOP Number O2820, GTC, by failing to submit the permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $14,625; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 698-9674.

(14) COMPANY: P&N Collins LLC dba Pat Collins Auto Sales; DOCKET NUMBER: 2013-0505-AIR-E; IDENTIFIER: RN106613995; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: used automobile dealership; RULE VIOLATED: 30 TAC §114.20(c)(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to equip a motor vehicle with either the control systems or devices that were originally a part of the motor vehicle or motor vehicle engine, or an alternate control system; and 30 TAC §114.20(c)(3) and THSC, §382.085(b), by failing to have a notice of the prohibitions and requirements for motor vehicles equipped with emission control devices displayed at a commercial motor vehicle sales facility in a conspicuous and prominent location; PENALTY: $1,501; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(15) COMPANY: PAY AND SAVE, INCORPORATED dba Lowes 96; DOCKET NUMBER: 2013-1951-PST-E; IDENTIFIER: RN100816628; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $5,408; ENFORCEMENT COORDINATOR: Mike Pace,

(817) 588-5933; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(16) COMPANY: Roddy, Don; DOCKET NUMBER: 2013-1408-WOC-E; IDENTIFIER: RN106832124; LOCATION: Denton, Denton County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to obtain a valid water system operator's license prior to performing process control duties in production, treatment, and distribution of public drinking water; PENALTY: $946; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Roddy, W. J. dba Green Tree Estates; DOCKET NUMBER: 2013-1370-PWS-E; IDENTIFIER: RN101176451; LOCATION: Denton, Denton County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(e), by failing to provide the results of triennial sampling for Stage 1 disinfectant by-products to the executive director for the January 1, 2006 - December 31, 2008 monitoring period; 30 TAC §290.106(e) and §290.107(e), by failing to report the results of triennial sampling for minerals and volatile organic chemical contaminants to the executive director for the January 1, 2008 - December 31, 2010 monitoring period; 30 TAC §290.106(e), by failing to report the results of annual nitrate sampling to the executive director for the 2010 - 2012 monitoring periods; 30 TAC §290.106(e), by failing to provide the results of sexennial sampling for metals to the executive director for the January 1, 2007 - December 31, 2012 monitoring period; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; and 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher license; PENALTY: $2,042; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Shell Oil Company and Shell Chemical LP; DOCKET NUMBER: 2013-1205-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: Federal Operating Permit (FOP) Number O1668, Special Terms and Conditions (STC) Number 15, New Source Review Permit (NSRP) Number 3214, Special Conditions (SC) Number 1, 30 TAC §116.115(c) and §122.143(4), and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; FOP Number O1668, STC Number 15, NSRP Numbers 21262 and PSD-TX-928, 30 TAC §§101.20(3), 122.143(4), and 116.715(a), and THSC, §382.085(b), by failing to prevent unauthorized emissions; and FOP Number O1945, STC Number 21, NSRP Number 3179, SC Number 10, 30 TAC §116.115(c) and §122.143(4), and THSC, §382.085(b), by failing to comply with the maximum fill rate of 14,100 gallons per hour (gal/hr) for Tank Numbers D402 and D403 and the maximum pumping rate of 126,000 gal/hr for Tank Number F354; PENALTY: $48,750; Supplemental Environmental Project offset amount of $19,500 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: The Vineyard Shopping Center II, L.P.; DOCKET NUMBER: 2013-1203-EAQ-E; IDENTIFIER: RN102747243; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: commercial project; RULE VIOLATED: 30 TAC §213.5(b)(4)(D) and Edwards Aquifer Protection Plan File Number 1466.00 Standard Condition Number 16, by failing to submit the Texas Licensed Professional Engineer certification certifying that the three water quality basins were constructed as approved; 30 TAC §213.4(j)(1) and Edwards Aquifer Protection Plan File Number 1466.00 Standard Conditions Number 4, by failing to obtain approval of a modification to an approved Water Pollution Abatement Plan prior to initiating construction of the modification; and 30 TAC §213.4(k) and Edwards Aquifer Protection Plan File Number 1466.00 Standard Condition Number 17, by failing to maintain the sedimentation/filtration basin in accordance with the approved plan; PENALTY: $10,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: TRI-CON, INCORPORATED; DOCKET NUMBER: 2013-1569-PST-E; IDENTIFIER: RN102282027; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: common carrier; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; PENALTY: $2,111; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201306105
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 23, 2013

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Notice of Water Quality Applications

The following notices were issued on November 29, 2013 through December 20, 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

ENTERPRISE PRODUCTS OPERATING LLC which operates the Morgan's Point Complex, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000440000, which authorizes process wastewater, stormwater, cooling tower blowdown, demineriliser regenerate wastewater, domestic wastewater, pressure washwater, water from steam traps, air compressor condensate, and water from the bottom of the methanol still column at a daily average flow not to exceed 310,000 gallons per day (GPD) via Outfall 001; once-through non-contact cooling water, pressure washwater, water from steam traps, air compressor condensate, and stormwater at a daily average dry weather flow not to exceed 150,000 GPD via Outfall 002; and once-through non-contact cooling water, pressure washwater, water from steam traps, air compressor condensate, settled Channel Water Authority (CWA) water from the line pigging, and stormwater at a daily average dry weather flow not to exceed 600,000 GPD via Outfall 003. The draft permit authorize the discharge of process wastewater, stormwater, cooling tower blowdown, demineriliser regenerate wastewater, previously monitored effluent (PME)

(treated domestic wastewater), pressure washwater, water from steam traps, air compressor condensate, condensate from the Wet Surface Air Coolers (WSACs) evaporative cooling system, and water from the bottom of the methanol still column at a daily average flow not to exceed 310,000 GPD via Outfall 001; once-through non-contact cooling water, pressure washwater, water from steam traps, air compressor condensate, and stormwater at a daily average dry weather flow not to exceed 150,000 GPD via Outfall 002; and once-through non-contact cooling water, pressure washwater, water from steam traps, air compressor condensate, settled CWA water from the line pigging, and stormwater at a daily average dry weather flow not to exceed 600,000 GPD via Outfall 003. The facility is located at 1200 North Broadway, approximately one-half mile north of the intersection of North Broadway Street and West Barbours Cut Boulevard, in the City of Morgan's Point, Harris County, Texas 77571.

TPC GROUP LLC which operates TPC Group Baytown Plant, a bulk storage terminal for storage and distribution of organic chemicals and organic chemical manufacturing, has applied for a renewal of TPDES Permit No. WQ0002485000, which authorizes the discharge of stormwater, fire system water, and utility wastewater commingled with previously monitored effluents (treated process wastewater, utility wastewater, and stormwater via Outfall 201) via Outfall 001 at a flow variable rate, and treated process wastewater, utility wastewater, and stormwater at a daily average flow not to exceed 22,000 gallons per day via Outfall 201. The facility is located at 4604 West Baker Road, approximately 1,600 feet west of Decker Drive (Spur 330), in the City of Baytown, Harris County, Texas 77520.

CHEMICALS INCORPORATED which operates the Hatcherville Plant, an organic chemical manufacturing and processing facility, has applied for a renewal of TPDES Permit No. WQ0003713000, which authorizes the discharge of steam condensate, once-through cooling water, cooling tower blowdown, boiler blowdown, and treated storm water at a daily maximum flow not to exceed 200,000 gallons per day via Outfall 001. The facility is located adjacent to the west side of Hatcherville Road, approximately 1400 feet north of the intersection of Farm-to-Market Road 1942 and Hatcherville Road, approximately two miles west of the City of Mont Belvieu, Chambers County, Texas.

CITY OF MARLIN has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010110002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 241 County Road 302, on the west side of County Road 302 approximately 2.5 miles southwest of the intersection of State Highway 6 and State Highway 712 in Falls County, Texas.

CITY OF STAMFORD has applied for a renewal of TPDES Permit No. WQ0010472002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 560,000 gallons per day. The facility is located approximately 8,400 feet northeast of the intersection of the FW&D Railroad and State Highway 6 and adjacent to Stink Creek in Jones County, Texas 79553.

CITY OF EASTLAND has applied for a renewal of TPDES Permit No. WQ0010637001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at the east end of Smith Street, approximately one mile southeast of the intersection of State Highway 6 and U.S. Highway 80 and 1.4 miles northeast of the intersection of State Highway 6 and Interstate Highway 20, in the City of Eastland in Eastland County, Texas.

MEMORIAL HILLS UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011044001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 1603 Briarcreek Boulevard, immediately south of Cypress Creek, approximately 600 feet north and 600 feet east of the intersection of Farm-to-Market Road 1960 and Hardy Road in Harris County, Texas 77073.

CITY OF NOME has applied for a renewal with changes to TPDES Permit No. WQ0011564001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The City proposes to add chlorine disinfection and post-aeration to the facility. The facility is located adjacent to Cotton Creek and at the intersection of 3rd Street and Cotton Creek, approximately 0.5 mile north of the City of Nome in Jefferson County, Texas 77629.

TRAIL OF THE LAKES MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011901001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The facility is located approximately 6,500 feet south and 150 feet east of the intersection of Woodland Hills Drive and Atascocita Road in Harris County, Texas 77396.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 25 has applied for a major amendment to TPDES Permit No. WQ0012003002 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 500,000 gallons per day to an annual average flow not to exceed 1,000,000 gallons per day; move the discharge point 600 feet upstream and discontinue the requirement to route its effluent through a polishing pond. The facility is located 0.98 mile north of the intersection of Farm-to-Market Road 1464 and West of Airport Boulevard, and 800 feet east of Farm-to-Market Road 1464 in Fort Bend County, Texas 77498.

US ARMY CORPS OF ENGINEERS has applied for a renewal of TCEQ Permit No. WQ0012255003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 4,200 gallons per day via evaporation ponds with 1.52 acres of surface area and 11.9 acre-feet of storage capacity. The wastewater treatment facility and disposal site are located at 2100 Cedar Breaks Road, in Lake Georgetown Cedar Breaks Park, approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 2338 and D. B. Wood Road in Williamson County, Texas 78633. The disposal site is located in the drainage area of Lake Georgetown in Segment No. 1249 of the Brazos River Basin. This permit will not authorize a discharge of pollutants into water in the State.

AQUA TEXAS INC has applied for a renewal of TPDES Permit No. WQ0012563001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 1.3 miles west of the intersection of Farm-to-Market Road 729 and Farm-to-Market Road 1969 and approximately 4 miles southwest of the intersection of State Highway 49 and Farm-to-Market Road 1969 in Marion County, Texas 75630.

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0013619001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 23427 Bettywood Lane, approximately 1,000 feet southeast of Kuykendahl Road crossing of Willow Creek and 800 feet east of Willow Creek, in Tomball in Harris County, Texas 77375.

CANYON REGIONAL WATER AUTHORITY has applied for a renewal of TCEQ Permit No. WQ0014126001, which authorizes the disposal of treated filter backwash water at a daily average flow not to exceed 64,000 gallons per day via surface irrigation of 45.1 acres

of non-public access land. The permit also authorizes the disposal of water treatment sludge on 40 acres of land located at the plant site at an application rate not to exceed 2.1 dry tons per acre per year. This permit will not authorize a discharge of pollutants into waters in the State. The facility, disposal site and water treatment sludge application site are located at 850 Lakeside Pass, approximately 1,000 feet southwest of the dam for Lake Dunlap at Dittmar Falls, and approximately 3,000 feet northeast of the Town of Schumansville, New Braunfels in Guadalupe County, Texas 78130.

FORT BEND MUNICIPAL UTILITY DISTRICT NO 169 AND CITY OF FULSHEAR has applied for a major amendment to TPDES Permit No. WQ0014745001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,000,000 gallons per day to an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 29000 1/2 Farm-To-Market Road 1093, Fulshear in Fort Bend County, Texas 77441. The treated effluent is discharged to a water quality basin; thence to an amenity lake; thence to Flewellen Creek; thence to Upper Oyster Creek in Segment No. 1245 of the Brazos River Basin.

PELICAN ISLAND STORAGE TERMINAL LLC which operates Galveston Terminal, a petroleum bulk storage terminal, has applied for a renewal of TPDES Permit No. WQ0002466000, which authorizes the discharge of stormwater and boiler blowdown on an intermittent and flow variable basis via Outfall 001. The facility is located at 3801 GTI Boulevard, southwest of the intersection of Pelican Island Boulevard and Bradner Street on Pelican Island in the City of Galveston, Galveston County, Texas 77554.

TERRA RENEWAL SERVICES INC has applied for a renewal of TCEQ Permit No. WQ0004513000, which authorizes the land application of sewage sludge and water treatment plant sludge for beneficial use. The current permit authorizes land application of sewage sludge and water treatment plant sludge for beneficial use on 185.8 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sludge land application site is located at 3495 North Farm-to-Market Road 2087, adjacent to the east side of Farm-to-Market Road 2087, approximately 1.6 miles south of the intersection of Farm-to-Market Road 1845 and Farm-to-Market Road 2087, Longview, in Gregg County, Texas 75603.

LONE STAR NGL MONT BELVIEU LP which operates a pipeline transportation and storage terminal facility, has applied for a renewal of TPDES Permit No. WQ0004876000, to authorize the discharge of stormwater at an intermittent and flow-variable rate. The facility is located at 4201 Farm-to-Market Road 1942, west of the City of Mont Belvieu and north of the City of Baytown, on the northside of the Coastal Water Authority canal road on the levee, 0.6 miles from where the canal road on the levee intersects Crosby-Barbers Hill Road (FM 1942), near the intersection of Barbers Hill Road and Crosby-Barbers Hill Road (FM1942), Harris County, Texas 77521.

MULTI-CHEM GROUP LLC P.O. Box 718, Maurice, Louisiana 70555, which proposes to operate the Multi-Chem Group - New Fairview Texas Facility, a chemical blending, storage, and distribution facility, has applied for new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005015000, to authorize the discharge of reverse osmosis concentrate water, filter-backwash water, and water softener regeneration water at a daily average flow-rate not to exceed 15,000 gallons per day via Outfall 001. The facility is located 115 Illinois Lane, Rhome, Wise County, Texas 76078.

MAGNA-FLOW INTERNATIONAL INC has applied for Texas Pollution Discharge Elimination System Sludge Permit No. WQ0005023000 (EPA I.D. No. TX0135003) to authorize the processing of municipal wastewater treatment plant sludge products from numerous facilities in the Houston area. The Mount Houston Municipal Utility District Sludge Processing Site blends sludge from numerous facilities then dewaters the combined sludge via a belt press prior to transporting to a TCEQ permitted landfill or permitted composting facility. This permit will not authorize a discharge of pollutants into waters in the State. The sludge processing facility will be located on 2265 Stuebner Park Lane, approximately 1.3 miles northwest of the intersection of State Highway 249 and Veterans Memorial Drive on the east bank of Halls Bayou in Houston, Harris County, Texas 77080.

CITY OF STEPHENVILLE has applied for a renewal of TPDES Permit No. WQ0010290001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 900 County Road 454, approximately 6,300 feet southeast of the intersection of U.S. Highway 377 and Farm-to-Market Road 914 in Erath County, Texas 76401.

CITY OF BEAUMONT has applied for a major amendment to TPDES Permit No. WQ0010501020 to authorize an interim phase with lower annual average flow and less stringent ammonia-nitrogen concentration-based effluent limits. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 46,000,000 gallons per day. The facility is located at 4900 Lafin Drive, Beaumont, approximately 3,000 feet south of the intersection of U.S. Highway 69 and State Highway 124 in Jefferson County, Texas 77705. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

TEXAS DEPARTMENT OF AGING AND DISABILITIES SERVICES has applied for a renewal of TPDES Permit No. WQ0010717001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located at 755 Honey Pond Lane, Mexia, approximately one mile west of the intersection of State Highway 171 and Farm-to-Market Road 2838, three miles northwest of the City of Mexia in Limestone County, Texas 76667.

COMMODORE COVE IMPROVEMENT DISTRICT has applied for a renewal of TPDES Permit No. WQ0010798001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 711 Anchor Drive, approximately two miles southeast of the intersection of County Road 792 and Farm-to-Market Road 523 in Brazoria County, Texas 77541.

CITY OF DEVERS has applied for a renewal of TPDES Permit No. WQ0011540001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located south of the City of Devers, on the south side of U.S. Highway 90 and adjacent to Chism Street in Liberty County, Texas 77538.

CITY OF IREDELL has applied for a renewal of TPDES Permit No. WQ0011565001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility is located approximately 700 feet east of the intersection of Kidd Street and Meridian Street, approximately 1000 feet south of the North Bosque River on the east side of the City of Iredell in Bosque County, Texas.

NUECES COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO 5 has applied for a renewal of TPDES Permit No. WQ0011583001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per

day. The facility is located at 5280 County Road 40, at the crossing of Banquete Creek and County Road 40, which is approximately 1.25 miles east of Farm-to-Market Road 666 and 0.5 mile south of State Highway 44 near Banquete in Nueces County, Texas 78339.

H & R REALTY INVESTMENTS LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0012680001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 3318 County Road 89, approximately 1 1/3 miles southwest of the intersection of Farm-to-Market Road 1128 and Farm-to-Market Road 518 in Brazoria County Texas.

BEACH ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0013563001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on the east side of Farm-to-Market Road 2031, approximately 2.8 miles south of the intersection of State Highway 60 and Farm-to-Market Road 2031 and approximately 2.8 miles south of the City of Matagorda in Matagorda County, Texas 77457.

MEBB ENTERPRISES LLC has applied for a renewal of TPDES Permit No. WQ0013727001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 9201 Havenway, approximately 0.5 mile north of the intersection of Fairbanks-North Houston Road and Breen Road following Fairbanks-North Houston Road and 975 feet west of Fairbanks-North Houston Road and 2,520 feet south of Taub Road in Harris County, Texas 77064.

M&D DEVELOPMENT LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015090001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility will be located at 16618 House Hahl Road, Cypress, in Harris County, Texas 77433.

CRAFT-TURNEY WATER SUPPLY CORPORATION 505 Southeast Loop 456, Jacksonville, Texas 75766, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015094001, to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 16,000 gallons per day. The facility is located at 2320 County Road 1905, Jacksonville, in Cherokee County, Texas 75766.

633-4S RANCH LTD AND STAHL LANE LTD have applied for a new permit, proposed TCEQ Permit No. WQ0015095001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day via a public access subsurface drip irrigation system on 59.91 acres. This permit will not authorize a discharge of pollutants into waters in the State. The domestic wastewater treatment facility and disposal site will be located approximately 6,000 feet north of the intersection of Smithson Valley Road and Farm-to-Market Road 1863, at the confluence of Lewis Creek and Dripping Springs Creek in Comal County, Texas 78163.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015099001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located approximately 3,300 feet southeast of the intersection of State Highway 163 and Ranch Road 2469 in Irion County, Texas 76930.

WESTSIDE WATER LLC a water and wastewater utility provider, has applied for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015101001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 85,000 gallons per day. The facility will be located approximately 4,850 feet west of the intersection of Clay Road and Pitts Road and 4,650 feet north of Clay Road in Waller County, Texas 77449.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

C & R WATER SUPPLY INC has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014285001 to authorize sludge processing from other of their facilities as well as processing grease-trap waste and septic tank pump outs. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located 2,000 feet east of Crockett-Martin Road and 3,000 feet south of State Highway 105 in Montgomery County, Texas 77304.

CITY OF MCALLEN has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010633003 to authorize facility upgrade from extended aeration activated sludge to conventional activated sludge and change in method of disinfection from chlorination with dechlorination to ultraviolet light. The facility is located at 4100 Idela, McAllen, Texas, approximately 1.5 miles west of Spur Highway 115 and approximately 2.5 miles southwest of the intersection of U. S. Highway 83 and Spur Highway 115 in the City of McAllen in Hidalgo County, Texas 78503.

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-201306154
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 31, 2013

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal numbers 13-047 and 13-057 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The proposed amendments update the Medicaid State Plan to include current information on agency names and organizational structure. Texas is required by the Centers for Medicare and Medicaid Services to provide state statutory citation, certification and description of the legal authority under which the Single State Agency, the Texas Health and Human Services Commission, administers the Medicaid State Plan. This does not represent a change from the current administration of the Medicaid Program.

State plan amendment transmittal number 13-047 also includes the temporary delegation of eligibility determinations to the federal Marketplace for certain groups from October 1, 2013, through December 31, 2013. With transmittal number 13-057, effective January 1, 2014, the federal Marketplace will assess eligibility, but will no longer make

eligibility determinations for certain groups. The proposed amendment has no anticipated fiscal impact.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 462-6282; by facsimile at (512) 730-7472; or by e-mail at ashley.fox@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201306156
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 31, 2013

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the Texas Home Living (TxHmL) waiver program, under the authority of §1915(c) of the Social Security Act. The TxHmL waiver program is currently approved for the five year period beginning March 1, 2012, and ending February 28, 2017. The proposed effective date for the amendment is September 1, 2013.

TxHmL provides essential community-based services and supports to individuals with an intellectual and developmental disability living in their own homes or with their families. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living in their own or family home and to enhance, rather than replace, existing informal or formal supports and resources. Services include day habilitation, respite, supported employment, prescription medications, financial management services, support consultation, adaptive aids, audiology, behavioral support, community support, dental, dietary, employment assistance, minor home modifications, occupational therapy, physical therapy, skilled nursing, and speech/language therapy.

This amendment request proposes to make the following changes:

1. Update the performance measures for consistency across waivers.

2. Update the process for HHSC's administrative oversight of the Department of Aging and Disability Services.

3. Eliminate the service category limits but keeps the one cost limit.

4. Update the service definitions and provider qualifications for supported employment and employment assistance.

5. Revise the provider qualifications for behavioral supports to allow a licensed clinical social worker and licensed professional counselor to provide the service and add a requirement that the provider complete DADS approved training.

6. Update the service backup plan language and process.

7. Update unduplicated count and the point-in-time limits.

8. Allow individuals with level of care I or VIII to transition to the TxHmL waiver from a nursing facility.

9. Update the interest lists process to reflect the bridge between waivers process, which allows an individual who has been denied waiver enrollment to be placed on one or more waiver interest lists using their original interest list request date.

HHSC is requesting the waiver amendment be approved for the period beginning September 1, 2013, through February 28, 2017. This amendment maintains cost neutrality for waiver years 2013 through 2017.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 462-6289, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201306157
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 31, 2013

♦ ♦ ♦

Department of State Health Services

Correction of Error

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopted amendments, repeals and new sections under 25 TAC Chapter 37, Subchapter D, concerning the Newborn Screening Program, in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9567). Amended §37.61 was adopted with changes and republished on page 9575. Due to an error in the agency's submission, subsection (a)(2) appeared twice in the rule text.

TRD-201306147

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Correction of Error

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (Department) adopted amendments to §§139.1, 139.2, 139.4, 139.32, 139.53, 139.56, and 139.57 and new §139.9 and §139.40, concerning the regulation of abortion facilities, in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9577). In the rulemaking preamble, extra language was inadvertently included in the paragraph that follows the heading "4. Comments Relating to ASC Construction and Physical Plant Rules". The paragraph begins on page 9586 and continues onto page 9587. The corrected paragraph reads as follows:

"Comment: Some commenters addressed specifically the minimum space and plant arrangement requirements in §135.52(d)(1)(G)(i), requiring 30 square feet per operating room to be set aside for a general storage room; §135.52(d)(3)(A), a requirement for a minimum clear floor area of 80 square feet in each examination room; §135.52(d)(9)(B)(i) - (ii), free space requirements for post-operative recovery suites and rooms, multi-bed and private; §135.52(d)(9)(E)(i), space requirements for extended observing room; §135.52(d)(10)(B)(i) - (ii), requirement for a minimum of one patient station per operating room and spatial requirements; §135.52(d)(13)(A), a requirement for surgical staff dressing rooms; §135.52(d)(15)(A), clear space minimums for operating rooms; §135.52(d)(15)(B)(iv) concerning scrub sinks and a viewing window; and the width requirement for doors and corridors, as well as that rule's requirement for swing type doors. Comment was made suggesting the elimination of §135.52(g)(5)(C)(iv) and Table 1 of §135.56(a) because there is no health or safety consideration for requiring a particular room temperature at a licensed abortion facility. Some commenters also objected to the application of off-street parking requirements contained in §135.52(b)(2). The commenters stated that these requirements would not improve patient care and hence are not medically necessary."

TRD-201306155

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Texas Department of Insurance

Company Licensing

Application to change the name of AUTOONE SELECT INSURANCE COMPANY to MAIDSTONE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Mineola, New York.

Application for admission to the State of Texas by SILVER OAK CASUALTY, INC., a foreign fire and casualty company. The home office is in DeRidder, Louisiana.

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-201306151
Norma Garcia
Chief Clerk
Texas Department of Insurance
Filed: December 31, 2013

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Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Amendment Request for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an amendment request for and a proposed agreement for import for disposal of low-level radioactive waste from:

Duke Energy-Brunswick Nuclear Plant (TLLRWDCC #1-0027-01)

8470 River Road, SE

Highway 87N

Southpoint, North Carolina 28465

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by January 15, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201306107
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: December 23, 2013

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Public Utility Commission of Texas

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 23, 2013, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §39.352.

Docket Title and Number: Application of Enertrade Electric, LLC for Retail Electric Provider Certificate, Docket Number 42116.

Applicant's requested service area by geography includes the entire area state of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than February 6, 2014. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42116.

TRD-201306148
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 30, 2013

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Request for Comments

The staff of the Public Utility Commission of Texas (commission) has established Project Number 42030, *Project to Evaluate Sharing of Customer Information with Third Parties for Customer Approved Services,* to gather information to assist staff in evaluating the Commission's rules regarding the sharing of customer information by Retail Electric Providers (REPs) and determining the need for a formal rulemaking project. Project Number 42030 is a companion project to Project Number 42029, *PUC Rulemaking Related to the Implementation of PURA Section 39.107(k)* pertaining to electric utilities and transmission and distribution utilities.

The commission requests that interested parties file comments to the following questions:

1. Regarding the sharing of customer specific information by a REP with an affiliate or a third-party entity for service(s) which are customer approved and used for the purpose of providing electric service to the customer:

(a) Should the commission amend its rules to require REPs to more clearly disclose to the customer that their personal information will be shared with an affiliate or a third-party entity? If so, what rules, including subsection(s) should be amended and what language should be amended to clearly advise the customer of the disclosure? If not, please explain why the rules should not be amended.

(b) Should the commission's rules be amended to clarify the verifiable authorization that REPs are required to obtain from a customer, written or otherwise, prior to sharing information with an affiliate or a third-party entity? If so, what rules, including subsection(s) should be amended and how? If not, please explain why the rules should not be amended.

(c) Should the commission amend its rules to allow a REP to refuse service to a customer based on the customer's failure to authorize sharing of customer information with an affiliate or a third-party entity? If so, what rules, including subsection(s) should be amended and how? If not, please explain why the rules should not be amended.

2. Regarding the sharing of customer information by a REP with an affiliate or a third-party entity for service(s) which are customer approved but not used for the purpose of providing electric service to the customer:

(a) Should the commission amend its rules to allow a REP to release proprietary customer information to an affiliate or a third-party entity without obtaining the customer's verifiable authorization? If so, what rules, including subsection(s) should be amended and how? If not, please explain why the rules should not be amended.

(b) Should the commission amend its rules to create additional requirements regarding the sharing of customer specific information with an affiliate or a third-party entity? If so, what rules, including subsection(s) should be amended and how? If not, please explain why the rules should not be amended.

(c) Should the commission amend its rules to require REPs to more clearly disclose to the customer that their personal information will be shared with an affiliate or a third-party entity? If so, what rules, including subsection(s) should be amended and what language should be amended to clearly advise the customer of the disclosure? If not, please explain why the rules should not be amended.

(d) Should the commission's rules be amended to clarify the verifiable authorization that REPs are required to obtain from a customer, written or otherwise, prior to sharing information with an affiliate or a third-party entity? If so, what rules, including subsection(s) should be amended and how? If not, please explain why the rules should not be amended.

(e) Should the commission amend its rules to allow a REP to refuse service to a customer based on the customer's failure to authorize sharing of customer information with an affiliate or a third-party entity? If so, what rules, including subsection(s) should be amended and how? If not, please explain why the rules should not be amended.

(f) Should the commission amend its rules to require a REP to provide the customer an opportunity to opt-out of the release of their information if the information is used for a purpose other than marketing products or services on behalf of an affiliate or a third-party entity? If so, what rules, including subsection(s) should be amended and how? If not, please explain why the rules should not be amended.

(g) Should the commission amend its rules to allow a REP to share customer specific information with an affiliate or a third-party entity only if the customer agrees to opt-in prior to sharing their information? If so, what rules, including subsection(s) should be amended and how? If not, please explain why the rules should not be amended.

3. Regarding the sharing of customer information by a REP with an affiliate or a third-party entity for services used for both the purpose of providing electricity and services not used for the purpose of providing electric service to the customer:

(a) Should the commission amend its rules to include the requirement for a REP to obtain the customer's or applicant's verifiable authorization prior to releasing customer information to an affiliate or third party entity? If so, what rules, including subsection(s) should be amended? If not, please explain why the rules should not be amended.

(b) Should the definition for "proprietary customer information" under P.U.C. SUBST. R. §25.5 and §25.272(c) be amended to include conditions and/or prohibitions regarding the use of customer information? If so, how should the definition be amended? If not, please explain why the definition should not be amended.

Written comments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Wednesday, January 29, 2014. Reply comments are to be filed by Wednesday, February 12, 2014. Sixteen copies of comments to the proposed rules are required to be filed pursuant to P.U.C. PROC. R. §22.71(c). All comments and reply comments should reference Project Number 42030. This notice is not a formal notice of proposed rulemaking; however, the parties' written comments and reply comments will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Questions concerning this notice should be referred to Jeffrey Wirth, Retail Market Analyst, Competitive Markets Division, (512) 936-7463. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201306094
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 20, 2013

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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.

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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