TEXAS REGISTER

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Makinzy Almand
10th Grade

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

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

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Open Meetings

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

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

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

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

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

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

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

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

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

THE 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-1183-GA

Requestor:

Ms. Ann Marie Lee

Henderson County Auditor

125 North Prairieville Street, Room 202

Athens, Texas 75751

Re: Whether a municipality may require voter approval to impose an ad valorem or sales tax (RQ-1183-GA)

Briefs requested by February 26, 2014

RQ-1184-GA

Requestor:

The Honorable Vince Ryan

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Distribution of equalization tax funds pursuant to repealed section 18.14 of the Education Code (RQ-1184-GA)

Briefs requested by March 3, 2014

RQ-1185-GA

Requestor:

The Honorable Robert F. Deuell

Chair, Committee on Economic Development

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a game proposed by the Lottery Commission through title 16, section 401.322 of the Administrative Code qualifies as a lottery under the Texas Constitution (RQ-1185-GA)

Briefs requested by March 3, 2014

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

TRD-201400680

Katherine Cary

General Counsel

Office of the Attorney General

Filed: February 12, 2014

♦ ♦ ♦

Opinions

Opinion No. GA-1041

Ms. Martha Galarza, CPA

Cameron County Auditor

1100 East Monroe

Brownsville, Texas 78523

Re: Whether a county may provide Internet-based local and long-distance telephone service to inmates in county jails

S U M M A R Y

No Texas statute or administrative rule expressly prohibits a county from offering voice over Internet Protocol services to inmates. The provision of those services must comply with the Commission on Jail Standards requirements for inmate telephone services, as well as any other applicable state and federal regulations.

Under Local Government Code section 132.007, if a county provides services through the Internet, it may only charge a fee for the service if the fee is designed to recover the costs directly and reasonably incurred in providing the service. Furthermore, the amount a county may charge for VOIP services to inmates is limited by the Commission on Jail Standards requirement that inmates be provided reasonable access to local and long-distance phone service and the Federal Communications Commission regulation capping interstate long-distance rates for prisoners. Any proceeds generated from an inmate telephone contract are county funds, and they may be used for any legitimate county purpose.

Opinion No. GA-1042

The Honorable Renee Ann Mueller

Washington County Attorney

100 East Main, Suite 200

Brenham, Texas 77833

Re: Calculating the minimum salary of a county court at law judge under Government Code section 25.0005 (RQ-1146-GA)

S U M M A R Y

In determining the minimum salary of a statutory county court judge under Government Code subsection 25.0005(a), the "total annual salary received by a district judge in the county" includes contributions and supplements paid by any county, including any county within a multi-county district in which the statutory county court judge does not serve.

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

TRD-201400655
Katherine Cary
General Counsel
Office of the Attorney General
Filed: February 11, 2014

♦ ♦ ♦

EMERGENCY RULES

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER E. ELECTION DAY PROCEDURES

1 TAC §81.71

The Office of the Secretary of State is renewing the effectiveness of the emergency adoption of the amendment to §81.71 for a 60-day period. The text of the amendment was originally published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7007).

Filed with the Office of the Secretary of State on February 3, 2014.

TRD-201400453
Wroe Jackson
General Counsel
Office of the Secretary of State
Original effective date: October 18, 2013
Expiration date: April 15, 2014
For further information, please call: (512) 463-5650

♦ ♦ ♦

SUBCHAPTER I. IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2002

1 TAC §§81.172 - 81.174, 81.176

The Office of the Secretary of State is renewing the effectiveness of the emergency repeal of §§81.172 - 81.174 and §81.176 for a 60-day period. The notice of the emergency repeal was originally published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7008).

Filed with the Office of the Secretary of State on February 3, 2014.

TRD-201400454
Wroe Jackson
General Counsel
Office of the Secretary of State
Original effective date: October 18, 2013
Expiration date: April 15, 2014
For further information, please call: (512) 463-5650

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1 TAC §§81.172 - 81.176

The Office of the Secretary of State is renewing the effectiveness of the emergency adoption of new §§81.172 - 81.176 for a 60-day period. The text of the new sections was originally published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7009).

Filed with the Office of the Secretary of State on February 3, 2014.

TRD-201400455
Wroe Jackson
General Counsel
Office of the Secretary of State
Original effective date: October 18, 2013
Expiration date: April 15, 2014
For further information, please call: (512) 463-5650

♦ ♦ ♦

Julia Meisner
10th Grade

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

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §§51.1, 51.3, 51.8, 51.9

The Texas Animal Health Commission (commission) proposes amendments to §51.1, concerning Definitions, §51.3, concerning Exceptions, §51.8, concerning Cattle, and §51.9, concerning Exotic Livestock and Fowl, in Chapter 51, which is entitled "Entry Requirements".

The purpose of the amendment to §51.8 is to put in place a recordation requirement for cattle of Mexican origin. For cattle that originate from Mexico, that have resided in Mexico, or that are "M" branded indicating they are of Mexican origin the proposal will require an accredited veterinarian to include a statement on any certificate, form, test record, or report issued that the cattle entering Texas are of Mexican origin. The proposed amendment will enhance the transparency of the entry of Mexican origin cattle into the state, enhance compliance with Texas entry requirements, enhance assurance that any surveillance testing required for entry is complied with, and also enhance general recordkeeping related to cattle originating from Mexico.

Mexican origin exhibition animals are considered the highest risk animal for the introduction of Bovine Tuberculosis (TB) into the state on an individual basis, and Mexican origin feeder cattle continue to disclose TB infection during U.S. slaughter inspections. Texas entry rules require Mexican origin exhibition animals entering the state from Mexico to be retested by a Texas veterinarian 60 days after arrival, and Mexican origin exhibition animals entering from another state to obtain an entry permit and to have proof of a negative TB test within the last 12 months. This amendment is also being proposed in §43.2, concerning General Requirements, in Chapter 43, which is entitled "Tuberculosis".

The purpose of the amendments to §§51.1, 51.3, and 51.9 is to remove the use of "waybill" and replace it with "owner-shipper statement" which is an accepted form of documentation for interstate movement. USDA has amended their regulations and established minimum national official identification and documentation requirements for the traceability of livestock moving interstate. These regulations specify approved forms of official documents which allow livestock covered to be moved interstate, as agreed upon by animal health officials in the shipping and receiving States or Tribes. The federal rule allows States or Tribes to issue alternative movement documentation in lieu of ICVIs when agreed to by the States or Tribes involved in the interstate movement. An owner-shipper statement is a statement signed by the owner or shipper of the livestock being moved stating the locations from which the animals are moved interstate; the destination of the animals; the number of the animals covered by the statement; the species of animal covered; the name and address of the shipper; and the identification of each animal are to be included on each document.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rules have an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules is in effect, the public benefit anticipated as a result of enforcing the rules will be to protect the livestock industry, specifically cattle, by having enhanced surveillance and record keeping for cattle originating from Mexico which are known to be an at risk population for exposure to TB and to conform our entry requirements to the standards accepted and utilized by other states and USDA.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by email at "comments@tahc.state.tx.us".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapters 161 and 162 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

H.B. 2311 was passed during the 83rd Texas Legislative Session and amends §161.056. Section 161.056(a) authorizes the commission, in order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, to develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the commission to by a two-thirds vote adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

Pursuant to §162.003, entitled "Testing", the commission by rule shall prescribe the manner, method, and system of testing cattle for tuberculosis under a cooperative program.

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

§51.1. Definitions.

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

(1) Accredited veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control and eradication programs pursuant to Title 9 of the Code of Federal Regulations, Parts 160 and 161.

(2) Animal--Includes livestock, exotic livestock, domestic fowl, and exotic fowl.

(3) Assembly--Boarding stables, boarding pastures, breeding farms, parades, rodeos, roping events, trail rides, and training stables.

(4) Certificate of veterinary inspection--A document signed by an accredited veterinarian that shows the livestock, poultry, exotic livestock, or exotic fowl listed were inspected and subjected to tests, immunizations, and treatment as required by the commission. Certificates are valid for 45 days for equine and 30 days for all other species.

(5) Cervidae--Deer, elk, moose, caribou and related species in the Cervidae family, raised under confinement or agricultural conditions for the production of meat or other agricultural products or for sport or exhibition, and free-ranging cervidae when they are captured for any purpose.

(6) Commission--The Texas Animal Health Commission.

(7) Commuter Flock--A National Poultry Improvement Plan (pullorum-typhoid clean or equivalent) flock in good standing with operations in participating states that are under single ownership or management control whose normal operations require interstate movement of hatching eggs and/or baby poultry without change of ownership for purposes of hatching, feeding, rearing or breeding. The owner or representative of the company owning the flock and chief animal health officials of participating states of origin and destination must have entered into a signed "Commuter Poultry Flock Agreement."

(8) Commuter Cattle Herd--A herd of cattle located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(9) Commuter Swine Herd--A swine herd located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of swine interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented

by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(10) Equine interstate passport--A document signed by an accredited veterinarian that shows the equine listed were inspected, subjected to tests, immunizations and treatment as required by the issuing state animal health agency, and contains a description of the equine listed. The passport is valid for six months when accompanied by proof of an official negative EIA test within the previous six months. Permanent individual animal identification in the form of a lip tattoo, brand or electronic implant is required for all equine approved for the equine interstate passport. This document is valid for equine entering from any state that has entered into a written agreement to reciprocate with Texas.

(11) Equine identification card--A document signed by the owner and a brand inspector or authorized state animal regulatory agency representative that lists the animal's name and description and indicates the location of all identifying marks or brands. This document is valid for equine entering from any state which has entered into a written agreement to reciprocate with Texas.

(12) Exotic livestock--Grass-eating [~~grass-eating~~] or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.

(13) Exotic fowl--Any [~~any~~] avian species that is not indigenous to this state. The term includes ratites.

~~[(14) Livestock--cattle, horses, mules, asses, sheep, goats, and hogs.]~~

(14) [~~(15)~~] Interstate show--A show, fair, or exhibition that permits livestock and poultry from other states to enter for show or exhibition and be held in common facilities with Texas origin livestock and poultry of the same species.

(15) Livestock--Cattle, horses, mules, asses, sheep, goats, and hogs.

(16) Owner-shipper statement--A statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of the animals covered by the statement; the species of the animal covered; the name and address of the shipper; and the identification of each animal as required by the commission or the United States Department of Agriculture (USDA).

(17) [~~(16)~~] Permit--A document recognized by the commission with specified conditions relative to movement, testing and vaccinating of animals [~~animal~~] which is required to accompany the animals [~~animal~~] entering, leaving or moving within the State of Texas.

(A) "E" permit--Premovement authorization for entry of animals [~~animal~~] into the state by the commission [~~Texas Animal Health Commission~~]. The "E" permit [~~PERMIT~~] states the conditions under which movement may be made, and will provide any appropriate restrictions and test requirements after arrival. The permit is valid for 15 days.

(B) VS 1-27 (VS Form 1-27)--A premovement authorization for movement of animals to restricted designations.

(18) [~~(17)~~] ["]Radio Frequency Identification Device (RFID)["]--Official individual animal identification with an identification device that utilizes radio frequency technology. The RFID devices include ear tags, boluses, implants (injected), and tag attachments (transponders that work in concert with ear tags).

(19) [~~(18)~~] Sponsor--An owner or person in charge of an exhibition, show or fair.

~~[(19) Waybill--A document used for livestock moving directly to a USDA specifically approved livestock market, quarantined feedlot, or slaughter plant or a document used for poultry moving directly to a federally inspected slaughter plant. The waybill contains the following information:]~~

~~[(A) name and address of owner or shipper;]~~

~~[(B) point of origin;]~~

~~[(C) number and type of livestock and/or poultry;]~~

~~[(D) purpose of movement; and]~~

~~[(E) destination.]~~

§51.3. Exceptions.

(a) Exceptions for a certificate of veterinary inspection and entry permit.

(1) Cattle 18 months of age and over delivered directly from the farm of origin to slaughter;

(2) Beef breed cattle 18 months of age and over entering from other than a farm-of-origin may be moved to slaughter, or to an approved feedyard when accompanied by a VS 1-27 Form on which each animal is individually identified. Brucellosis test data shall be written on the VS 1-27 Form which must include the test date and results;

(3) Beef breed cattle 18 months of age and over delivered directly to a USDA specifically approved livestock market by the owner or consigned there and accompanied by an owner-shipper statement [~~a waybill~~];

(4) Beef breed steers, spayed heifers, beef breed cattle under 18 months of age, delivered to slaughter and accompanied by an owner-shipper statement [~~a waybill~~] or to a livestock market by the owner or consigned there and accompanied by an owner-shipper statement [~~a waybill~~];

(5) Beef breed steers, spayed heifers and beef breed cattle under 18 months of age delivered to a feedlot for feeding for slaughter by the owner or consigned there and accompanied by an owner-shipper statement [~~a waybill~~];

(6) Swine and poultry delivered to slaughter by the owner or consigned there and accompanied by an owner-shipper statement [~~a waybill~~];

(7) Baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6, or have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the commission [~~Texas Animal Health Commission~~];

(8) Beef breed steers, spayed heifers, and beef breed cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection;

(9) Feral Swine being shipped directly to slaughter. Feral swine shall be shipped in a sealed vehicle accompanied by a 1-27 permit with the seal number noted on the permit also providing the number of head on the permit;

(10) Equine when accompanied by a valid equine interstate passport or equine identification card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months; and

(11) Swine consigned from an out-of-state premise of origin and originate from a Validated and Qualified Herd to a Texas livestock market specifically approved under Title 9, Code of Federal Regulations §71.20.

(b) Exceptions for a certificate of veterinary inspection. Equine may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the commission [~~Texas Animal Health Commission~~]. Following release by the veterinarian, equidae must be returned immediately to the state of origin by the most direct route. Equine entering Texas for sale at a livestock market, may first be consigned directly to a veterinary hospital or clinic for issuance of the certificate of veterinary inspection, when accompanied by a prior entry permit issued by the commission [~~Texas Animal Health Commission~~].

(c) Exceptions for an entry permit.

(1) Swine that originate from an approved Swine Commuter Herd or that originate from a Pseudorabies Stage IV or V state or area and Brucellosis free state or area and are not vaccinated for pseudorabies;

(2) Poultry that originate from an approved Poultry Commuter Flock;

(3) Cattle that originate from an approved Cattle Commuter Herd;

(4) Equine accompanied by a valid equine interstate passport or equine ID card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months;

(5) Sheep and goats consigned from out-of-state and originating from Consistent States (having an active scrapie surveillance and control program); and

(6) Exotic fowl from out of state, except ratites.

§51.8. Cattle.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement, and Change of Ownership). Cattle which are parturient, postparturient, or 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers being shipped to a feedyard prior to slaughter, shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

(b) Tuberculosis requirements.

(1) All beef cattle, bison and sexually neutered dairy cattle originating from a federally recognized accredited tuberculosis free state, or zone, as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(2) All beef cattle, bison and sexually neutered dairy cattle originating from a state or zone with anything less than a tuberculosis free state status and having an identified wildlife reservoir for tuberculosis or that have never been declared free from tuberculosis shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, prior to entry with results of this test recorded on the certificate of veterinary inspection. All beef cattle, bison and sexually neutered dairy cattle originating from any other states or zones with anything less than free from tuberculosis shall be accompanied by a certificate of veterinary inspection.

(3) All dairy breed animals, including steers and spayed heifers, shall be officially identified prior to entry into the state. All sexually intact dairy cattle, that are two months of age or older may enter provided that they are officially identified, and are accompanied by a certificate of veterinary inspection stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than two months of age must obtain an entry permit from the Commission, as provided in §51.2(a) of this chapter (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of two months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. Dairy cattle delivered to an approved feedlot for feeding for slaughter by the owner or consigned there and accompanied by certificate of veterinary inspection with an entry permit issued by the commission are exempt from testing unless from a restricted herd. In addition, all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or zones with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) All "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall obtain a permit, prior to entry into the state, in accordance with §51.2(a) of this chapter and be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within 12 months prior to entry into the state.

(5) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status, would enter by meeting the requirements for a state with similar status as stated in paragraphs (1), (2) and (3) of this subsection.

(6) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(A) To be held for purposes other than for immediate slaughter or feeding for slaughter in an approved feedyard or approved pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the commission [~~TAHC~~] or APHIS/VS.

(B) When destined for feeding for slaughter in an approved feedyard, cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the approved feedyard only in sealed trucks; accompanied with a VS 1-27 permit issued by the commission [~~TAHC~~] or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(7) Cattle originating from Mexico.

(A) All sexually intact cattle shall meet the requirements provided for in paragraph (6) of this subsection.

(B) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation of cattle from Mexico. In addition to the federal requirements, steers

and spayed heifers must be moved under permit to an approved pasture, approved feedlot, or approved pens.

(C) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in paragraph (6)(A) of this subsection and the applicable requirement listed in clauses (i) and (ii) of this subparagraph:

(i) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(ii) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(I) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian;

(II) be moved by permit to a premise of destination and remain under Hold[-]Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense. The cattle may be allowed movement to and from events/activities in which commingling with other cattle will not occur and with specific permission by the TAHC until confirmation of the negative post entry retest for tuberculosis can be conducted; and

(III) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(D) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(E) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(F) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(G) Any certificate, form, record, report, or chart issued by an accredited veterinarian for cattle that originate from Mexico, have resided in Mexico or are "M" branded shall include the statement, "the cattle represented on this document are of Mexican origin."

(c) Trichomoniasis Requirements:

(1) All breeding bulls entering the state more than 12 months of age shall be tested negative for Trichomoniasis with an official Polymerase Chain Reaction (PCR) test within 60 days prior to entry. Trichomoniasis samples pooled at the laboratory may qualify as the official test if no more than five total samples are pooled. Breeding bulls shall be individually identified by an official identification device and be accompanied with a certificate of veterinary inspection, indicating the age. The official identification number shall be written on the certificate of veterinary inspection. Official identification includes: Official Alpha-numeric USDA metal eartags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands, or official state of origin Trichomoniasis tags. Bulls older than 12 months of age shall be tested one time by an official PCR test prior to entry into Texas. Breeding bulls, entering Texas as a recent resident, enrolled at a CSS certified artificial insemination facility where the bull(s) was isolated from female cattle and accompanied by documents with an original signature by the veterinarian or manager of the facility, are exempt from the test requirements. Untested bulls from out of state can enter Texas directly to a feedyard that has executed a Trichomoniasis Certified Facility Agreement, and are on a VS 1-27 permit and accompanied with an entry permit number issued by the Commission. Texas bulls participating in out of state "bull station trials" may return to their Texas farm of origin without a Trichomoniasis test if maintained in a controlled environment out of state without any contact with female cattle, which needs to be indicated on the health certificate issued for the bull(s).

(2) All bulls entering Texas for the purpose of participating at fairs, shows, exhibitions and/or rodeos, which are 12 months of age or older and capable of breeding may enter the state without testing for Trichomoniasis, but shall obtain a permit, in accordance with §51.2(a) of this chapter, prior to entry. Bulls permitted for entry into the State of Texas under the provisions of this subsection shall not be commingled with female cattle or used for breeding. Bulls that stay in the state more than 60 days must be tested negative for Trichomoniasis with an official PCR test.

(3) All breeding bulls entering from Mexico or from any country that does not have an established Trichomoniasis testing program, shall enter on and be moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination in Texas and remain under Hold Order until tested negative for Trichomoniasis with not less than three official culture tests conducted not less than seven days apart, or an official PCR test, within 30 days after entry into the state. All bulls shall be maintained separate from female cattle until tested negative for Trichomoniasis. The Hold Order shall not be released until all other post entry disease testing requirements have been completed. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. The identification shall be recorded on the test documents.

(4) All breeding bulls entering from Canada or from any country that has an established Trichomoniasis testing program but for which the animals are not tested to meet the certification and testing requirements of paragraph (1) of this subsection, shall enter on and be moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination in Texas and remain under Hold Order until tested negative for Trichomoniasis with not less than three official culture tests conducted not less than seven days apart, or an official PCR test within 30 days of entry into the state. All bulls shall be maintained separate from female cattle until tested negative for Trichomoniasis. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. The identification shall be recorded on the test documents.

§51.9. Exotic Livestock and Fowl.

(a) Exotic Livestock. The following named species entering the State of Texas shall meet the specific requirements in paragraphs (1) - (4) of this subsection:

(1) Exotic cervidae--Originates from a Certified Free Herd or negative to a brucellosis test within 30 days prior to entry. Tuberculosis test requirements see §51.10(c) [~~§51.10(d)~~] of this chapter (relating to [~~Entry Requirements for~~] Cervidae). Susceptible species (i.e. elk) must meet the Chronic Wasting Disease requirements, see §51.10(a) and (b) [~~§51.10(a) - (c)~~] of this chapter [~~(relating to Entry Requirements for Cervidae)~~].

(2) Exotic Bovidae--Negative to a brucellosis test within 30 days prior to entry. Negative to a tuberculosis test within 60 days prior to entry.

(3) Camelidae--The executive director of the commission may require a brucellosis and tuberculosis test of any camelidae, from out of state, when there is epidemiological risk of exposure or infection to either disease. Entry may be denied based on the results of these tests or inspections.

(4) Exotic Swine--Tested negative to pseudorabies and brucellosis within 30 days prior to entry or originate from a brucellosis validated free and psuedorabies qualified free herd, in addition to an entry permit and a certificate of veterinary inspection.

(b) Exotic Fowl. Ratites entering the State of Texas shall meet the specific requirements listed in paragraphs (1) - (4) of this subsection:

(1) Each bird will be individually identified with either an RFID device, a permanently attached tag or an implanted electronic device (microchip). The identification will be shown on the certificate of veterinary inspection along with the location and name brand of the implanted electronic device. If an animal has more than one implanted microchip, then the location, microchip number, and name brand of each will be documented on the certificate of veterinary inspection. Birds or hatching eggs must originate from flocks that show no evidence of infectious disease and have had no history of Avian Influenza in the past six months. In addition, each bird must be tested and found to be serologically negative for Avian Influenza and Salmonella pullorum-typhoid from a sample collected within 30 days of shipment. A bird serologically positive for Avian Influenza may be admitted if a virus isolation test via cloacal [~~cloaceal~~] swab conducted within 30 days of shipment is negative for Avian Influenza. The testing is to be performed in a state approved diagnostic laboratory in the state of origin. Serologically positive birds admitted under this section must be held under quarantine on the premise of destination in Texas for virus isolation retest.

(2) Ratites destined for slaughter only may enter Texas accompanied by an entry permit and either an owner-shipper statement [~~a waybill~~] or health certificate without meeting the requirements of paragraph (1) of this subsection.

(3) All ratites originating within Texas and changing ownership or being offered for public sale or sold by private treaty within the state must be individually identified with an implanted electronic device, a tag or band.

(4) All identification must be maintained in the sale records for consignments to a public sale or in the records of the buyer and seller when the animals are sold at private treaty. These records must be maintained for a period of three years.

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

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400595
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 719-0724

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TITLE 22. EXAMINING BOARDS

PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER C. DEFINITIONS OF TERMS

22 TAC §661.31

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.31, concerning Definitions.

Amendments to §661.31 clarify the definition of "firm" and "offer of surveying services" to promote uniformity of application and interpretation of defined terms.

The Board proposes an amendment to §661.31(7) to clarify the definition of "firm" by eliminating "sole proprietor" and adding entities "conducting business under an assumed name." The Board believes this clarification will remove the unintended consequence of sole proprietors having to register as firms with the Board. The Board also proposes an amendment to §661.31(8) which clarifies that an advertisement offering surveying services contains the firm's contact information.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended rule.

Mr. Estrada has determine that for each year of the first five-year period the amended rule is in effect there will be no local employment impact as a result of adoption of the amended rule.

Mr. Estrada has determined that for each year of the first five years the amended rule is in effect, the anticipated public benefit will be that the Board's rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the 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.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at natalie.jackson@txls.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1071.151.

No other sections are affected by this proposal.

§661.31. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Professional Land Surveying Practices Act and Amendment.

(2) Board seal--The seal of the Board shall be as authorized by the Board.

(3) Certificate of registration and certificate of licensure--A license to practice professional land surveying in Texas. A certificate of licensure is a license to practice state land surveying in Texas.

(4) Construction estimate--As ["~~construction estimate",~~ ~~as~~] used in §1071.004 of the Act, means a depiction of a possible easement route for planning purposes.

(5) Contested case--A proceeding, including, but not restricted to, ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(6) Direct supervision--To be able to recognize and respond to any problem that may arise; give instruction for the solution to a problem; have knowledge of the research and the collection, of relevant data; the placement of all monuments; the preparation and delivery of all Documents.

(7) Firm--Any [~~A~~] business entity including but not limited to a partnership, limited partnership, [~~sole proprietor,~~] association, corporation, limited liability company, limited liability partnership and/or other entity [~~for~~] conducting business under an assumed name.

(8) Offer of surveying services--Any form of advertisement which contains the firm contact information and offers [~~for~~] land surveying services, including but not limited to verbal offer, hard copy, electronic web site, telephone listing, written proposal or other marketing materials.

(9) Renewal--The payment of a fee annually as set by the Board within the limits of the law for the certificate of registration or the certificate of licensure.

(10) Report--Survey drawing, written description, and/or separate narrative depicting the results of a land survey performed and conducted pursuant to this Act.

(11) Rule--Any Board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the Board and not affecting the private rights or procedures.

(12) Seal--An embossed or stamped design authorized by the Board that authenticates, confirms, or attests that a person is authorized to offer and practice land surveying services to the public in the State of Texas and has legal consequence when applied.

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 February 10, 2014.

TRD-201400639
Marcelino (Tony) Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 239-5263

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SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.45, §661.52

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.45, concerning Examinations; and §661.52, concerning Inactive Status.

Amendments to §661.45(c) allows the Board to treat the state exam for registered professional land surveyors as one complete exam rather than a compilation of parts.

Amendments to §661.52 clarifies the procedure for an applicant seeking inactive status by allowing the Executive Director to use his discretion in approving the applicants request or bringing the matter to the Board's attention.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended rules.

Mr. Estrada has determine that for each year of the first five-year period the amended rules are in effect there will be no local employment impact as a result of adoption of the amended rules.

Mr. Estrada has determined that for each year of the first five years the amended rules are in effect, the anticipated public benefit will be that the that the Board's rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the 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.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at natalie.jackson@txls.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1071.101 and §1071.151.

No other sections are affected by this proposal.

§661.45. Examinations.

(a) Registered professional land surveyor examinations shall be written and so designed to aid the Board in determining the applicant's knowledge of land surveying, mathematics, land surveying laws, and his/her general fitness to practice the profession as outlined in the Professional Land Surveying Practices Act. The applicant will be notified at least 10 days in advance of the date, time, duration and place of the examination. If an applicant fails to appear for two successive ex-

aminations, the applicant's file will be closed and will not be reopened without the filing of a new application and fee.

(b) Calculators will be permitted to be used during any examination. Only Board approved calculators will be permitted for use during examinations. No communication/imaging device of any type will be permitted, including but not limited to pagers and cellular phones. Devices or materials that might compromise the security of the examination or the examination process are not permitted in the examination room.

(c) An applicant that fails to make a passing grade on any portion of the examination will be required to repeat the entire examination. [~~An applicant repeating the examination will be required to repeat only those portions of the examination on which the applicant made less than a passing grade.~~]

(d) Licensed state land surveyors' examinations shall be written and so designed to test the applicant's knowledge of the history, files, and functions of the General Land Office, survey construction, legal aspects pertaining to state interest in vacancies, excesses, and unpatented lands, and familiarity with other state interests in surface and subsurface rights as covered by existing law.

(e) The licensed state land surveyor examination will be in two four-hour sections and each part graded independently. If an applicant fails either part, that applicant will be required to file an updated application with fee and repeat the entire examination.

(f) The contents of all examination materials are confidential. Any registrant and/or applicant who take an action with the intent to compromise the confidentiality of the examination is subject to disciplinary sanction, administrative penalties, or both. Each candidate will be required to sign a statement that they will neither copy nor divulge any examination problem or solution, and that any violation thereof will be sufficient grounds for invalidating the candidate's examination. In assessing an appropriate penalty or sanction, the Board may do any one or more of the following:

(1) Impose the penalties and sanctions set out in the Act;

(2) Disqualify the applicant from taking future examinations for a period of three years;

(3) Disqualify the applicant from taking future examinations until the applicant successfully completes a Board-approved study of professional ethics;

(4) Disqualify the applicant from further consideration for certification or registration;

(5) Invalidate the candidate's examination.

(g) Examination candidates who have been called into active U.S. military duty or who are re-assigned military personnel and will not be available to sit for an examination may request the examination cycle be postponed and any paid examination fees encumbered toward a future examination date. Such candidates shall submit adequate documentation, including copies of orders, and a request to postpone the examination to the Board. The candidate shall notify the Board of their availability to resume the examination cycle within 60 days of release from active duty or when they are deployed to a location that will proctor the examination.

(h) Beginning January 1, 2011, any applicant who is unsuccessful in three attempts to pass any part of a SIT or RPLS examination shall not have an application approved for a subsequent taking of the same examination for a period of one year from the date of notice of failure of the third exam. Applications submitted subsequent to the one year waiting period shall include documented evidence satisfactory to the Board that the applicant has acquired additional education and experience indicative that the applicant would better be able to pass a subsequent examination. This rule applies to all SIT and RPLS examinations administered by the Board, both past and future.

§661.52. Inactive Status.

(a) A Surveyor whose registration is in good standing may apply for Inactive Surveyor registration status on a form prescribed by the Board.

(b) An Inactive Surveyor may not practice professional land surveying. If an Inactive Surveyor engages in the practice of professional land surveying, the Inactive Surveyor's registration may be suspended or revoked and he/she may be fined as allowed by the Professional Land Surveying Practices Act.

(c) An Inactive Surveyor shall not use their seal during any period that the registration is Inactive.

(d) An Inactive Surveyor shall pay an annual fee as prescribed by the Board.

(e) In order to return the registration to active status, an Inactive Surveyor who has been Inactive must meet the following requirements:

(1) The Surveyor must apply by completing and submitting an application [~~on a~~] form prescribed by the Board. [~~The Board will review the form. After receipt of a complete application, the Board will make a decision on the application at its next scheduled meeting.~~]

(2) The Surveyor must pay the full renewal fee as prescribed by the Board.

(3) The Surveyor must fulfill the continuing professional educational requirement as specified in the Act for the previous year.

(4) Once the application form, fee, and proof of continuing professional education have been received by the Board Office, the Executive Director may approve and the registration will be Active. At the discretion of the Executive Director, he/she may refer the application to the Board for consideration.

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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Marcelino (Tony) Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 239-5263

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 56. FAMILY PLANNING

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§56.1 - 56.8,

56.10 - 56.14 and 56.17 - 56.19, the repeal of §56.9 and §56.16, and new §56.9, concerning family planning services.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 56.1 - 56.19 have been reviewed, and the department has determined that reasons for adopting §§56.1 - 56.8, 56.10 - 56.15 and 56.17 - 56.19 continue to exist because rules on this subject are needed. The department also has determined that §56.9 and §56.16 are no longer needed and should be repealed. However, the department has determined to replace §56.9 with a new rule titled Abuse Reporting.

The Family Planning Program provides statewide family planning services to low-income women and men who do not have other sources of payment for services. The target population is women and men of reproductive age who are at or below 250% of the Federal Poverty Level. Family planning services include preventive health, medical, counseling, and educational services. Additional services may include technical assistance and training for providers, information, and education activities for the public and providers.

The purpose of the amendments, new rule, and repeals is to align the rules with Texas law as a result of the loss of Title X funds and to align abuse reporting and client consent guidelines and requirements with department policy. The amendments replace references to specific funding sources, such as Title V, X, and XX, with general program references (i.e., family planning program or family planning services). Amendments for genetics services will clarify Medicaid requirements.

SECTION-BY-SECTION SUMMARY

Amendments to §§56.1, 56.6, 56.11, and 56.12 replace the terms "contractor(s)" with state "provider(s)."

Amendments to §56.1 and §56.4 replace references to the specific funding sources such as "Title V, X, and XX" with references to "family planning program" or "family planning services."

Amendments to §§56.1, 56.5, and 56.6 rename section titles to "Introduction," "Contraceptive Methods," and "Prohibition of Abortion" respectively.

The amendment to §56.2 removes statutory definitions for specific title funding sources, including Title V, X, and Title XX, and the definition for "contractor."

The amendment to §56.3 provides increased clarity concerning the purpose of the family planning program.

The amendment to §56.5 allows providers flexibility to provide contraceptive services.

An amendment to §56.6 clarifies the section's sentence structure to emphasize that abortion is not considered a method of family planning, and no state funds appropriated to the department shall be used to pay the direct or indirect costs of abortion procedures provided by providers.

The amendment to §56.7 improves syntax and increases rule clarity.

An amendment to §56.8 adds the word "department" to "providers" to increase rule accuracy.

Section 56.9 will be repealed because the time limit for providing family planning assistance to Medicaid clients in the current rule is not based on a Medicaid requirement.

New §56.9 addresses changes in policy and reporting requirements concerning child abuse, human trafficking, and intimate partner violence.

The amendments to §56.10 clarify the intent and the wording of the section to emphasize that clients have the right to choose family planning methods and sources of services without coercion to accept services.

Amendments to §56.12 define eligibility for family planning services in terms of the department's requirements, and re-emphasize that providers may not deny family planning services to eligible clients because of inability to pay.

Amendments to §56.13 increase clarity concerning consent by minors for family planning services and adds reference information concerning the department's Family Planning Policy Manual.

Section 56.14 clarifies that adolescents should be offered services as soon as possible, rather than within a specific time period. Additionally, the amendment includes language concerning parental consent and confidentiality for adolescents and removes redundant language concerning consent.

Section 56.16 is repealed because the department is no longer a Title X grantee and the need for Title X Informational and Educational Committees no longer exists.

The amendments to §56.17 no longer require that the genetic services agency provider's records comply with the department's records requirements and that the genetic services agency provider must arrange for full medical referral services. Additionally, the amendment deletes approval to conduct selected laboratory tests at regular clinical laboratories even for those laboratories that demonstrate the ability to perform the tests.

The amendment to §56.18 replaces "amniocentesis" as a genetic service with "prenatal genetic diagnostic services" to meet Medicaid requirements.

An amendment to §56.19 requires that for the Title XIX Family Planning Genetics Program, genetic services for conditions that do not have serious psychosocial or medical implications for the client are not allowed.

FISCAL NOTE

David Auzenne, MPH, Unit Manager, Preventive and Primary Care Unit, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of administering the sections as proposed.

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Mr. Auzenne has determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses that are providers of family planning and family planning genetic services will be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is no anticipated economic cost to persons required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Auzenne has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of administering the sections will be continued access to quality reproductive health care to women and men to promote positive birth outcomes and healthy families.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments, repeals, and new rule do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Imelda Garcia, Community Health Services Section, Department of State Health Services, Mail Code 1923, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 776-2009, or email ImeldaM.Garcia@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§56.1 - 56.14, 56.17 - 56.19

STATUTORY AUTHORITY

The amendments and new rule are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The amendments and new rule affect Government Code, Chapter 531, and Health and Safety Code, Chapter 1001.

§56.1. Introduction [~~Applicability of Family Planning Requirements~~].

The requirements in this chapter [~~each section~~] apply to the department's Family Planning Program [~~Titles V, X, XIX (Medicaid), and XX family planning programs~~] unless otherwise specified within the section. Department Family Planning providers [~~planning contractors~~] are also required to observe all guidelines and operating procedures outlined in the most recent Family Planning Policy Manual, as required by their contracts. In addition to the requirements set out in this chapter [~~Chapter 56~~], Title XIX (Medicaid) providers must comply with the terms and conditions of the Provider Agreement signed by all providers as a condition of participation in the Texas Medical Assistance Program.

§56.2. Definitions.

The following words and terms, when used in this chapter [~~subchapter~~], shall have the following meanings.

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

[~~(4) Contractor--Any entity that contracts with the Department of State Health Services to provide Title V, X, and/or XX family planning services.~~]

(4) [~~(5)~~] Department--The Department of State Health Services.

(5) [~~(6)~~] Family planning services may include:

(A) health history and physical;

(B) counseling and education;

(C) laboratory testing;

(D) provision of a contraceptive method; and

(E) referrals for additional services as needed.

(6) [~~(7)~~] Intended pregnancy--Pregnancy a woman reports as desired at the time of conception.

(7) [~~(8)~~] Medicaid--Title XIX of the Social Security Act.

(8) [~~(9)~~] Provider--Any entity that receives department or Title XIX [~~Titles V, X, XIX, or XX~~] funding to provide family planning services.

(9) [~~(10)~~] Region--Any of the public health service regions established by the Department of State Health Services.

[~~(11) Title V family planning program--Family planning services funded by grants under the Maternal and Child Health Act, 42 United States Code §701 *et seq.*~~]

[~~(12) Title X family planning program--Family planning services funded by grants under the Public Health Service Act, 42 United States Code §300 *et seq.*~~]

(10) [~~(13)~~] Title XIX family planning program--Family planning services provided under Title XIX (Medicaid) of the Social Security Act, 42 United States Code §1396 *et seq.*

[~~(14) Title XX family planning program--Family planning services funded by grants under the Social Services Block Grant, 42 United States Code §1397 *et seq.*~~]

§56.3. Purposes.

The purposes of family planning services are:

(1) (No change.)

(2) to positively affect [~~positively~~] the outcome of future pregnancies;

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

§56.4. Maximum Rates and Specific Codes.

For payment of purchased counseling, educational, medical, and sterilization department family planning services [~~funded by grants under~~

~~Titles V, X, and XX,~~] maximum rates are established by the department according to specific diagnosis and procedure codes. The commission [~~Texas Health and Human Services Commission~~] sets fees, charges, and rates for family planning services provided under Title XIX (Medicaid).

§56.5. Contraceptive [~~Range of~~] Methods.

A broad range of FDA-approved methods of contraception must be made available to the client, either directly or by referral to another provider of contraceptive services. All brands of the different contraceptive methods need not be made available; however, [~~but~~] each major contraceptive category must be made available.

§56.6. Prohibition of Abortion [~~Statement~~].

Abortion is not considered a method of family planning, and no state funds appropriated to the department shall be used to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of abortion procedures provided by department providers [~~contractors~~].

§56.7. Requirements for Reimbursement of Family Planning Services.

The commission and the department shall reimburse providers for services [~~provided~~] in compliance with program standards, policies and procedures, and contract requirements unless payment is prohibited by law.

§56.8. Records Retention.

Department providers [~~Providers~~] shall maintain for the time period specified by the department all records pertaining to client services, contracts, and payments. Title XIX (Medicaid) record retention requirements are found in 1 Texas Administrative Code[~~,~~] §354.1004 (relating to Retention of Records). All records relating to services must be accessible for examination at any reasonable time to representatives of the commission and/or the department and as required by law.

§56.9. Abuse Reporting.

Texas Family Code, Chapter 261, requires child abuse reporting.

(1) Providers are required to have an internal policy and procedure concerning determination, documentation, and reporting instances of sexual and non-sexual abuse in accordance with the department's Child Abuse Screening Documenting and Reporting Policy.

(2) Additionally, providers must develop an agency specific policy for Human Anti-Trafficking and Intimate Partner Violence to comply with abuse reporting guidelines and requirements as interpreted by department policy.

§56.10. Freedom of Choice.

Clients have the right to freely choose [~~freely~~] family planning methods and sources of services. Clients shall not be coerced to accept services [~~subjected to coercion to accept services~~].

§56.11. Confidentiality.

Providers shall safeguard client family planning information. Clients must provide written authorization prior to the release of any personally identifying information except reports of child abuse required by Texas Family Code, Chapter 261, and as required or authorized by other law. The department may distribute appropriated funds only to providers [~~contractors~~] that show good faith efforts to comply with all child abuse reporting guidelines and requirements as interpreted by department policy.

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

§56.12. Eligibility for Family Planning Services.

Eligibility shall be determined according to the requirements of the most recent department Family Planning Policy Manual. Department providers shall not deny family planning services to eligible clients because of their inability to pay for services. Title XIX (Medicaid) eligibility is determined by the guidelines set by the commission. Individuals who receive Medicaid are eligible for family planning medical, counseling, and educational services. [~~Contractors shall not deny family planning services to eligible clients because of their inability to pay for services.~~]

§56.13. Consent.

Department Family Planning services must be provided with consent from [~~Providers may provide family planning services, including prescription drugs, without the consent of~~] the minor's parent, managing conservator, or guardian only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations. Providers may reference the current Family Planning Policy Manual. A provider may not require consent for family planning services from the spouse of a married client.

§56.14. Family Planning for Adolescents.

(a) Adolescents age 17 and younger shall be provided individualized family planning counseling and family planning medical services that meet their specific needs as soon as possible [~~within two weeks of request~~].

(b) The provider shall ensure that:

(1) counseling for adolescents seeking family planning services have parental consent [~~includes encouraging participation of families, parents, and/or legal guardians in their decision to seek family planning services~~];

(2) counseling for adolescents includes information on use of all medically approved birth control methods, including abstinence; and

(3) appointment schedules are flexible enough to accommodate access for adolescents requesting services.[~~;~~]

[~~(4) full participation in family planning medical services is encouraged but may be deferred for the adolescent electing a non-prescriptive contraceptive method; and~~]

[~~(5) the adolescent is assured that all services are confidential and that any necessary follow-up contact will also protect the client's privacy.~~]

§56.17. Contract Requirements for the Title XIX (Medicaid) Family Planning Genetics Program.

(a) A genetic service agency provider may contract with the commission for Title XIX reimbursement for family planning genetic diagnostic and counseling services under the following conditions.

(1) The medical director of the genetic services agency provider is a clinical geneticist (MD or DO). The clinical geneticist must be an active candidate [~~board eligible~~] or board certified in clinical genetics by the American Board of Medical Genetics (ABMG) and licensed by the Texas Medical Board.

(2) (No change.)

[~~(3) The agency provider's records must contain multiple indexing for easy retrieval of information (by client name, by client number, and by syndrome, according to the International Classification of Diseases (current edition) with Clinical Modifications), and must comply with the department's records requirements.~~]

[(4) The agency provider must arrange for full medical referral services since genetic disorders often encompass several health problems. Independent consultant, laboratory, and radiology services must be billed through the genetic services agency provider under contract with the commission.]

(3) [(5)] Genetic counseling must be provided face-to-face by a clinical geneticist (MD or DO) or a genetic counselor under the direct supervision of a clinical geneticist.

(4) [(6)] Services provided by a specialized genetics agency provider must be under a written subcontractual agreement with the prime contractor. The commission has the right to approve all subcontractual agreements.

(5) [(7)] Any applicable state licensure or certification requirements must be met.

(b) Clinical laboratories that are part of the genetic services agency provider and external clinical laboratories used by genetic services agency providers must be directed by a clinical laboratory geneticist as defined by the ABMG. [In some cases, the department may approve selected laboratory tests to be conducted by regular clinical laboratories if these laboratories demonstrate the ability to perform these tests. All clinical laboratories must be certified by Title XVIII for services provided and further approved for participation in the Title XIX program.]

§56.18. Family Planning Genetics Services Provided.

Family planning genetics services must be prescribed by a physician (MD or DO) and have implications for reproductive decisions. Services may include the following, based on the client's needs:

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

(7) prenatal genetic diagnostic services [amniocentesis]; and

(8) (No change.)

§56.19. Limitations of Family Planning Genetics Services.

For the Title XIX Family Planning Genetics Program, the following types of services are not allowed:

(1) genetic services for conditions that [usually] do not have serious psychosocial or medical implications for the client; and

(2) (No change.)

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

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400642
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 776-6990

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25 TAC §56.9, §56.16

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

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The repeals affect Government Code, Chapter 531, and Health and Safety Code, Chapter 1001.

§56.9. Prompt Service.

§56.16. Title X Informational and Educational Committees.

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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Lisa Hernandez
General Counsel
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Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 776-6990

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. AUTOMOBILE INSURANCE

DIVISION 3. MISCELLANEOUS INTERPRETATIONS

28 TAC §5.204

The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §5.204, concerning the standard proof of liability insurance form prescribed under Transportation Code §601.081. Senate Bill 1567, 83rd Legislature, Regular Session (2013), amended Transportation Code §601.081 by requiring a disclosure for named driver policies on the prescribed form. The proposed amendments to §5.204 are necessary to implement the named driver disclosure.

Under new Transportation Code §601.081(a) and new Insurance Code §1952.0545, a named driver policy is "an automobile insurance policy that does not provide coverage for an individual residing in a named insured's household specifically unless the individual is named on the policy. The term includes an automobile insurance policy that has been endorsed to provide coverage only for drivers specifically named on the policy."

The amendment to Transportation Code §601.081(b) states that, for a named driver policy, the standard proof of motor vehicle

liability insurance form prescribed by TDI must include the disclosure required under Insurance Code §1952.0545. Proposed §5.204 adds the required disclosure to the prescribed form and includes nonsubstantive editorial and formatting changes to improve the rule's clarity. TDI proposes to remove the graphics and replace them with written descriptions of the ID card requirements. The prescribed form would be available on the TDI website and upon request. Additionally, proposed §5.204 corrects errors in spelling and translation for the Spanish versions of Side A and Side B of the ID card, and allows for optional communication by email.

Except for the addition of the disclosure required for named driver policies under SB 1567, the Spanish translation of the disclosure, and the corrected Spanish translations of the ID card, the changes would not impose new or different requirements for the proof of motor vehicle liability insurance form. SB 1567 requires the disclosure for all policies delivered, issued for delivery, or renewed on or after January 1, 2014.

FISCAL NOTE. Marilyn Hamilton, director of the Personal and Commercial Lines Office for the Property and Casualty Section, has determined that, for each year of the first five years the proposed section is in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Ms. Hamilton does not anticipate any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Hamilton expects that enforcing or administering the proposed amendments will have the significant public benefit of ensuring that TDI's rules conform to Transportation Code §601.081, as amended by SB 1567. Ms. Hamilton expects any costs of compliance with the proposed amendments to be minimal.

Ms. Hamilton does not anticipate any adverse economic effect on large or small insurers from the proposed amendments. Insurers are not currently required to use the prescribed form, and the proposed amendments do not impose a new requirement to use the prescribed form. Section 5.204 already includes a prescribed standard proof of liability insurance form, and the proposed amendment merely implements the ID card disclosure requirement in SB 1567 for named driver policies, including the Spanish translation of the disclosure. It also updates the Spanish notice language for insurers that choose to provide the Spanish version of Side B on request only. Ms. Hamilton does not expect a disproportionate economic impact on small or micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed amendments to §5.204 will not have an adverse economic effect on small or micro businesses. Insurers are not currently required to use the prescribed form, and the proposed amendments do not impose a new requirement to use the prescribed form. As a result, and in compliance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

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

REQUEST FOR PUBLIC COMMENT. If you wish to comment on the proposal, or to request a public hearing, you must do so in writing no later than 5:00 p.m., Central time, on March 24, 2014. A hearing request must be on a separate page from any written comments. TDI requires two copies of your comments or hearing request. Send one copy by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Send the other copy by mail to the Texas Department of Insurance, Personal and Commercial Lines Office, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104; or by email to marianne.baker@tdi.texas.gov.

STATUTORY AUTHORITY. TDI proposes the amendments under Transportation Code §601.081; and Insurance Code §§1952.0545, 2301.008, and 36.001. Transportation Code §601.081, as amended by SB 1567, requires that, for a named driver policy, the standard proof of motor vehicle liability insurance form prescribed by TDI must include the disclosure required under Insurance Code §1952.0545. Insurance Code §1952.0545 requires the following written disclosure for a named driver policy: WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY. Insurance Code §2301.008 allows the commissioner of insurance to adopt standard insurance policy forms, printed endorsement forms, and related forms other than insurance policy forms and printed endorsement forms, that an insurer may use instead of the insurer's own forms in writing insurance subject to Subchapter A, Chapter 2301. Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. This proposal implements the following statutes: Insurance Code §1952.0545 and §2301.008 and Transportation Code §601.081.

§5.204. Motor Vehicle Safety Responsibility.

(a) Form. For each motor vehicle insurance policy, the liability insurer must issue a [~~which becomes effective on or after September 1, 1991, the insurer shall comply with the provisions of paragraphs (1) - (4) of this section.~~

[~~(1)~~] [~~A~~] standard proof of liability insurance form. The form must be[~~:~~] titled "Texas Liability Insurance Card.[~~:~~]" The insurer may use its own form or TDI's prescribed form. TDI's prescribed form is available on the TDI website or upon request. [~~shall be issued by each liability insurer. The Texas Liability Insurance Card shall contain all of the following languages as explained in paragraphs (3) and (4) of this section.~~]

(b) [~~(2)~~] Side A. Side A of the form must [~~shall~~] be written in [~~the English language or, at the option of the insurer, can be written in English and Spanish. It shall be~~] at least 10-point type, except where otherwise specified in [~~for the language in subparagraph (H) of~~] this subsection [~~paragraph~~]. The insurer must provide Side A in English, or in English and Spanish. [~~entire text shall be in upper and lowercase letters.~~] Side A of the form must [~~shall~~] include all of the following (optional Spanish language in parentheses):

(1) [~~(A)~~] the [~~insured--~~] name and address of each insured or covered person (el nombre y la dirección del asegurado)[~~;~~]

(2) [~~(B)~~] the [~~vehicle--~~] year, make, and model of each covered vehicle (el año, marca, y modelo de cada vehículo con cobertura); or a description of the types of vehicles the policy covers, and, at the company's option, the VIN. { [~~(~~]Note: If the policy does not require the description of a vehicle, then this section of the ID card [~~block~~] should contain the appropriate wording to [~~which will~~] describe the types of vehicles the policy covers, such as [~~for which coverage is afforded, i.e.,~~] "any auto driven by the insured," "any auto driven with dealer plates," or similar descriptive language}[~~);~~]

(3) [~~(C)~~] the [~~effective date--display~~] effective date of the policy (la fecha de efectividad de la póliza)[~~;~~]

(4) [~~(D)~~] the [~~expiration date--display~~] expiration date of the policy (la fecha de vencimiento de la póliza)[~~;~~]

(5) [~~(E)~~] the policy number (el número de la póliza)[~~--display number;~~]

(6) [~~(F)~~] the [~~insurance company--~~] name and toll-free phone number of the insurer, if the insurer is required by statute to maintain a toll-free number for consumer inquiries (el nombre de la compañía de seguro y el número de teléfono gratis)[~~;~~]

(7) [~~(G)~~] the [~~agent--~~] name and phone number of the agent, if applicable (el nombre del agente y el número de teléfono)[~~;~~]

(8) [~~(H)~~] the following statement in at least eight-point type: "This policy provides at least the minimum amounts of liability insurance required by the Texas Motor Vehicle Safety Responsibility Act for the specified vehicles and named insureds and may provide coverage for other persons and vehicles as provided by the insurance policy." If the insurer provides Side A in Spanish, the Spanish statement must read: "Esta póliza provee por lo menos las cantidades mínimas de seguro de responsabilidad civil que es requerida por la ley de responsabilidad para la seguridad de los vehículos motorizados de Texas (Texas Motor Vehicle Safety Responsibility Act) para los vehículos especificados y para los asegurados nombrados, y puede proveer una cobertura para otras personas y vehículos según lo proporcionado en la póliza de seguro."
[~~Figure: 28 TAC §5.204(2)(H)~~]

(9) for a named driver policy, the following statement in boldfaced capital letters: "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY." If Side A contains Spanish, the warning in Spanish should read: "ADVERTENCIA: UN CONDUCTOR MENCIONADO EN LA PÓLIZA NO PROVEE COBERTURA A LAS PERSONAS QUE RESIDEN EN EL HOGAR DEL ASEGURADO QUE NO SON MENCIONADAS EN LA PÓLIZA DE SEGUROS."

[~~(3) Side B of the form shall be entitled "Texas Liability Insurance Card."~~]

[~~(A) Side B shall contain the following language.~~]
[~~Figure: 28 TAC §5.204(3)(A)~~]

[~~(B) The format explaining when a card may be required cannot be changed. That is, the card shall use bullets (o) and list the places a card might be requested in a vertically descending manner.~~]

[~~(C) Side B of the form shall appear in upper and lower case, using at least 10-point type for the text body with at least 12-point type for the heading, "Texas Liability Insurance Card." Boldfaced type shall be used for the heading and first line, reading "Keep this card." Boldfaced capital letters shall be used for the word "IMPORTANT" as it appears on Side B.~~]

[~~(4) At its option, the insurer shall comply with at least one subparagraph out of subparagraphs (A)-(D) of this paragraph:~~]

[~~(A) provide to the insured a Texas Liability Insurance Card in which the text of Side B is in English and Spanish;~~]

[~~(B) provide to the insured two separate cards, one in English, the other with Side B in Spanish;~~]

[~~(C) provide to the insured a Texas Liability Insurance Card in English and with that mailing include a notice in Spanish regarding the availability of a Texas Liability Insurance Card in Spanish. The notice shall include all the language required for Side B, in the same manner as required for Side B. The notice shall also inform the insured that the insured can obtain a Spanish Texas Liability Insurance Card by calling the company's toll-free number, the insured's agent, or any other applicable number. This last information shall appear as follows: "IMPORTANTE: Si usted quiere una tarjeta oficial escrita en espanol, llame a este numero:" and shall be followed by the company's toll-free number, the insured's agent, or any other applicable number. This shall appear in at least 10-point type with the word "IMPORTANTE" appearing in boldface and uppercase letters. Upon request, the company shall furnish Spanish cards in compliance with subparagraph (A) or (B) of this paragraph;~~]

[~~(D) provide to the insured a Texas Liability Insurance Card in which the text of both Side A and Side B are in Spanish and English.~~]

(c) Side B. Side B of the form must be written in at least 10-point type, except where otherwise specified. Side B must contain the following statements, in this order, and formatted as shown in this subsection (optional Spanish language in parentheses; not italicized):

(1) Texas Liability Insurance Card (Tarjeta de Seguro de Responsabilidad Civil de Texas) (at least 12-point, boldfaced type)

(2) Keep this card. (Guarde esta tarjeta.) (boldfaced type)

(3) IMPORTANT: You must show this card or a copy of your insurance policy when you apply for or renew your: (IMPORTANTE: Usted debe mostrar esta tarjeta o una copia de su póliza de seguro cuando solicite o renueve su:) ("IMPORTANT" in boldfaced capital letters)

(A) Motor vehicle registration (Registro del vehículo motorizado)

(B) Driver's license (Licencia de conducir)

(C) Motor vehicle safety inspection sticker. (Etiqueta de inspección de segurida para su vehículo.)

(4) You may also be asked to show this card or your policy if you have an accident or if a peace officer asks to see it. (También se puede pedir que usted muestre esta tarjeta o su póliza si tiene un accidente o si se la pide un oficial de policía.)

(5) All drivers in Texas must carry liability insurance on their vehicles or otherwise meet legal requirements for financial responsibility. If you do not meet your financial responsibility requirements, you could be fined up to $1,000, your driver's license and motor vehicle registration could be suspended, and your vehicle could be impounded for up to 180 days (at a cost of $15 per day). (Todos los conductores en Texas deben tener un seguro de responsabilidad civil para sus vehículos, o de lo contrario deben cumplir con los requisitos legales de responsabilidad financiera. Si usted no cumple con los requisitos de responsabilidad financiera, podría estar sujeto a pagar una multa de hasta $1,000, mas la suspensión de su licencia de conducir y la suspensión del registro del vehículo, y además su vehículo podría ser confiscado por hasta 180 días (a un costo de $15 por día).)

(d) The insurer must issue Side B in English. The insurer must also make Side B available in Spanish, either on the same card as the English version, or on a separate card. If the insurer initially provides only the English version and offers to provide the Spanish version on a separate card when the insured requests it, the insurer must include with the English version the following notice in Spanish, in at least 10-point type, formatted as shown in this subsection, with or without the optional bracketed text: IMPORTANTE: Si usted desea una tarjeta oficial de comprobante de seguro escrita en español, comuníquese con su agente de seguros a este número {o dirección de correo electrónico}." The notice must be followed by the company's toll-free number, the insured's agent's number, or any other applicable number, and, at the insurer's option, the agent's or company's email address.

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

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Sara Waitt
General Counsel
Texas Department of Insurance
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

The Texas Parks and Wildlife Department proposes the repeal of §57.384, concerning Permit Denial, and §57.385, concerning Appeal; and new §57.384, concerning Refusal to Issue; Review of Agency Decision to Refuse Issuance.

Under the provisions of Parks and Wildlife Code, §67.0041, the department is authorized to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of nongame species of fish or wildlife. Current department regulations governing the sale of nongame fish taken from public water include provisions for permit denial (§57.384) and appeal of permit denial (§57.385). Those rules were most recently updated in 1997. The proposal would update those rules to be more consistent with other rules regarding the issuance and renewal of permits and the review of agency decisions to refuse issuance or renewal of permits.

Over the last several years, the Parks and Wildlife Commission (Commission) has adopted rules to more clearly establish criteria under which the department could refuse to issue or renew certain permits and to establish an internal process by which a permit applicant could seek a review of an agency decision to refuse permit issuance or renewal. See, e.g., 31 TAC §§57.122, 57.253, 57.399, 65.266, and 65.363. The proposed repeals and new section would replace current §57.384 and §57.385 with a new §57.384 that sets forth the conditions under which the department could refuse to issue or renew a permit to sell nongame fish taken from public water. The proposed new section also would establish a process for reviewing an agency decision to refuse issuance or renewal of a permit, which is similar to the process used in connection with other department permits.

Proposed new §57.384(a)(1) - (2) would recapitulate the provisions of current §57.384(3) - (4) to continue the requirement that a permit not be issued for an activity that would be biologically detrimental to the target species, to a threatened or endangered species, or to other aquatic life and also to continue the requirement that a permit not be issued for an activity that would be inconsistent with department management goals and objectives. Similarly, proposed new §57.384(a)(3) recapitulates the provisions of current §57.384(5), to continue the requirement that a permit not be issued if the applicant fails to comply with the requirements of the subchapter.

Current §57.384(1), provides that the department will not issue or renew a permit to sell nongame fish taken from public fresh water if the applicant "has been finally convicted of a violation of the Parks and Wildlife Code or any rule, regulation, or proclamation issued by the Commission within the previous 12 months." This provision functions as an automatic bar to the issuance or renewal of a permit for any violation of the Parks and Wildlife Code or a regulation of the Commission, while at the same time prohibiting permit denial based on a conviction more than 12 months prior to the application.

Proposed new §57.384(a)(4) would replace the current automatic bar and 12-month limit with a provision that allows the department to use discretion in determining whether to refuse to issue or renew a permit. The proposal would allow department staff to take into account the applicant's history of violations in deciding to issue or renew a permit, but would not automatically prohibit permit issuance or renewal. The proposed new rule would allow the department to refuse permit issuance to any person who has been convicted of, pleaded nolo contendere to, or received deferred adjudication for any violation of Parks and Wildlife Code or a regulation of the Commission. Furthermore, the proposed new rule would allow the department to refuse permit issuance to any person who has been convicted of, pleaded guilty or nolo contendere to, received deferred adjudication or pre-trial diversion, or assessed a civil penalty for a violation of 16 U.S.C. §§3371 - 3378 (the Lacey Act). However, the proposed new rule would authorize the use of discretion in determining whether to refuse issuance based on a listed offense. The premise underlying the proposal is that a person who has pleaded guilty to, been convicted of or received deferred adjudication for a violation of state law involving aquatic and wildlife resources, or who has been convicted, received deferred adjudication, pre-trial diversion, or assessed a civil penalty for a Lacey Act violation has demonstrated a disregard for laws intended to protect the state's aquatic and wildlife resources.

The denial of issuance or renewal of a permit based on such offenses will not be automatic, but will be within the discretion of the department. Factors that may be considered by the department in determining whether to issue or renew a permit based on the proposed new criteria would include, but not be limited to, the nature and seriousness of the offense(s), the number of offenses, the existence or absence of a history of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

Proposed new subsection (b) would provide a mechanism for persons who have been denied permit issuance or renewal to

have the opportunity to have such decisions reviewed by department managers. Although current §57.385 addresses a process to appeal an agency decision to deny permit issuance or renewal, the use of an informal appeal process will help ensure that decisions affecting permit privileges are consistent with applicable policy and procedures. The informal appeal process will not supplant other legal remedies available to the permit applicant.

Dr. Earl W. Chilton II, Aquatic Habitat Enhancement Program Director, has determined that for each year of the first five years that the proposal will be in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule as proposed.

Mr. Chilton also has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be greater consistency in department permit denial and review processes, a more streamlined permit denial process, and the ability of the department to consider circumstances surrounding violations in making decisions regarding permit denials.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The proposal will not result in adverse economic effects on persons required to comply.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposal may be submitted to Monica McGarrity, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8292; email: monica.mcgarrity@tpwd.texas.gov.

SUBCHAPTER E. PERMITS TO SELL NONGAME FISH TAKEN FROM PUBLIC FRESH WATER

31 TAC §57.384, §57.385

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

The repeals are proposed under the authority of Parks and Wildlife Code, §67.004, which authorizes the Commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species; and §67.0041, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed repeals affect Parks and Wildlife Code, Chapter 67.

§57.384. Permit Denial.

§57.385. Appeal.

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 February 10, 2014.

TRD-201400607
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 389-4775

31 TAC §57.384

The new rule is proposed under the authority of Parks and Wildlife Code, §67.004, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species; and §67.0041, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed rule affects Parks and Wildlife Code, Chapter 67.

§57.384. Refusal to Issue; Review of Agency Decision to Refuse Issuance.

(a) The department may refuse permit issuance or renewal if:

(1) the prospective take of nongame fish is determined by the department to be detrimental to the target species, species listed as endangered or threatened, or any other aquatic species;

(2) the prospective take of nongame fish cannot be accomplished in a manner consistent with the management goals and objectives of the department;

(3) the applicant or assistant(s) seeking renewal is not in compliance with provisions of this subchapter; or

(4) the applicant or assistant(s) have been:

(A) convicted of, pleaded guilty or nolo contendere to, or received deferred adjudication for a violation of Parks and Wildlife Code or a regulation of the commission; or

(B) convicted, pleaded guilty or nolo contendere, received deferred adjudication or pre-trial diversion, or assessed a civil penalty for a violation of 16 U.S.C. §§3371 - 3378 (the Lacey Act).

(b) An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.

(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall submit a written request to the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review. The decision of the review panel shall be final.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Natural Resources (or his or her designee);

(B) the Director of the Inland Fisheries Division (or his or her designee), as appropriate; and

(C) a department employee designated by the Director of the Inland Fisheries Division.

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 February 10, 2014.

TRD-201400598
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 389-4775

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SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes the repeal of §57.977, amendments to §§57.973, 57.981, and 57.992, and new §57.977 and §57.978, concerning the Statewide Recreational and Commercial Fishing Proclamation.

The proposed repeal of §57.977, concerning Violations and Penalties, would allow the department to propose new §57.977, concerning Spawning Event Closures. The provisions of current §57.977 would then become proposed new §57.978, concerning Violations and Penalties.

The proposed amendment to §57.973, concerning Devices, Means, and Methods, would add three locations to the list of locations where persons are restricted to no more than two pole-and-line devices while angling, expand the geographical extent of special rules governing the take of rainbow trout on the Guadalupe River, and simplify rules specifying the color of floats that must be employed with jug lines.

In 2012 the department implemented harvest and gear restrictions on Canyon Lake Project #6 in Lubbock County that are similar to those in effect for community fishing lakes (CFL). The lake is 82 acres, which is larger than the maximum size of 75 acres established by rule for CFLs; therefore, the lake was subject to statewide harvest and devices regulations. By rule, CFLs share a single regulatory structure on catfish (no minimum length limit, five fish bag) and gear usage (pole-and-line angling only, with a limit of two poles per person). The rulemaking last year addressed the restriction to pole-and-line angling only but not the pole limit and harvest limitations. The proposed amendment would correct that oversight by imposing the statewide CFL harvest regulations for channel and blue catfish and the two-pole limit on Canyon Lake Project #6. In addition, there are two segments of the Concho River within the city limits of the City of San Angelo that have also been managed under regulations similar to those in effect for CFLs. The proposed amendment would impose the CFL gear restriction rules on those stream segments.

Current rules require juglines used for non-commercial purposes to be marked with a white, free-floating device. The department has received requests from the public to change the rule to remove the color requirement because "noodle" floats are ideal for this purpose but are not commonly available in white. The department has determined that allowing floats to be any color does not present an enforcement issue, provided the float is not orange, which is the required color for floats used on commercial juglines.

Current harvest and gear regulations for rainbow and brown trout on the Guadalupe River from Canyon Lake Dam to the easternmost bridge crossing on Farm to Market Road (F.M.) 306 consist of the statewide limits for trout (a five-fish daily bag limit and no length limit). From the easternmost F.M. 306 crossing downstream to the second bridge crossing on River Road, current rules allow the harvest of trout 18 inches or longer, and anglers are allowed to retain one trout per day. The retention of trout harvest in this area is also restricted to trout caught on artificial lures. Downstream of the second bridge crossing on the River Road, the regulations revert back to statewide limits. The proposed amendment would impose a 12- to 18-inch slot length limit and five-fish daily bag limit, restrict harvest to artificial lures only, and allow only one trout over 18 inches to be retained. The new regulation zone would extend from 800 yards downstream from the Canyon Dam release to the easternmost F.M. 306 bridge crossing.

Rainbow trout have been stocked in the Guadalupe River below Canyon Reservoir since 1966 by TPWD through a state/federal/private partnership, and the river has been a popular fishery since its inception. The Guadalupe River Chapter of Trout Unlimited (GRTU) has also stocked the Guadalupe River since the early 1970s. Because of the release from Canyon Reservoir, water temperature in the Guadalupe River below Canyon Reservoir is suitable for oversummer survival of rainbow trout in most years. The distance below the reservoir where water temperature remains suitable (below 70° F) is determined by outflow from the reservoir. Higher flows extend the distance, while lower flows reduce it. TPWD and/or GRTU have continuously monitored water temperatures at five sites in the river since 1997. Water temperature data indicate the 4-mile segment of the river from the outflow of Canyon Dam to the easternmost bridge crossing on F.M. 306 has the most consistent, suitable water temperatures. Mortality due to above optimal water temperature (70°F or higher) in this stretch is likely the lowest. Oversummer survival of trout in this segment of the river was documented in fall

2011 despite extremely low summer (June - August) flows (less than 70 cfs) and record high ambient temperatures.

Length limits for the harvest of trout are not currently regulated in this section of the river. Trout of any length can be harvested in this stretch of the river although potential for multi-year survival in this stretch is likely the highest of anywhere on the river. A more-restrictive harvest regulation in this stream segment could be used to increase angler catch rates as well as potentially increase the size structure of the trout population. The proposed amendment is designed to avoid interfering with the popular catch-and-keep fishery directly below the dam. The 12-inch lower end of the slot limit would allow harvest of trout stocked by TPWD, as most are below this length, while protecting trout stocked by GRTU which are typically above this length.

Proposed new §57.977, concerning Spawning Event Closure, would establish a processes to allow the department to temporarily prohibit the take of alligator gar in places where they are spawning or are about to spawn. Alligator gar populations are believed to be declining throughout much of their historical range in North America, which includes the Mississippi River system as well as the coastal rivers of the Gulf of Mexico from Florida to northern Mexico. Although the specific severity of these declines is unknown, habitat alteration and over-exploitation are thought to be partially responsible. Alligator gar have been extirpated in Illinois, Indiana, and Ohio and designated as a "Species of Concern" in Oklahoma and Kentucky. In addition, the Endangered Fishes Committee of the American Fisheries Society has listed the alligator gar as "Vulnerable." Observed declines in other states, vulnerability to overfishing, and increased interest in the harvest of trophy gar indicate that a conservative management approach is warranted until populations and potential threats can be fully assessed. On that basis, the Commission in 2009 adopted a daily bag limit of one alligator gar per person, which was intended to protect adult fish while allowing limited harvest, thus ensuring population stability. Since 2009, the department has conducted (and is continuing to conduct) research to determine the estimated harvest of alligator gar, quantify reproduction, understand habitat usage, and determine geographic differences in populations. Initial analysis of the research data indicate that alligator gar in Texas have the greatest chance of spawning success if the creation of preferred spawning habitat (the seasonal inundation of low-lying areas of vegetation) occurs in late spring through early summer. Since each year does not necessarily bring seasonal inundation at the optimum time, spawning success varies greatly. For example, department data for the middle Trinity River indicate that between 1980 and 2010, strong reproductive success occurred in only five years (1980, 1989, 1990, 1991, and 2007). Furthermore, in 21 of the years between 1980 and 2010, reproductive success was nonexistent or weak, and in many of these years, rainfall was low or drought conditions occurred. Because the conditions for spawning do not exist on a regular or cyclical basis, and because spawning occurs in shallow waters where numerous gar can be concentrated in one area, alligator gar are extremely vulnerable to harvest during spawning. To protect alligator gar from excessive harvest during spawning, the proposed new rule would allow the executive director of the department to prohibit the take of alligator in an affected area, which would be defined as "an area of fresh water containing environmental conditions conducive for alligator gar spawning" or "an area of fresh water where alligator gar are in the process of spawning activity." The proposed new rule would define "environmental conditions conducive for alligator gar spawning" as "the components of a hydrological state (including but not limited to water temperatures, duration and timing of flooding events, river discharge rates, and any other factors that are known to be conducive to gar reproduction) that are predictors of the likelihood of spawning activity of alligator gar." The proposed new rule would require the executive director to provide appropriate public notice when an affected area is declared and when lawful fishing for alligator may resume, and would limit the duration of a prohibition to no more than 30 days. The department believes it is important to provide the angling public with a specific maximum timespan for the effectiveness of an action under the proposed new section. The proposed new rule is necessary to manage alligator gar populations and ensure their ability to perpetuate themselves successfully.

The proposed amendment to §57.981, concerning Bag, Possession, and Length Limits, would alter regulations for blue and channel catfish on Louisiana border waters (Toledo Bend Reservoir, Caddo Lake, and Lower Sabine River).

Current harvest regulations for blue and channel catfish on Louisiana border waters consist of a 50-fish daily bag limit in any combination, of which no more than five blue or channel catfish longer than or equal to 20 inches may be retained. Fish of any length may be harvested. The proposed amendment would increase the length for restriction on the harvest of five catfish from 20 to 30 inches.

The current regulations were implemented on all border waters on September 1, 2011 in collaboration with Louisiana Department of Wildlife and Fisheries (LDWF). There have been numerous complaints from anglers, particularly on Toledo Bend Reservoir, that the regulation is too restrictive because it results in high proportions of undersized fish being caught on juglines and trotlines. In response to the complaints, supplemental creel, population sampling, and opinion surveys were conducted by TPWD and LDWF. Anglers interviewed during creel surveys caught 1,230 blue catfish, of which 46% were 20 inches or longer and 6% 30 inches or longer. LDWF sampled blue catfish with trotlines and results were similar to those obtained from Texas anglers, with 50% of the catch 20 inches or longer and 6% longer than 30 inches. An opinion survey of anglers indicated that 89% opposed the retention limit of five fish greater than 20 inches and only 3% supported it. Of those opposing, 91% favored a five-fish bag limit but wanted the length limit increased to 30 inches, while 9% supported the current length limit (20 inches) but preferred a bag limit increase to 10 fish.

Toledo Bend Reservoir currently supports an abundant blue catfish population with stable recruitment, and trotline and jugline anglers routinely catch fish that weigh 20 pounds or more and exceed 35 inches in length). Elimination of the minimum length limit under a 50-fish daily bag limit for blue and channel catfish (in any combination) while allowing the retention of no more than five fish of 30 inches or greater in length should provide harvest opportunities that Toledo Bend Reservoir anglers desire without resulting in detrimental effects on the blue catfish population. Blue catfish abundance is high, recruitment is stable, and annual population exploitation is likely low. Additionally, the proposed amendment should not negatively affect blue catfish populations at Caddo Lake or the lower Sabine River, since minimal blue catfish fisheries exist in those places, and no effect is anticipated on the channel catfish population in any border waters because fish longer than or equal to 20 inches are scarce.

The proposed amendment to §57.981 also would affect harvest regulations for red drum on Tradinghouse Creek Reservoir in McLennan County. The current regulations consist of a 20-inch

minimum length limit, no maximum length limit, and a three-fish daily bag limit. The proposed amendment would eliminate the current requirements and implement the statewide length limits (20-inch minimum length limit, 28-inch maximum length limit, and harvest of up to two red drum 28 inches or longer per year with trophy drum tag). The daily bag limit would remain at three. Tradinghouse Creek is a 2,012-acre reservoir located in McLennan County, 10 miles east of Waco. The reservoir was impounded in 1968 and was maintained by Texas Utilities Company for the purpose of cooling a coal-fired power plant. Plant operations were downgraded to an as-needed status in 2004, and then suspended permanently in 2009. Red drum have been stocked regularly in reservoir since 1975. The change in plant operations resulted in water quality changes (lower water temperature and chloride levels) in the reservoir that almost completely eliminate the ability of red drum to survive year round. Red drum stocking was discontinued after 2010, and red drum most likely no longer exist in the reservoir. No red drum were observed during supplemental gill netting or the summer creel survey. Temperature data confirmed near-lethal water temperatures for red drum, and there were more than 40 days of temperatures low enough to stop red drum from actively feeding. Additionally, chloride levels were found to be much lower than the minimum needed to support red drum in fresh water. Consequently, special regulations are no longer needed for this freshwater population.

The proposed amendment to §57.981 also would affect Lake Kyle in Hays County. Current regulations on Lake Kyle consist of community fishing lake (CFL) regulations (five fish daily bag limit for channel and blue catfish, no minimum length limit, methods restricted to pole-and-line only and no more than two devices per person) and a 14 to 21 inch slot length limit for largemouth bass. The proposed amendment would prohibit the harvest of channel and blue catfish, largemouth bass, or any sunfish species. Lake Kyle is a 12-acre impoundment of Plum Creek and has been open to the public since spring 2012 under the management of the City of Kyle Parks and Recreation Department. A 14- to 21-inch slot length limit was implemented for largemouth bass in 2011 to protect the quality population surveyed at this lake. A high-quality sunfish population was also detected during initial fish surveys. However, after opening to the public, the quality of the sunfish fishery has been reduced. Public access is limited to the hours and days the park is open. All park users access the park through one entrance at the main office. This unique site provides the attributes needed to expand a quality fishing experience beyond bass to include channel catfish and sunfish.

The proposed amendment to §57.981 also affects saltwater fisheries. The proposed amendment would alter the current regulations in effect for spotted seatrout. Until 2007, the harvest regulations for spotted seatrout were statewide, consisting of a daily bag limit of 10 fish, a 15-inch minimum size limit, and no more than one fish greater than 25 inches in length allowed to be retained. The possession limit was twice the daily bag limit. In 2007, the department became concerned about spotted seatrout populations in the Lower Laguna Madre and created regional regulations for seatrout (32 TexReg 4421). Those regulations (still in effect) reduced the bag and possession limits for spotted seatrout in the Lower Laguna Madre south of Marker 21 to a five-fish daily bag limit and a possession limit equal to the daily bag limit. The proposed amendment would move the boundary for the current regulation northward to F.M. 457 in Matagorda County. The proposed amendment would lower the daily bag limit from 10 fish to five and make the possession limit identical to the daily bag limit in the area between Marker 21 and F.M. 457 in Matagorda County. Department sampling and survey efforts since 2007 indicate an increase in the number and size of spotted seatrout in the lower Laguna Madre, and similar results are expected within the area affected by the proposed amendment. Surveys and modeling indicate that landings will be reduced by 13.6%, with an increase in the spawning biomass of 16.4% and a 41.8% increase in the number of spotted seatrout greater than 25 inches in length in the affected area. Modeling has indicated a substantial improvement would be possible in a relatively short period of time, with 89% of the effects realized within three years, and 99% of the effects realized within six years. The proposed amendment is necessary to improve the quality of fishing by increasing the number and size of spotted seatrout. The current rule governing the harvest of spotted seatrout in the Lower Laguna Madre is referred to as a special regulation. Because the proposed amendment would enlarge the geographical extent of the special regulation to encompass most of the Texas coast, the proposed amendment would designate the harvest regulations in the area south of F.M. 457 as the statewide standard, and the harvest rules north of F.M. 457 as the special regulation.

The proposed amendment to §57.981(c)(5) and the proposed amendment to §57.992, concerning Bag, Possession, and Length Limits, would affect provisions governing the recreational take of flounder. The last three years of fishery-independent survey data (gill nets) indicate a downward population trend in the flounder fishery. While fall gill net sampling data showed an increase in abundance between 2009 and 2011, the two most recent years (2012, 2013) show a decline by 76%, returning to the lowest abundance recorded since the department began sampling in 1982. Based on this recent downward trend staff has determined that to stabilize or reverse this trend additional measures should be implemented to protect and replenish spawning stock biomass during the flounder spawning run. Current harvest regulations for flounder consist of a 14-inch minimum size limit and a 5-fish daily bag and possession limit for recreational take and a 30-fish daily bag and possession limit for commercial take, except during the month of November. During the month of November, recreational and commercial take are restricted to two flounder per day and lawful means are restricted to pole-and-line only. The proposed amendment would extend the two-fish bag limit into the first two weeks of December, but during that two-week time, any legal means could be used to harvest flounder.

Ken Kurzawski, Program Director, Inland Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Kurzawski also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a

regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that other than the proposed rules affecting flounder, the rules will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006, except with respect to the portions of the proposed amendment to §57.992 that affect commercial take of flounder.

The proposed amendment affecting flounder will have an adverse economic impact on small or micro-businesses engaged in commercial fisheries operations. There are two primary groups of small or micro-businesses in the flounder fishery that are directly affected by the proposed rules: those who directly target flounder for harvest and those who harvest flounder as bycatch (incidental to other harvest operations). Based on permit data, the department has determined that all persons who take flounder for commercial purposes in Texas qualify as micro-businesses.

The proposed rules affecting the commercial harvest of flounder would extend the two-fish bag limit (currently in effect only in November) into the first two weeks of December. In addition, the November-only restriction of gear to pole-and-line only would be eliminated and flounder could be taken by any legal means during the first two weeks in December.

The department has analyzed the adverse economic impact on small and micro-businesses affected by the proposed rules by addressing the historical number of commercial trips resulting in the landing of flounder during December. While commercial harvest may continue to occur under the proposed rules during the first two weeks in December, in an effort to ensure that all possible direct impacts are considered, the department assumes for purposes of the small and micro-business analyses that there would be no commercial harvest during the first two weeks in December under the proposal.

Also, since department's landing data is collected and assembled on a monthly basis, to determine the estimated historical harvest during the first two weeks of December, the department assumes that the December sales occurred during the first two weeks of December.

Between license years (LY) 2010 (September 1, 2009 - August 31, 2010) and 2013 (September 1, 2012 - August 31, 2013), December flounder landings were reported by 12 to 33 (average of 23) commercial finfish fisherman. Therefore, the department estimates that the proposed rule would impact between 12 to 33 small or micro-businesses.

The following analysis estimates the potential adverse economic impacts of the proposed amendment based on landings data for the lowest (LY2011) and highest (LY2012) years of harvest under the current rule which imposes a two-fish bag limit in November, harvest by pole-and-line only. An average of the last four years (LY2010 - LY2013) is also shown.

In December 2010 (LY2011), the lowest year of harvest, there were a total of 52 trips in December by 16 commercial finfish fisherman. These trips resulted in 2,306.41 pounds of flounder landed, for an average catch per trip of 44.35 pounds. Using the average reported price for December, 2010 (LY2011), of $3.09 per pound, the total aggregate sales for December 2010 for all small or micro-businesses was $7,126.80. Therefore, the proposed amendment, if adopted, could result in an aggregate loss in sales of one-half of the total aggregate sales or $3,563.40 (for all small or micro-businesses affected by the proposed rule. Therefore, using LY2011 data, the greatest adverse economic impact to any small or micro-business affected by the rule would be $3,563.40 (if all flounder were landed by one licensee) and the average adverse economic impact to a small or micro-business of the proposed rule would be $222.71 ($3563.40 divided by 16 commercial finfish fisherman reporting trips in December).

In December 2011 (LY2012), the highest year of harvest, there were a total of 166 trips in December by 33 commercial finfish fisherman, resulting in 14,350.79 pounds of flounder landed, for an average catch per trip of 86.45 pounds. Using the average reported price for December 2011 (LY2012) of $2.52 per pound, the total aggregate sales for December 2011 for all small or micro-businesses was $36,163.99. Therefore, the proposed amendment, if adopted, could result in an aggregate loss in sales of one-half of the total aggregate sales or $18,081.99 for all small or micro-businesses affected by the proposed rule. Therefore, using LY2012 data, the greatest adverse economic impact to any small or micro-business affected by the rule would be $18,081.99 (if all flounder were landed by one licensee) and the average adverse economic impact to a small or micro-business of the proposed rule would be $547.91 ($18,081.99 divided by 33 commercial finfish fisherman reporting trips in December).

On average, between LY2010 and LY2013 there were 96.5 trips in December, with an average landing of 6,998.4 pounds of flounder. During that same period of time there were an average of 23 commercial finfish fisherman. Using the average December reported price for LY2010 - 2013 of $2.88 per pound, the total aggregate average sales between December 2011 (LY2010) and December 2012 (LY2013) for all small or micro-businesses was $20,155.39. The aggregate annual loss in sales for all small or micro-businesses affected by the proposed rule would be one-half the total aggregate average or $10,077.70. Therefore, using this four-year average, the average adverse economic impact to a small or micro-business of the proposed rule would be a loss of $438.16.

There will also be adverse economic impacts for small or micro-businesses that land flounder as incidental catch (bycatch); however, the probable adverse economic impacts on these small or micro-businesses would be less than impacts on businesses fishing for flounder under a finfish fisherman's license (i.e., less than $438.16).

In developing the proposal to address the downward trends in flounder populations, the department considered several alternatives, in addition to the proposal contained in this rulemaking, to minimize adverse impacts on commercial finfish fishermen. The department considered: (1) expansion of the November regulations into the last two weeks of October; (2) expansion of the November regulations into the last week of October; (3) expan-

sion of the November regulations into the first week of December; (4) expansion of the November regulations into the first two weeks of December; (5) a combination of options (1) - (4) (i.e., the last week of October and the first week of December); (6) expansion of the November regulations into the entire month of December; and (7) no action. The department believes that given the significant recent downward trend in southern flounder, the "no action" alternative would not provide the needed protections for the fishery. The department believes that expanding only the reduced bag limit of two-fish into the first two weeks of December would best balance competing interests in achieving the objective of the proposed amendment while being less burdensome to anglers.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Ken Kurzawski (Inland Fisheries) at (512) 389-4591, e-mail: ken.kurzawski@tpwd.texas.gov; Jeremy Leitz (Coastal Fisheries) at (512) 389-4333, e-mail: jeremy.leitz@tpwd.texas.gov; or Brandi Reeder (Law Enforcement) at (512) 389-4853, e-mail brandi.reeder@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§57.973, 57.977, 57.978

The new rules and amendment are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed new rules and amendment affect Parks and Wildlife Code, Chapters 66 and 67.

§57.973. Devices, Means and Methods.

(a) (No change.)

(b) Game and non-game fish may be taken only by pole and line in or on:

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

(6) [~~the~~] North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam;

(7) [~~the~~] South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam; and

(8) (No change.)

(c) No person may employ more than two pole-and-line devices at the same time on:

(1) any dock, pier, jetty, or other manmade structure within a state park; [~~and~~]

(2) community fishing lakes that are not within or part of a state park;[~~.~~]

(3) Canyon Lake Project #6 (Lubbock County);

(4) North Concho River (Tom Green County) from O. C. Fisher Dam to Bell Street Dam; and

(5) South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

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

(g) Device restrictions. Devices legally used for taking fresh or saltwater fish or shrimp may be used to take crab as authorized by this subchapter.

(1) - (8) (No change.)

(9) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(A) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 10 days after the date set out, and must include the number of the permit to sell non-game fish taken from fresh water, if applicable;

(B) for commercial purposes that is not marked with an orange free-floating device;

(C) for non-commercial purposes that is not marked with a [~~white~~] free-floating device of any color other than orange;

(D) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(10) - (12) (No change.)

(13) Pole and line.

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

(C) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to a point 800 yards downstream of the Canyon Lake dam outlet [~~the easternmost bridge crossing on F.M. Road 306~~], rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(14) - (23) (No change.)

§57.977. Spawning Event Closures.

(a) Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) Affected area--

(A) an area of fresh water containing environmental conditions conducive for alligator gar spawning; or

(B) an area of fresh water where alligator gar are in the process of spawning activity.

(2) Environmental conditions conducive for alligator gar spawning--the components of a hydrological state (including but not limited to water temperatures, timing and duration of flood events, river discharge rates, and any other factors that are known to be conducive to alligator gar reproduction) that are predictors of the likelihood of spawning activity of alligator gar.

(b) The Executive Director shall prohibit the take or attempted take of alligator gar in an affected area and shall provide appropriate notice to the public when the take or attempted take of alligator gar in an affected area is prohibited. The Executive Director shall provide appropriate public notice as to when lawful fishing in the affected area or areas may resume. An action under this section shall not exceed 30 days in duration.

(c) No person may take or attempt to take alligator gar by any means in an affected area declared by the Executive Director under subsection (b) of this section until the Executive Director gives notice that the lawful take of alligator gar may resume.

§57.978. Violations and Penalties.

The penalties for a violation of this subchapter are prescribed by Parks and Wildlife Code.

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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31 TAC §57.977

(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 Parks and Wildlife Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to take or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

The proposed repeal affects Parks and Wildlife Code, Chapter 61.

§57.977. Violations and Penalties.

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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DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 66 and 67.

§57.981. Bag, Possession, and Length Limits.

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

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

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

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.
Figure: 31 TAC §57.981(c)(5)

(d) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(1) Freshwater species.
Figure: 31 TAC §57.981(d)(1)

(2) Saltwater species.
Figure: 31 TAC §57.981(d)(2)

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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DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to take or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendment affects Parks and Wildlife Code, Chapters 61 and 67.

§57.992. Bag, Possession, and Length Limits.

(a) (No change.)

(b) There are no bag, possession, or length limits on game fish, non-game fish, or shellfish, except as otherwise provided in this subchapter.

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

(4) The statewide daily bag and length limits for commercial fishing shall be as follows.
Figure: 31 TAC §57.992(b)(4)

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

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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

The Texas Parks and Wildlife Department proposes an amendment to §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules. As proposed, the amended rule would close approximately 434 acres to oyster harvesting in the East Bay Approved Area in Galveston Bay and a 54-acre area encompassing Half-Moon Reef in Matagorda Bay for two harvest seasons, which will allow for scheduled oyster cultch plantings to repopulate these areas with oysters and for those oysters to reach market size. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed. Private oyster leases in East Galveston Bay would not be affected by the closure.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. When Hurricane Ike made landfall on the upper Texas coast on September 13, 2008, it caused extensive damage to the oyster reef habitat in Galveston Bay and especially East Bay. The damage was mainly caused by siltation on the reefs and the deposition of sediment on reef substrate. This siltation does not allow for spat to set on the reef and begin the process of oyster reef repopulation. Sidescan sonar surveys conducted by the department indicated an approximately 50-60% loss of oyster habitat in Galveston Bay due to heavy sedimentation/siltation and debris over consolidated reefs. The impact was greatest in East Bay, where over 80% of oyster habitat was lost.

The department's oyster habitat restoration efforts to date in East Bay have resulted in approximately 640 acres of sediment/silt-covered oyster habitat returned to productive habitat within the bay. Approximately $4 million in grants and other funding have been secured by the department to conduct cultch planting on approximately 170 acres of additional sediment/silt-covered oyster habitat in East Bay.

The Half-Moon reef complex lies off Palacios Point in Matagorda County between Tres Palacios Bay and the eastern arm of Matagorda Bay and was formerly a highly productive oyster reef within the Lavaca-Matagorda Estuary. The reef has been degraded due to a variety of stressors and as a result The Nature Conservancy (TNC) has secured funding to restore up to 40 acres within the historical reef footprint and within the 54-acre area proposed for temporary closure. The proposed closure area will provide a small buffer around the restoration site.

The project will consist of the emplacement of three-dimensional structures utilizing graded limestone that will function as cultch for oyster populations and is completely funded by TNC.

The department has determined that the 434 acres encompassing the oyster restoration sites in the East Bay Approved Area in Galveston Bay and the 54-acre area encompassing Half-Moon Reef in Matagorda Bay must be closed to oyster harvest for at least two years in order to repopulate these reefs, allow for post-construction monitoring for success, and to allow oysters to reach market size.

Lance Robinson, Coastal Fisheries Division Regional Director, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state or local governments as a result of enforcing or administering the rule. The department will incur costs associated with the installation and maintenance of corner marker buoys used to delineate the closure boundaries. Over the two-year closure period the

department estimates an expense of approximately $30,000 to $35,000. The initial cost of installation is estimated to be $27,000 ($1,500 per buoy, plus anchors and corners).

Mr. Robinson also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the potential for increased oyster production by repopulating damaged public oyster reefs and allowing these oysters to reach market size and subsequent recreational and commercial harvest.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses, micro-businesses, or persons required to comply with the amended rule as proposed because there has been no commercial harvest of oysters occurring in the areas affected by the proposed rule since at least 2008.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

The department has determined that the proposed rule is in compliance with Government Code §505.11 (Actions and Rules Subject to the Coastal Management Program) and §505.22 (Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposal may be submitted to Jeremy Leitz, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4333; e-mail: jeremy.leitz@tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §76.115, which authorizes the commission to close an area to the taking of oysters when the area is to be reseeded or restocked.

The proposed rule affects Parks and Wildlife Administrative Code, Chapter 58.

§58.21. Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

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

(c) Area Closures.

(1) There is no open public season for oysters from areas declared to be restricted or prohibited by the Department of State Health Services or areas closed by the commission.

(A) [~~(1)~~] The director may close an area to the taking of oysters upon finding that the area is being overworked or damaged or the area is to be reseeded or restocked, and may re-open the areas as provided in Parks and Wildlife Code, §76.115.

(B) [~~(2)~~] An order to close an area shall state the criteria used by the director to determine that the closure is warranted.

(C) [~~(3)~~] The department shall consult with members of the oyster industry regarding the management of oyster beds in the state.

(D) [~~(4)~~] For the purposes of this section an area will include those designated by the Department of State Health Services as "Approved" and "Conditionally Approved" or other areas based on evaluation by the department.

(E) [~~(5)~~] No person may harvest oysters in an area closed by order of the commission or the executive director.

(2) No person may take or attempt to take oysters within an area described in this paragraph. The provisions of this paragraph cease effect on November 1, 2016.

(A) Galveston Bay.

(i) Hannah Reef. The area within the boundaries of a line beginning at 29° 29' 17.7"N, 94° 42' 43.9"W (corner marker buoy A); to 29° 29' 2.9"N, 94° 42' 9.7"W (corner marker buoy B); thence to 29° 28' 44.3"N, 94° 42' 16.8"W (corner marker buoy C); thence to (29° 29' 0.6"N, 94° 42' 52.8"W (corner marker buoy D); and thence back to corner marker buoy A.

(ii) Middle Reef (CCA). The area within the boundaries of a line beginning at 29° 30' 49.3"N, 94° 39' 53.2"W (corner marker buoy A); thence to 29° 30' 39.3"N, 94° 39' 40.9"W (corner marker buoy B); thence to 29° 30' 35.0"N, 94° 39' 46.1"W (corner marker buoy C); thence to 29° 30' 45.1"N, 94° 39' 58.2"W (corner marker buoy D); and thence and back to corner marker buoy A.

(iii) Middle Reef. The area of Middle Reef contained area within the boundaries of a line beginning at 29° 30' 13.5"N, 94° 39' 22.4"W (corner marker buoy A); thence to 29° 30' 2.3"N, 94° 39' 10.8"W (corner marker buoy B); thence to 29° 29' 58.2"N, 94° 39' 15.8"W (corner marker buoy C); thence to 29° 30' 10.0"N, 94° 39' 27.9"W (corner marker buoy D); and thence back to corner marker buoy A.

(iv) Pepper Grove Reef. The area within the boundaries of a line beginning at 29° 29' 49.6"N, 94° 40' 4.4"W (corner marker buoy A); thence to 29° 29' 50.0"N, 94° 39' 27.8"W (corner marker buoy B); thence to 29° 29' 21.8"N, 94° 39' 27.3"W (corner marker buoy C); thence to 29° 29' 21.4"N, 94° 39' 42.6"W (corner marker buoy D); thence to 29° 29' 15.6"N, 94° 39' 42.5"W (corner marker buoy E); thence to 29° 29' 15.4"N, 94° 40' 4.0"W (corner marker buoy F); and thence back to corner marker buoy A.

(B) Matagorda Bay - Half-Moon Reef. The area within the boundaries of a line beginning at 28° 34' 18.8"N, 96° 14' 08.4"W (corner marker buoy A); thence to 28° 34' 15.7"N, 96° 13' 59.4"W (corner marker buoy B); thence to 28° 33' 53.8"N, 96° 14' 19.5"W (corner marker buoy C); thence to 28° 33' 57.0"N, 96° 14' 28.5"W (corner marker buoy D); and thence to 28° 34' 18.8"N, 96° 14' 08.4"W (corner marker buoy A).

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

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CHAPTER 61. DESIGN AND CONSTRUCTION
SUBCHAPTER E. GUIDELINES FOR ADMINISTRATION OF TEXAS LOCAL PARKS, RECREATION, AND OPEN SPACE FUND PROGRAM

31 TAC §§61.131, 61.133 - 61.136, 61.138, 61.139

The Texas Parks and Wildlife Department (the department) proposes amendments to §§61.131, 61.133 - 61.136, 61.138, and 61.139, concerning Guidelines for Administration of Texas Local Parks, Recreation, and Open Space Fund Program. The proposed amendments are a result of the department's continual outreach and communication efforts with the regulated community. In general, the proposed amendments incorporate suggestions from the regulated community with respect to word choice in order to improve clarity and accuracy and reflect a desire on the part of the department to more explicitly recognize the value of conservation as a component of recreation; however, the proposed amendments also make changes to scoring criteria and point values.

Several changes occur throughout the proposed amendments. The proposed amendments would replace the word "sponsor" with the word "applicant" for the sake of accuracy. Because the evaluation of a grant proposal must take place before a grant can be awarded, the governmental entity making the request is technically an applicant. The proposed amendments to §§61.133(a)(7) and (c)(7), 61.134(a)(7) and (c)(6), 61.136(a)(5) and (b)(7)(D), 61.138(c)(6)(C), and 61.139(c)(3) replace general references to underserved citizens with the term "underserved population." Parks and Wildlife Code, §24.001(12) defines "underserved population" as "any group of people that is low-income, inner city, or rural as determined by the last census, or minority, physically or mentally challenged, youth at risk, youth, or female." The department has determined that the current regulatory references and terminology in those provisions dealing with grant awards on the basis of serving underserved populations is not consistent with the wording of the statute. Therefore, appropriate conforming changes have been made in the identified sections.

The proposed amendments also would standardize references to the use of federal census data throughout the subchapter, by implementing the phrase "most recent federal census data" in all places where the rules require census data.

The proposed amendments also would replace the phrase "department-approved" with the phrase "department-endorsed" wherever it occurs in order to more accurately reflect the status of master plans submitted to the department. The department does not actually approve master plans that are required by the rules; it appraises their sufficiency with respect to the department's priorities.

The proposed amendments to §§61.133(a)(11) and (c)(7)(J), 61.134(a)(8) and (c)(7), 61.136(a)(8) and (c)(7)(G), 61.138(c)(14), and 61.139(c)(11) alter or replace current rule language to address sustainable park design. Sustainable park design is becoming increasingly important as communities strive to create viable, long-term recreation space in times of increasing competition for space and funding. The department has determined that sustainable design and management is of great importance and is consistent with the objectives of the department's Land and Water Resources Recreation and Conservation Plan (sometimes referred to as the Land and Water Plan).

The proposed amendment to §65.131, concerning Policy, would eliminate dates regarding the period for which the Application Procedures are adopted. The current dates are archaic and unnecessary. The department has determined that a year-by-year approach to maintaining the viability of background documents is impractical.

The proposed amendment to §61.133, concerning Grants for Outdoor Recreation Programs, would consist of several changes. The proposed amendment to §61.133(a)(4) would replace the phrase "provide water-related park and recreation opportunities" with the phrase "expand access to water-based recreation opportunities." The department has determined that the proposed wording better explains the criteria and is consistent with wording in other agency plans and documents. Comment from the regulated community also indicated a preference for the criteria to include projects that improve fish and wildlife habitat. The department concurs with the preference, since it would be consistent with the department's mission and its Land and Water Plan. The proposed amendment also would alter subsection (a)(5) to remove the term "innovative use." Staff had determined that the term is problematic because it is subjective and difficult to define; therefore, it is being removed. The proposed amendment would alter subsection (a)(6) to include the word "conservation" and remove the phrase "basic park." The intent of the change is to recognize a larger sphere of program applicability, inclusive of parks, and to emphasize the department's commitment to conservation. The proposed amendment to subsection (a)(8) would augment the current category by providing consideration for sponsors who utilize local resources. The proposed amendment also would reword subsection (a)(9) to narrow the scope of the priority to "public parkland" as opposed to the current "public land" and replace a reference to stewardship with a reference to conservation. The department has determined that the current reference to "public land" is too broad; there are many types of public land that would be inappropriate for use as outdoor recreation assets, so the proposed amendment would narrow the priority by referring to "public parkland." The insertion of the term "conservation" is necessary for reasons articulated earlier in this preamble. In the proposed amendment to subsection (a)(10), the phrase "parks and recreation areas" would be removed because it has caused confusion regarding the eligibility of projects that would convert obsolete facilities of various types into parks and recreation facilities, which is absolutely encouraged by the department. The proposed amendment to subsection (a) also would alter paragraph (12) to clarify that the priority points under that category are not restricted to projects containing greenbelts and may be awarded for any project that links parks and conservation areas. Finally, the proposed amendment to subsection

(c) would eliminate paragraph (13) because the appreciation of and preservation of cultural resources is considered to fall within the scope of recreational diversity, which is addressed in subsection (a)(3).

The proposed amendment to §61.133(c) also would alter paragraph (7) to provide that an applicant for a grant could also submit a comprehensive plan other than a master plan and eliminates unnecessary informational description of what is considered by the department to constitute need. The proposed amendment to subsection (c)(7)(A) also alters clauses (ii) - (iv) to allow greater flexibility to applicants for satisfying priority needs identified in the master or comprehensive plan. The proposed amendment to subsection (c)(7)(B) would make changes regarding the priority category of park and recreation diversity. The proposed amendment also would eliminate the list of example categories in clauses (i) - (xi) because input from the regulated community indicated that there are many types of projects other than those listed that provided significant recreational opportunity and the current list is too limited. Also in response to input from the regulated community, the proposed amendment would replace the language in current subparagraph (C) to rectify perceptions that the hierarchy of water-body types listed in the current rule caused areas of the state with plentiful water resources to be more competitive than projects in parts of the state with fewer water resources. The proposed amendment also would alter subparagraph (D) to remove the term "innovative use." Staff had determined that the term is problematic because it is subjective and difficult to define; therefore, it is being removed. The proposed amendment also would alter subparagraph (D)(ii) eliminate confusion regarding the basis for point awards under that priority category. The current rule requires an applicant to qualify new and different opportunities "in the sponsor's jurisdiction or intended service area" and bases the point award "on the percentage of construction budget." Feedback from the regulated community suggests that the current wording is difficult to understand. Therefore, the proposed amendment would substitute "at the project site" for "in the sponsor's jurisdiction or intended service area" and eliminates the reference to "percentage of construction budget." Subparagraph (E) would be altered by inserting language to emphasize the importance of recreation as opposed to facility support, an unnecessary reference to two of many possible project facets, and eliminating an explanation of the calculation of total facilities cost. The department received feedback from the regulated community indicating a desire to have the rules more overtly focus on conservation as opposed to project infrastructure (signage, parking lots, etc.) only peripherally related to conservation. The "total facilities cost" explanation is being removed because it is not informative and cannot be applied effectively to every situation. The proposed amendment also makes changes to subparagraph (F) by reducing the total number of points available under the category (from 15 to 12) and creating a category for "physically/mentally challenged citizens." The proposed amendment would allow the award of five points for projects that provide opportunity for the physically/mentally challenged, rather than only for the elderly population. Feedback from the regulated community persuaded the department that a broader context would be just as effective, since the component of the elderly population that the department believes needs to be served is the elderly with physical and/or mental challenges. Thus, the category is more inclusive. The proposed amendment also would alter subparagraph (G) to reward applicants for both local and partner resource contributions. Points would be awarded based on the total dollar amount of documented contributions that go above and beyond the required match. The proposed amendment to subparagraph (G) also would remove unnecessary examples of non-grant assisted facilities. As has been noted elsewhere, the use of examples causes confusion because a list of examples is not exhaustive and therefore isn't helpful. Under the current rule, points are awarded under subparagraph (G)(ii) for cooperation with other private or public entities on a per-activity basis. The criteria would be expanded to reward applicants for both local and partner resource contributions. Points would be awarded based on the total dollar amount of documented contributions that go above and beyond the required match. The proposed amendment to subparagraph (H) would eliminate the need for a project to be regionally representative and eliminate unnecessary references to wetlands and water resources. The category is intended to reward applicants for acquisition and conservation of parks and recreation lands. The department has determined that "regionally representative" is an abstract term in many instances, and that all natural features of a prospective project should be considered as part of the evaluation process. The proposed amendment to subparagraph (H) also would alter clause (i) to remove an unnecessary reference to types of government and restructure the remainder of the subparagraph to reflect the department's intent to be responsive to input from the regulated community regarding perceptions that the hierarchy of water-body types listed in the current rule allows projects submitted from areas of the state with plentiful water resources to be more competitive than projects in parts of the state with fewer water resources. The point award values are also being reduced in each category. The department's rationale is that because requirements are being eased to make more projects competitive, the number of potential points should be reduced slightly to compensate for the increased availability. The proposed amendment to subparagraph (I) eliminates the phrase "parks and recreation area or facilities" because it has caused confusion regarding the eligibility of projects that would convert obsolete facilities of various types into parks and recreation facilities, which is absolutely encouraged by the department. The proposed amendment to subparagraph (K) also would clarify that the priority points under that category are not restricted to projects containing greenbelts and may be awarded for any project that links parks and conservation areas, based on the significance of the linkage. The proposed amendment also would eliminate current subparagraph (L) because the appreciation of and preservation of cultural resources is considered to fall within the scope of recreational diversity, which is addressed in subsection (a)(3).

The proposed amendment to §61.134, concerning Grants for Indoor Recreation Programs, would alter subsection (a)(7) to remove the reference to federal census data, which is redundant. The proposed amendment also would expand the potential for award of points under the criteria in subsection (c)(1) by allowing the award of points for projects that satisfy three of the top five priority needs or two of the five top category needs. Under the current rule, points are awarded if a project satisfies three of the top three priority needs or two of the three top category needs. The change is intended to make projects more competitive and broaden awards to include more communities. The proposed amendment to §61.134 also would remove language from subsection (c)(2) to remove a provision for the reduction of points for proposals that include facilities that do not support recreational activities and replace with a statement that project elements that do not support recreational activities will not be considered. The department has determined that the current

rule is conditional in nature and should be more emphatic. Input from the regulated community has convinced the department that a project proposal that is consistent with intent of the section should not be penalized for also containing components that do not support recreational activities, as long as those components are not antithetical to the goals and objectives of the department. The proposed amendment also would remove unnecessary language from subsection (c)(4)(B) that furnishes an example of how the priority category might affect a hypothetical project. The department has determined that providing a general example as guidance could lead to misunderstandings and prefers to provide more detailed information in direct interactions with applicants. The proposed amendment also alters subparagraph (B) to provide a mechanism to reward applicants for both local and partner resource contributions. Points would be awarded based on the total dollar amount of documented contributions that go above and beyond the required match. The proposed amendment would alter the priority category for the elderly in paragraph (6)(C) to make it encompass "physically/mentally challenged citizens," which is intended to enlarge the applicability of the category, and includes elderly citizens.

The proposed amendment to §61.135, concerning Grants for Community Outreach Outdoor Programs, would eliminate subsection (a)(10) because the importance of promoting outdoor educational activities is self-evident and at any rate would be addressed under the priority for diversity. The proposed amendment also would add new subsection (b)(5)(A) - (D) to provide the department with more detailed information with which to evaluate and score project proposals. The new provisions would require an applicant to submit a project description, project action plan, budget summary, and resolution, and would describe the content of each of those components. The project description would consist of a basic overview of important factors such as the goals of the project, a method for measuring the progress of the project, risk management measures (safety training, first aid), and a list of expenses. The requirements are intended to allow the department to perform initial evaluation of projects without protracted interactions with the applicant to determine the essential components of the proposal. The project action plan would consist of a one-year timeline and a detailed description of the location(s) of the project, the dates at which various phases of implementation are to occur, and the nature of the activities that are to be undertaken. By requiring a detailed chronology of project implementation, the department believes that it will be better able to evaluate and award grants. Similarly, requiring a budget summary will provide the department with a way to determine the realistic probability of an applicant to achieve the goals and objectives of a proposal. Finally, a resolution from a governing board or authorized official is necessary to enable the department to be assured that all facets of proposed project have been properly vetted prior to submission to the department. The proposed amendment also would alter current subsection (b)(5)(A) to increase the potential point award, from 12 to 15 points. Because the proposed amendment to subparagraph (E)(iii) - (v) would increase the potential points awarded in those categories, the total point award under the category must be increased as well. The point awards in subparagraph (E)(iii) - (v) would be increased in order to weight projects according to the number of people that would be served.

The proposed amendment also would modify current subsection (b)(5)(G) to clarify that the intent of projects to support at-risk youth should be primarily concerned with mentoring and career development in the context of natural resources, which is consistent with the department's Land and Water Plan. Similarly, the proposed amendment would eliminate current subsection (b)(5)(I) because the goals listed in the priority point category have been determined to be self-evident in the context of the department's mission and the goals of the department's Land and Water Plan.

The proposed amendment to §61.136, concerning Small Community Grant Program, would alter subsection (a)(4) to remove the phrase "park" and replace it with the word "outdoor" and add the word "conservation." As noted elsewhere in this preamble, one of the goals of this rulemaking is to clarify the department's intent to administer grant programs that are consistent with the department's overall conservation mission and objectives. The intent of the wording change is to expand the category to include conservation activities done in the park in addition to traditional park elements. The proposed amendment to subsection (a)(8) to replace the current priority (environmentally responsible activities) with a priority for sustainable park design. The totality of the various priorities is to encourage proposals that emphasize conservation in general; thus, it isn't critical to devote a single priority to environmentally responsible activities. Instead, the department proposes to create a priority for sustainable park design, which is becoming increasingly important as communities strive to create viable, long-term recreation space in times of increasing competition for space and funding. The proposed amendment also would alter subsection (b)(7)(B) to remove "innovative use" as a component of the priority and to allow up to three points to be awarded for each need identified through a documented public input process. Staff has determined that the term "innovative use" is problematic because it is subjective and difficult to define; therefore, it is being removed. The current rule stipulates that points will be awarded "only if each recreation element is identified by a documented public input process." Comments from the regulated community indicate a desire for this priority component to be clarified and quantifies. Therefore, the proposed amendment would establish a maximum point award of three points, to be awarded at a ratio of one point per facility.

The proposed amendment also would modify subsection (b)(7)(C) to award points on the basis of "direct outdoor recreation and conservation" opportunities rather than "direct park and recreation" opportunities. The intent of the wording change is to expand the category to include conservation activities done in the park in addition to traditional park elements. The proposed amendment also removes a delineation of the components for determining total facilities cost. The department has determined that the term "total construction cost" is self-explanatory and sufficient for conveying the nature of the information the department is seeking. The proposed amendment also would alter subparagraph (E) to reward applicants for both local and partner resource contributions. Points would be awarded based on the total dollar amount of documented contributions that go above and beyond the required match. The proposed amendment also would eliminate subparagraph (K). Under the current subparagraph (I), a deduction of five points may be made by the department if an applicant is not in compliance with its obligations under a prior grant awarded by the department. Therefore, the provisions of subparagraph (K) are redundant.

The proposed amendment to §61.138, concerning Outdoor Urban Park Grants Program, would consist of several components. The proposed amendment would alter subsection (c)(1)(A), (B), and (E) to clarify that point awards for the acquisition of significant natural areas, green corridors, and future conservation and recreation purposes are awarded on the basis of acreage

and quality. The department has determined that it is important to emphasize that in evaluating similar competing acquisition proposals, the project that offers the largest amount of space, most significant natural features, or a combination of the two, should be ranked highest. The proposed amendment also alters subparagraphs (C) and (F) to remove the variable point award and make each priority worth two points. The department has determined that the subjective difference between one point and two points causes confusion and should be eliminated. The proposed amendment also would eliminate current subsection (c)(1)(H) because it is redundant; the program is restricted to urban communities, so it is unnecessary to award points based on proximity areas of high population density. The proposed amendment also would alter subsection (c)(2) would clarify what is meant by the term "neighborhood park" in subparagraph (A) and eliminate the variable point awards in subparagraphs (A) - (C). The department received requests from the regulated community to provide a definition for "neighborhood park." Therefore, the proposed amendment would define a neighborhood park as "1-15 acres in size with a service area of one-half mile." The variable point totals are being eliminated because the department has determined that the subjective difference between one point and three points causes confusion and should be eliminated. The proposed amendment would eliminate subparagraph (D) because proposed new paragraph (14) would address sustainability. The proposed amendment would alter subsection (c)(3) to address criteria for projects that propose restoration. The current rule has been determined to be confusing because it has been interpreted to limit awards to projects that propose restoration of existing recreation and conservation infrastructure, when in fact the category is intended to award any project that proposes to restore an existing building or complex for use as a recreational or conservation center. The proposed amendment would remove confusing language in paragraph (3)(A). Feedback from the regulated community suggests that the current wording is difficult to understand. Therefore, the proposed amendment would eliminate the reference to "percentage of budget dedicated to the criterion" and allow the rule consist of a formula for calculating Renovation Cost. The proposed amendment also would remove current subparagraph (B) because proposed new paragraph (14) addresses wildlife habitat management. The proposed amendment to current subparagraph (C) would remove the reference to "percentage of budget dedicated to the criterion" (for the reason discussed in the proposed amendment subparagraph (A) and add a formula for determining Reuse Cost, which the department believes will assist communities in developing grant proposals. The proposed amendment also would clarify paragraph (4) to state that points for trails/corridors/greenways will be awarded based on the length of the trail. The department's intent is to emphasize major projects. The proposed amendment to paragraph (6)(A) would require the submission of a map showing the distribution of parks within the applicant's service area. The current rule requires the applicant to identify the locations of parks, but the department has determined that a graphical representation of park distribution is more helpful. The proposed amendment also would alter subparagraph (D) to allow the award of points for projects that provide opportunity for the physically/mentally challenged, rather than only for the elderly population. Feedback from the regulated community persuaded the department that a broader context would be just as effective, since the component of the elderly population that the department believes needs to be served is the elderly with physical and/or mental challenges. Thus, the category is more inclusive. The proposed amendment also would replace the current provision governing joint ventures and partnerships in subsection (c)(7) with new language intended to reward applicants for both local and partner resource contributions. Points would be awarded based on the total dollar amount of documented contributions that go above and beyond the required match. The proposed amendment also would address priority points awarded for master plans in subsection (c)(8). The current rule allows points to be awarded for projects satisfying three of the top three needs identified in a master place, two of the top three needs, and one of the top three. Feedback from the regulated community indicates that more flexibility in this category is desired. Therefore, the proposed amendment would allow the award of points for satisfying one of the top five priority needs identified in a master plan, but reduces the overall points available, from 10 to five. The proposed amendment also would provide that an applicant for a grant could also submit a jurisdiction-wide plan in lieu of a master plan. The proposed amendment to paragraph (9) would eliminate language that refers to projects that, if not undertaken in the near future, would result in a safety hazard or the elimination of usability. The department has determined that decaying infrastructure that has reached the point of being a safety hazard and is not suitable for restoration should not be considered in the scoring process. The proposed amendment also would alter language in subparagraphs (C) and (D) to create two categories, one that would award points for actions being considered to remedy a threat situation, and one that would award points for actions that will be taken in the future. Finally, the proposed amendment would add new paragraph (14) to create a new category to award points for projects for sustainable park design and development.

The proposed amendment to §61.139, concerning Indoor Urban Park Grants Program, would consist of several actions. The proposed amendment to subsection (c)(3) would require the submission of a map showing the distribution of parks within the applicant's service area. The current requires the applicant to identify the locations of parks, but the department has determined that a graphical representation of park distribution is more helpful. The proposed amendment to subparagraph (B) would re-state the current provision and is nonsubstantive. The proposed amendment also would alter subparagraph (D) to allow the award of points for projects that provide opportunity for the physically/mentally challenged, rather than only for the elderly population. Feedback from the regulated community persuaded the department that a broader context would be just as effective, since the component of the elderly population that the department believes needs to be served is the elderly with physical and/or mental challenges. Thus, the category is more inclusive. The proposed amendment to subsection (c)(4) also would replace the current provision governing joint ventures and partnerships with new language intended to reward applicants for both local and partner resource contributions. Points would be awarded based on the total dollar amount of documented contributions that go above and beyond the required match. The proposed amendment also would address priority points awarded for master plans in subsection (c)(5). The current rule allows points to be awarded for projects satisfying three of the top three needs identified in a master place, two of the top three needs, and one of the top three. Feedback from the regulated community indicates that more flexibility in this category is desired. Therefore, the proposed amendment would allow the award of points for satisfying one of the top five priority needs identified in a master plan, but reduces the overall points available, from 10 to five. The proposed amendment also would provide that an

applicant for a grant could also submit a jurisdiction-wide plan in lieu of a master plan. The proposed amendment to paragraph (6) would eliminate language that refers to projects that, if not undertaken in the near future, would result in a safety hazard or the elimination of usability. The department has determined that decaying infrastructure that has reached the point of being a safety hazard and is not suitable for restoration should not be considered in the scoring process. The proposed amendment to paragraph (6) also would alter subparagraphs (A) and (B) to replace the phrase "action in progress" with the phrase "actions under consideration," which is necessary because the department does not want the category to be limited to processes already in progress if action was imminent. Finally, the proposed amendment would add new paragraph (11) to create a new category to award points for projects for sustainable park design and development.

Mr. Tim Hogsett, Director of Recreational Grants, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amendments.

Mr. Hogsett also has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the amendments as proposed will be regulations that are clearer and easier to interpret by the regulated community, which will benefit the public by making grant funding for outdoor and indoor recreation and conservation projects more efficient.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed amendments. The amended rules would not compel or mandate any action on the part of any entity, including small businesses or microbusinesses.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the amendments as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed amendments.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to Mr. Tim Hogsett, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8712, e-mail: tim.hogsett@tpwd.texas.gov or via the department's website at www.tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, Chapter 24, which requires the department to adopt regulations for grant assistance.

The proposed amendments affect Parks and Wildlife Code, Chapter 24.

§61.131. Policy.

It is the Texas Parks and Wildlife Commission policy that the executive director shall administer local projects in accord with the following guidelines with interpretation of intent to be made to provide the greatest number of outdoor recreational opportunities for Texas in accord with priorities of the Texas Outdoor Recreation Plan. In keeping with this policy, local projects will not be approved from both the Texas Local Parks, Recreation, and Open Space Fund and the Federal Land and Water Conservation Fund Program unless extraordinary circumstances dictate that high priority public needs will not be met without the full or partial funding of both programs.

(1) Section 61.81 of this title (relating to Application Procedures), the procedural guide for Land and Water Conservation Fund Program, is adopted for the Texas Local Parks, Recreation, and Open Space Fund Program.

(2) Section 61.121 of this title (relating to Policy), guidelines for administration of Local Land and Water Conservation Fund projects, is adopted for the Texas Local Parks, Recreation, and Open Space Fund Program, except all references to the state liaison officer shall mean the executive director.

(3) Section 61.81 of this title [~~(relating to Application Procedures)~~], the procedural guide for Land and Water Conservation Fund Program, is adopted by reference for the Texas Recreation and Parks Account [~~for the period September 1, 1993, through September 1, 1994~~]. Copies may be obtained from Texas Parks and Wildlife Department, Grants Program, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4948.

(4) Section 61.121 of this title [~~(relating to Policy)~~], guidelines for administration of Local Land and Water Conservation Fund Program and guidelines for administration of Texas Local Parks, Recreation, and Open Space Fund projects are adopted by reference for the Texas Recreation and Parks Account [~~for the period of September 1, 1993, through September 1, 1994~~]. Copies may be obtained from Texas Parks and Wildlife Department, Grants Program, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4948.

§61.133. Grants for Outdoor Recreation Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for outdoor recreation programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. In general, recommended priorities for outdoor recreation projects are:

(1) to ensure applicant [~~sponsor~~] performance on active grants and compliance at previously assisted grant sites;

(2) to recognize and reward local planning;

(3) to increase recreational diversity;

(4) to expand access to water-based [~~provide water-related park and~~] recreation opportunities and improve fish and wildlife habitat;

(5) to improve geographic distribution [~~and innovative use~~] of park and recreation opportunities;

(6) to maximize the use of funds for conservation [~~basic park~~] and recreation opportunities;

(7) to improve park and recreation opportunities for an underserved population [~~low income (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State)), minority, and elderly citizens~~];

(8) to reward local resources and cooperative efforts between project applicants [~~sponsors~~] and other entities;

(9) to encourage the acquisition of public parkland and conservation of [~~preserve~~] significant natural resources [~~through public land acquisition and stewardship~~];

(10) to renovate existing, obsolete [~~park and recreation areas and~~] facilities;

(11) to promote sustainable park design and [~~environmentally responsible activities and~~] development;

(12) to provide [~~linear greenbelt~~] linkages to other public park and conservation areas [~~parks, neighborhoods, or public facilities~~]; and

[~~(13) to encourage the appreciation and preservation of cultural resources; and~~]

(13) [~~(14)~~] to support the department's Land and Water Resources Conservation and Recreation Plan.

(b) Local master plan standard requirements. Minimum master plan standards must be met to qualify for planning and priority points. Local applicants [~~sponsors~~] may submit applications without having a department-endorsed [~~department-approved~~] master plan; however, only those applicants [~~sponsors~~] that have a TPWD endorsed [~~approved~~] park, recreation and open space master plan will receive points for completing a local plan. In addition, only proposals that address priority needs identified in endorsed [~~approved~~] plans will receive priority points under the provisions of subsection (c)(7) of this section. Master plans must have been received in an approvable format at least 60 days prior to the application submission deadline at which time credit is sought. The following are minimum master plan standards:

(1) Proof of adoption. The plan must be formally adopted or otherwise endorsed by act or resolution of the applicable governing body of the applicant [~~sponsor~~], and the endorsement must be included with the document.

(2) Jurisdiction-wide scope. The plan must be complete, comprehensive, and assess the entire jurisdiction area of the project applicant [~~sponsor~~]. County plans must cover the entire county, and city or district plans must cover the entire city or district. For large urban areas, the plan should cover the entire jurisdiction, and then may break the jurisdiction down into regions, sectors, precincts, districts, etc., as appropriate. Master plans that contemplate service delivery across more than one jurisdiction may be submitted by a local applicant [~~sponsor~~], with any necessary supplemental information, provided the plan has been formally adopted or otherwise endorsed by act or resolution of the applicable governing body of the applicant [~~sponsor~~].

(3) Plan duration. The plan must specifically identify the time period within which the goals and objectives of the plan are to be carried out. Plans should cover a minimum ten-year period. If a plan is more than five years old, a brief summary of plan accomplishments to date, as well as applicable updates of demographics, goals and objectives, standards, and maps must be provided to enable the department to recognize and credit program progress. Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input. Plans older than 10 years will be considered obsolete and new plans will be required.

(4) Plan content. The following information should be included in the document:

(A) introduction;

(B) goals and objectives;

(C) plan development process (discuss when the planning process began, plan phases, public input received, survey/studies conducted, committees and/or personnel involved, etc.);

(D) area/facility concepts and standards, including:

(i) population/area service and acreage goals;

(ii) "typical" park and facility standards; and

(iii) applicable local codes, ordinances, and other requirements for community or neighborhood development.

(E) inventory of existing park, recreation and open space areas and facilities (including schools).

(F) needs assessment and identification. Information under this subparagraph shall be area- and facility-specific, and may include basic support facilities/infrastructure which are critical to the recreational experience. A discussion and identification of open space needs in the master plan, or a separate open space plan, shall be included.

(G) prioritization of needs. Applicant shall include:

(i) priority lists for outdoor and indoor needs (may be separate or combined);

(ii) if necessary, a map of all specific area(s) intended for open space acquisition and preservation, identified as a need, discussed, and prioritized, if desired;

(iii) where appropriate, a discussion of renovation/redevelopment needs, which may be ranked as a priority; and

(iv) plan implementation recommendations, including a timeline and discussion of resources for meeting priorities (which must identify and prioritize which needs are to be met, where, and when). Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input.

(H) illustrations, maps, charts, surveys, etc.

(c) Outdoor recreation project priority scoring system.

(1) Outdoor recreation projects presented to the commission shall be scored according to the criteria, rating factors, and point values set forth in this subsection.

(2) The priority ranking of a project will depend on its score in relation to the scores of other projects under consideration.

(3) Funding of projects will depend on the availability of TRPA funds.

(4) Projects which have not been approved after two considerations by the commission, without alterations to significantly raise the project score, shall be returned to the applicant [~~sponsor~~] and not accepted for resubmission.

(5) Each site of a multiple-site project shall be scored individually. Individual site scores will be weighted on a pro-rata share of the total budget for the entire project. All weighted scores will be added together for the total project score.

(6) If the applicant [~~sponsor~~] is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, the application will be scored and presented for award consideration. If the applicant [~~sponsor~~] does not meet the requirements of this paragraph, the application will not be scored or considered further.

(7) A project proposal meeting the requirements of paragraph (6) of this subsection shall be evaluated according to the extent that:

(A) the applicant [~~sponsor~~] has a current department-endorsed [~~department-approved~~] master plan or other comprehensive plan on file with the department at the time of application and the project will satisfy the priority outdoor recreation needs identified in the [~~master~~] plan required by this subparagraph. [~~Consideration of "need" for this criterion includes basic support facilities/infrastructure critical to the park and recreation experience. Eligible support facilities/infrastructure are limited to restrooms, roads and parking, area lighting (to ensure public safety), utilities essential to eligible support facilities, irrigation, and land acquisition.~~] Scoring shall be as follows, up to a total of 15 points:

(i) for having a current department-endorsed [~~department-approved~~] master plan on file at the time of application submission - 5 points;

(ii) for satisfying 3 of the top 5 [~~3~~] priority needs - 10 points;

(iii) for satisfying 2 of the top 5 [~~3~~] priority needs - 6 points; and

(iv) for satisfying 1 of the top 5 [~~3~~] priority needs - 3 points.

(B) the project will provide diversity of park and recreation facilities [~~opportunities/facilities. Priority points for this criterion shall be awarded based on the number of park and recreation opportunities/facilities provided within the intended service area~~]. One point will be awarded for each type of significant and diverse recreation facility. Each facility must be identified as a need in the applicant's [~~category listed in this subparagraph, provided each element is specifically identified in a~~] locally adopted park, recreation and open space master plan or, if the applicant [~~sponsor~~] does not have an adopted master plan, by a documented public input process, up to [~~a total of~~] 10 points. [~~The significant recreation categories are:~~]

~~*[(i)* campgrounds;]~~

~~*[(ii)* sports fields and courts;]~~

~~*[(iii)* playgrounds (tables, pavilions, etc.);]~~

~~*[(iv)* picnic areas;]~~

~~*[(v)* golf courses;]~~

~~*[(vi)* swimming facilities;]~~

~~*[(vii)* trails;]~~

~~*[(viii)* passive recreation (scenic overlooks, gardens, etc.);]~~

~~*[(ix)* amphitheater;]~~

~~*[(x)* fishing/hunting facilities; and]~~

~~*[(xi)* natural area.]~~

(C) the project will expand access to water-based recreation opportunities along existing natural water bodies, provide desirable habitat conditions for fish and wildlife, and will not degrade the resource. Scoring shall be as follows, up to a total of 4 points:

(i) project expands access to water-based recreation on an existing wetland, river, continuous flow stream, pond, lake, gulf, bay, or estuary: 1 point;

(ii) project preserves, restores, or improves habitat conditions for fish and wildlife: 1 point;

(iii) project is provided in an area that currently has limited public access to water-based recreation along existing natural water bodies: 1 point;

(iv) project provides a link to existing natural water bodies that support water-based recreation opportunities: 1 point.

~~[(C) the project will provide improved natural water-based park and recreation opportunities, up to a total of 6 points. The project provides direct park and recreation or conservation opportunities which do not degrade the resource along existing quality water bodies, for no more than one of the following:]~~

~~*[(i)* coast or lake: 6 points;]~~

~~*[(ii)* bay or estuary: 5 points;]~~

~~*[(iii)* river: 4 points (only water bodies named as "rivers" may receive points under this category. All others, e.g., creeks, brooks, bayous, branches, etc., are considered "streams");]~~

~~*[(iv)* stream (continuous flow): 3 points;]~~

~~*[(v)* pond: 2 points ("ponds" are generally man-made and no larger than five surface acres. Points will not be awarded for constructing ponds under this category.); or]~~

~~*[(vi)* wetland: 1-3 points, dependent upon size and quality.]~~

(D) the project will improve the geographic distribution [~~or innovative use~~] of park and recreation lands and facilities in the project's service area or within the applicant's [~~sponsor's~~] jurisdiction, up to [~~a total of~~] 10 points.

(i) project provides the first public park in the applicant's [~~sponsor's~~] jurisdiction or intended service area: 10 points; or

(ii) project provides significantly new and different park and recreation opportunities (other than school facilities) at the project site [~~in the sponsor's jurisdiction or intended service area~~]: 1-10 points. Points for this item shall be awarded only if specific recreation elements are identified as a need in a locally adopted park, recreation, and open space master plan or, if the applicant [~~sponsor~~] does not have an adopted master plan, by a documented public input process. Point awards shall [~~be based on the percentage of construction budget and will~~] be calculated as follows: new and different facility costs, divided by total construction costs, multiplied by 10.

(E) the project maximizes the use of development funds for outdoor [~~facilities which provide direct park and~~] recreation and conservation opportunities, up to a total of 20 points, determined by dividing the direct recreational and conservation [~~facilities~~] costs[~~, including trees and drip irrigation,~~] by the total construction costs and multiplying the result by 20. [~~"Total Facilities Costs" includes park/recreation and support/infrastructure facilities, contingency, and all required program signage costs in excess of $1,000.~~]

(F) the project improves park and recreation opportunities for an underserved population [~~low-income, minority, and elderly~~], up to 12 [~~a total of 15~~] points.

(i) project improves opportunities for low-income citizens, based on economic and demographic data for the service area from the most recent federal census data: determined by multiplying the percentage of population qualifying as low-income by 5 [~~and dividing by 100~~]. Maximum of 5 points.

(ii) project improves opportunities for minority citizens, based on economic and demographic data for the service area from the most recent census data: determined by multiplying the percentage of population qualifying as minority by 5 [and dividing by 100]. Maximum of 5 points.

(iii) project provides park and recreation opportunities for physically/mentally challenged citizens, which exceed the federal and state required accessibility standards. 2 points.

[(iii) project improves opportunities for the elderly: 1 point for each facility or activity that is identified as a need for this special population in a locally adopted master plan or, if the sponsor does not have an adopted plan, by a documented public input process. Maximum of 5 points.]

(G) the project involves local resources or documented cooperation between the applicant [sponsor] and other public or private entities to provide park and recreation opportunities at the project site(s). Maximum of 20 points.

(i) project involves the contribution of resources from sources other than the applicant [sponsor], including publicly owned non-parkland, which serves as all or part of the applicant's [sponsor's] matching share of funds. Maximum of 15 points. Points shall be awarded on a percentage basis, determined by dividing the total outside contribution value by the total match and multiplying the result by 15.

(ii) project includes documented contributions via the applicant or outside resources above the 50% required match. Up to five points will be awarded based on the following criteria: (Additional Contribution Amount / Required Match) x 5.

[(ii) project involves cooperation between the sponsor and other public or private entities and resources are contributed to the overall project for non-grant assisted facilities (example: a county constructs roads/parking facilities for a city, but no grant funds are requested for roads/parking): 1 point per activity, to a maximum of 5 points.]

(H) the project provides for the acquisition and conservation [preservation/conservation] of park and recreation lands, including publicly owned non-parkland, which consist of [regionally representative] natural resources or provides desirable [wetlands,] open space[, water access,] or needed parkland. Total point range: 0-25 [1-30] points for not more than one of the following:

(i) project provides for the acquisition and conservation [preservation/conservation] of a [federal, state, regional, or local] government identified natural area which is recognized in an acceptable, published planning document for having valuable or vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife: 0-25 [5-30] points, based on acreage and/or quality; or

[(ii) project provides for the acquisition and preservation/conservation of a significant wetland area: 5-25 points, based on acreage and/or quality; or]

(ii) [(iii)] project provides for the acquisition and conservation [preservation/conservation] of natural open space [land or water for human use and enjoyment] that is two acres or larger in size, relatively free of man-made structures [(including creek corridors, floodways, natural drainage basins, and areas which may be enhanced for native habitat)], and which is identified in an acceptable[, published,] and adopted local, jurisdiction-wide open space plan or master plan: 0-15 [5-20] points, based on acreage and/or quality; or

[(iv) project provides for the acquisition of land which would provide needed public access to park and recreational waters (see definitions under criteria listed in subparagraph (C) of this paragraph), 1-5 points, as determined below:]

[(I) coast or lake: 5 points;]

[(II) bay or estuary: 4 points;]

[(III) river: 3 points;]

[(IV) stream (continuous flow): 2 points;]

[(V) pond: 1 point; or]

(iii) [(v)] project provides for the acquisition of needed parkland; 0-5 points. Points awarded based on the quality, size and how well the narrative justifies need [recreational land proposed for future development: 10 points].

(I) project provides for the renovation or adaptive reuse of an existing obsolete facility [park and recreation area or facilities], determined by dividing the renovation cost by the total construction cost and multiplying the result by 25. Maximum of 25 points.

(J) project promotes sustainable park design [environmentally responsible activities and development by the use of activities or techniques such as xeriscape/native plant materials for landscaping, drip or treated effluent irrigation systems, energy efficient lighting systems, recycled materials for facility construction, environmental education and interpretation, significant tree plantings where no trees exist, alternative energy sources, water catchment systems, or other resource conservation measures]. Points for this category will be awarded based on how the overall project embraces sustainable techniques in the design and construction of the park, including but not limited to the diversity, innovative nature and/or cost of the project elements, up to a maximum of 10 points.

(K) project provides [significant] linkage via trail to other public park and conservation areas. Points shall be awarded based on the significance of the linkage, [i.e., trails and green corridors (not to include streets or sidewalks) to other parks and recreation areas, neighborhoods, or public facilities,] up to a maximum of 3 points.

[(L) project provides park and recreation opportunities that enhance and encourage appreciation and preservation of site-based cultural (historical and archaeological) resources through interpretive facilities or preservation strategies: maximum of 3 points. Points for this item are awarded based on the significance of the enhancement.]

(L) [(M)] project supports the department's Land and Water Resources Conservation and Recreation Plan (Plan). Applicant [Sponsor] must address how the project meets the goals of the Plan in the proposal narrative. Up to a maximum of 5 points.

(M) [(N)] applicant [sponsor] is in compliance with previously funded projects. If applicant [sponsor] is not in compliance with existing grant obligations, 5 points will be deducted from the project score.

(N) [(O)] a complete application was received by the application deadline - 5 points will be awarded.

§61.134. Grants for Indoor Recreation Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for indoor recreation programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. The priority ranking of a project depends on its score in relation to the scores of other projects under consideration. Funding of projects will

depend on the availability of TRPA funds. Projects which have not been approved after two considerations by the commission, without alterations to significantly raise the project score, shall be returned to the applicant [~~sponsor~~] and not accepted for resubmission. In general, recommended priorities for indoor recreation projects are:

(1) to ensure applicant [~~sponsor~~] performance on active grants and compliance at previously assisted grant sites;

(2) to recognize and reward local planning;

(3) to provide indoor recreational diversity;

(4) to improve geographic distribution [~~and innovative use~~] of indoor recreation facilities;

(5) to reward local resources and cooperative efforts between project applicants [~~sponsors~~] and other entities;

(6) to provide for the renovation or adaptive reuse of existing, obsolete indoor recreation or other facilities or structures;

(7) to improve indoor recreation opportunities for an underserved population according to the most recent federal census [~~low-income (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State)), minority, and elderly citizens~~];

(8) to promote sustainable park design [~~environmentally responsible activities~~] and development; and

(9) to support the department's Land and Water Resources Conservation and Recreation Plan.

(b) Local master plan standard requirements. Minimum master plan standards must be met to qualify for planning and priority points. Local applicants [~~sponsors~~] may submit applications without having a department-endorsed [~~department-approved~~] master plan; however, only those applicants [~~sponsors~~] that have a department-endorsed [~~department-approved~~] park, recreation and open space master plan will receive points for completing a local plan. In addition, only proposals that address priority needs identified in endorsed [~~approved~~] plans will receive priority points under the provisions of subsection (c) of this section. Master plans must have been received in an approvable format at least 60 days prior to the application submission deadline at which time credit is sought. The following are minimum master plan standards:

(1) Proof of adoption. The plan must be formally adopted or otherwise endorsed by act or resolution of the applicable governing body of the applicant [~~sponsor~~], and the endorsement must be included with the document.

(2) Jurisdiction-wide scope. The plan must be complete, comprehensive, and assess the entire jurisdiction area of the project applicant [~~sponsor~~]. County plans must cover the entire county, and city or district plans must cover the entire city or district. For large urban areas, plans should cover the entire jurisdiction, and then break the jurisdiction down into regions, sectors, precincts, districts, etc., as appropriate. Master plans that contemplate service delivery across more than one jurisdiction may be submitted by a local applicant [~~sponsor~~], with any necessary supplemental information, provided the plan has been formally adopted or otherwise endorsed by act or resolution of the applicable governing body of the applicant [~~sponsor~~].

(3) Plan duration. Plans must specifically identify the time period within which the goals and objectives of the plan are to be carried out. The plan should cover a minimum ten-year period. If a plan is more than five years old, a brief summary of plan accomplishments to date, as well as applicable updates of demographics, goals and objectives, standards, and maps must be provided to enable the department to recognize and credit program progress. Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input. Plans older than 10 years will be considered obsolete and new plans will be required.

(4) Plan content. The following information should be included in the document:

(A) introduction;

(B) goals and objectives;

(C) plan development process (discuss when the planning process began, plan phases, public input received, survey/studies conducted, committees and/or personnel involved, etc.);

(D) area/facility concepts and standards, including:

(i) population/area service and acreage goals;

(ii) "typical" park and facility standards; and

(iii) applicable local codes, ordinances, and other requirements for community or neighborhood development;

(E) inventory of existing park, recreation and open space areas and facilities (including schools);

(F) needs assessment and identification. Information under this subparagraph shall be area/facility specific, and may include basic support facilities/infrastructure which are critical to the recreational experience. A discussion and identification of open space needs in the master plan, or a separate open space plan, shall be included.

(G) prioritization of needs. Applicant shall include:

(i) separate priority lists for outdoor and indoor needs;

(ii) if necessary, a map of all specific area(s) intended for open space acquisition and preservation, identified as a need, discussed, and prioritized, if desired;

(iii) where appropriate, a discussion of renovation/redevelopment needs, which may be ranked as a priority; and

(iv) plan implementation recommendations, including a timeline and discussion of resources for meeting priorities (must identify and prioritize which needs are to be met, where and when). Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input.

(H) illustrations, maps, charts, surveys, etc.

(c) Indoor recreation project priority scoring system. If the applicant [~~sponsor~~] is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, an application will be scored and presented for award consideration. If the applicant [~~sponsor~~] does not meet the requirements of this subsection [~~paragraph~~], the application will not be scored or considered further. A project proposal meeting the requirements of this subsection [~~paragraph~~] shall be evaluated according to:

(1) whether or not the applicant [~~sponsor~~] has a current department-endorsed [~~department-approved~~] master plan on file at the time of application and the extent to which the project will satisfy the priority indoor recreation needs identified in the master plan required by this section, up to a total of 15 points.

(A) for having a current department-endorsed [~~department-approved~~] master plan on file at the time of application submission 5 points;

(B) for satisfying 3 of the top 5 [~~3~~] priority needs 10 points; and

(C) for satisfying 2 of the top 5 [~~3~~] priority needs 6 points.

(2) the extent to which the project will provide diversity of public indoor recreation facilities or opportunities. Points shall be awarded based on the number of indoor recreation facilities provided. One point will be awarded for each type of recreation facility, up to a maximum of 10 points, provided that each recreation element is identified as a need in a locally adopted master plan or, if the applicant [~~sponsor~~] does not have an adopted plan, by a documented public input process. The department will not consider project elements that do not support a recreational activity. [~~Points may be deducted for projects which propose support facilities which do not support recreational activities.~~]

(3) the extent to which the project will improve geographic distribution [~~or innovative use~~] of public indoor recreation facilities. Maximum of 20 points.

(A) project provides the first public indoor recreation facility in the applicant's [~~sponsor's~~] jurisdiction or intended service area: 20 points; or

(B) project provides significantly new and different public indoor recreation facilities (other than school facilities) in the applicant's [~~sponsor's~~] jurisdiction or intended service area, based on 5 points per opportunity, provided the individual recreation elements are identified as a need in a locally adopted master plan or, if the applicant [~~sponsor~~] does not have an adopted plan, by a documented public input process. Maximum of 15 points.

(4) the extent to which the project involves local resources or documented cooperation between the applicant [~~sponsor~~] and other public or private entities to provide public indoor recreation facilities at the project site. Maximum of 20 points.

(A) project involves the contribution of resources, including publicly owned non-parkland, from sources other than the applicant [~~sponsor~~], which serves as all or part of the applicant's [~~sponsor's~~] matching share of funds. Maximum of 15 points. Points shall be awarded on a percentage basis, determined by dividing the total outside contribution value by the total match and multiplying the result by 15.

(B) project includes documented contributions via the applicant or outside resources above the 50% required match. Up to five points will be awarded based on the following criteria: (Additional Contribution Amount / Required Match) x 5.

[~~(B) project involves documented cooperation between the sponsor and other public or private entities and/or resources are contributed to the overall project for non-grant assisted facilities (example: a county constructs roads/parking facilities for a city, but no grant funds are requested for roads/parking): 1 point per documented activity, to a maximum of 5 points.~~]

(5) the extent to which the project provides for the renovation or adaptive reuse of an existing facility, determined by dividing the renovation cost by the total construction cost and multiplying the result by 25. Maximum of 25 points.

(6) the extent to which the project improves public indoor recreation opportunities for an underserved population [~~low-income, minority, or elderly citizens~~], up to a total of 15 points.

(A) project improves opportunities for low-income citizens: determined by multiplying the percentage of population qualifying as low-income by 5 and dividing by 100. Maximum of 5 points.

(B) project improves opportunities for minority citizens: determined by multiplying the percentage of population qualifying as minority by 5 and dividing by 100. Maximum of 5 points.

(C) project improves opportunities for the physically/mentally challenged. Project provides park and recreation opportunities for physically/mentally challenged citizens, which exceed the federal and state required accessibility standards. 2 points. [~~elderly. Points for this item shall be awarded on the basis of recreational facility type and service or activity that is identified as a need for the special population in a locally adopted master plan or, if the sponsor does not have an adopted plan, by a documented public input process. Maximum of 5 and dividing by 100 points.~~]

(7) the extent to which the project promotes sustainable park design [~~the environmentally responsible activities~~] and development [~~by the use of activities or techniques such as xeriscape/native plant materials for landscaping, drip or treated effluent irrigation systems, energy efficient lighting systems, recycled materials for facility construction, environmental education and interpretation, significant tree plantings where no trees exist, alternative energy sources, water catchment systems, or other resource conservation measures~~]. Points shall be awarded based on how the overall project embraces sustainable techniques in the design and construction of the facility including but not limited to the diversity, innovative nature and/or cost of the project elements, up to a maximum of 10 points.

(8) the extent to which the project supports the department's Land and Water Resources Conservation and Recreation Plan (Plan). Applicant [~~Sponsor~~] must address how the project meets the goals of the Plan in the proposal narrative. Up to a maximum of 5 points.

(9) applicant [~~sponsor~~] is in compliance with previously funded projects. If applicant [~~sponsor~~] is not in compliance with existing grant obligations, 5 points will be deducted from the project score.

(10) a complete application was received by the application deadline - 5 points will be awarded to the project score.

§61.135. Grants for Community Outreach Outdoor Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for community outdoor outreach programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. In general, recommended priorities for community outdoor outreach projects are:

(1) to ensure applicant [~~sponsor~~] compliance on previous grants;

(2) to improve community outdoor outreach opportunities for inner-city, rural, low-income (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census [~~(Median Household Income by State)~~]), ethnic minority, female, physically/mentally challenged, and youth citizens;

(3) to reward partnerships between local applicants [~~sponsors~~] and other organized groups;

(4) to increase the number of participants served;

(5) to maximize the use of funds for direct community outdoor outreach opportunities;

(6) to reward commitment of applicant [~~sponsor~~] resources;

(7) to increase use of TPWD programs, personnel and facilities;

(8) to serve youth-at-risk;

(9) to promote activities related to TPWD initiatives; and

[(10) to promote outdoor educational activities; and]

(10) [(11)] to reduce priority of new funding for applicants [sponsors] who have not fulfilled all previous grant reimbursement requirements.

(b) Community outdoor outreach program project priority scoring system.

(1) Community outdoor outreach projects shall be scored according to the criteria, rating factors, and point values set forth in this subsection.

(2) The priority ranking of a project will depend on its score in relation to the scores of other projects under consideration.

(3) Funding of projects will depend on the availability of TRPA funds.

(4) If the applicant [sponsor] is in full compliance with previously assisted grant projects in accordance with the provisions of this subchapter, the application will be scored and presented for award consideration. If the applicant [sponsor] does not meet the requirements of this paragraph, the application will not be scored or considered further.

(5) A project proposal meeting the requirements of paragraph (4) of this subsection shall be evaluated according to:

(A) Project description: 0-5 points. Project description should provide a basic overview that:

(i) allows the department to quickly determine the key points of the project (location, time, scope, rationale, etc.);

(ii) describes the goals and objectives of the project;

(iii) includes an assessment instrument for measuring project progress from initiation to completion;

(iv) addresses risk-management measures (safety training, first aid, etc.); and

(v) includes an itemized list of expenses to paid by co-op funds.

(B) Project Action Plan: 0-3 points. A project action plan should include:

(i) a one-year timeline for the project, beginning within six months of grant approval and proceeding to completion; and

(ii) a detailed description of proposed sites, dates, and planned activities.

(C) Budget Summary: 0-3 points. A budget summary should explain proposed expenses and costs, the dollar value of the grant being requested, and applicant's contribution.

(D) Resolution: 1 point. An applicant is ineligible for a grant award under this subchapter unless the application includes a resolution signed by a governing board or authorized official that:

(i) specifically authorizes the submission of the grant application to the department;

(ii) identifies any sponsorship contribution;

(iii) designates a project official by name; and

(iv) is dated. A resolution bearing a date more than one year preceding the date of submission will not be accepted.

(E) [(A)] Proposed project's primary constituency. Maximum of 15 [12] points.

(i) inner city (city must have population of 100,000 or greater): 2 points, based on population figures of applicant [sponsor] location (may be inner-city or rural or neither, but not both);

(ii) rural (cities or counties of 20,000 or less population: 2 points, based on population figures of applicant [sponsor] location (may be inner-city or rural or neither, but not both);

(iii) ethnic minority (ethnic minorities within served population greater than or equal to 50% of total served population): 3 [2] points;

(iv) female (females within served population greater than or equal to 50% of total served population): 3 [2] points;

(v) low-income greater than or equal to 50% of total served population: 3 [2] points;

(vi) physically/mentally challenged (includes ADD, ADHD, special education and must be stated in a number or percentage of total population served): 2 points;

(vii) youth must be stated in number or percentage served (age 17 and under): 2 points.

(F) [(B)] Proposed project encourages partnerships with organized groups. Application must include partnership letters from the partnering organization. Letters of endorsement will not receive credit. One point shall be awarded for each partnership agreement that commits cash contributions, volunteer labor, program materials, physical facilities use, transportation, food, etc. Letters must be current, dated, signed and state what the partners are providing to the program as well as the value of the contribution applicable. Maximum of 4 points.

(G) [(C)] Number of program participants the proposed project will serve. One point awarded per 25 persons served, up to a maximum of 10 points.

(H) [(D)] The extent to which the proposed project prioritizes direct service costs. Points shall be awarded on a percentage basis, determined by dividing the direct service delivery costs by the total project cost and multiplying the result by 10. Maximum of 10 points.

(I) [(E)] The extent to which the applicant's [sponsor's] funds and resources are committed to the project. Points shall be awarded on a percentage basis, determined by dividing the local/applicant [local/sponsor] funds by the total project cost and multiplying the result by 4. Applicant [Sponsor] must provide auditable proof of the contribution. Maximum of 4 points.

(J) [(F)] The extent of the proposed project's direct relationship with TPWD programs and/or facilities. Maximum of 5 points. One point shall be awarded per instance of:

(i) TPWD facility used (must name each department facility);

(ii) TPWD personnel involvement (must provide letter of coordination from TPWD staff); and/or

(iii) TPWD program provided (must identify each program).

(K) [(G)] Project specifically serves at-risk youth. Maximum of 4 points, as follows: [A definition of at-risk youth

for the target audience must be included, as well as a description of each activity designed to serve at-risk youth. One point shall be awarded for each activity serving at-risk youth as defined in the project (e.g., tutoring, mentoring, self-esteem building, career development, leadership development, etc.). Maximum of 3 points.]

(i) one point for each activity serving at-risk youth through natural resource mentoring programs; and

(ii) two points for each activity serving at-risk youth through natural resource career development programs.

(L) [(H)] Project proposes activities related to TPWD initiatives. One point shall be awarded for each proposed activity related to a TPWD initiative (e.g., fishing, camping, hunting, environmental education, or other outdoor activity). Maximum of 5 points.

[(I) Project promotes outdoor educational activities. Each educational element must be demonstrated by a discussion of the educational goals and objectives to be employed as they pertain to outdoor/environmental education. Maximum of 4 points. Points will be awarded according to the curriculum's potential to increase participants':]

[(i) awareness;]

[(ii) knowledge, skills, and abilities;]

[(iii) critical thinking; and]

[(iv) behavioral change.]

(M) [(J)] Project includes an outdoor service project. Eligible service projects must be related to the department's mission. Projects must be described in detail and must include a partnership letter from the involved entities or organizations. Examples of eligible service projects include but are not limited to: trail or habitat restoration, planting native vegetation, wildlife monitoring, students mentoring students and building/distributing bird houses. Maximum of 3 points. Points will be awarded on the following criteria:

(i) environmental/conservation needs addressed by the proposed service project and how the proposed service project will address the needs identified in subparagraph (E) [(A)] of this paragraph;

(ii) the direct involvement of youth in the planning and problem solving process; and

(iii) the prospective impact of the service project on youth and the community.

(N) [(K)] Applicant has fulfilled all previous community outdoor outreach grant reimbursement requirements. If no, deduct points from the application score determined by multiplying the remaining unspent grant balance by .0015 percent.

§61.136. Small Community Grant Program.

(a) Program purpose and priorities. All grant applications submitted to the department for the small community grant program are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. In general, recommended priorities for small community projects are:

(1) to ensure applicant [sponsor] performance on active grants and compliance at previously assisted grant sites;

(2) to reward the smallest communities;

(3) to improve geographic distribution [and innovative use] of park and recreation opportunities;

(4) to maximize the use of funds for outdoor [basic park and] recreation and conservation opportunities;

(5) to improve park and recreation opportunities for an underserved population [low income (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State)), minority, and elderly citizens];

(6) to reward cooperative efforts between small communities and other governmental, educational, or private sector entities;

(7) to renovate existing, obsolete [park and recreation areas and] facilities;

(8) to promote sustainable park design [environmentally responsible activities] and development; and

(9) to support the department's Land and Water Resources Conservation and Recreation Plan.

(b) Small communities project priority scoring system.

(1) Small community projects presented to the commission shall be scored according to the criteria, rating factors, and point values set forth in this subsection.

(2) The priority ranking of a project will depend on its score in relation to the scores of other projects under consideration.

(3) Funding of projects will depend on the availability of TRPA funds.

(4) Projects which have not been approved after two considerations by the commission, without alterations to significantly raise the project score, shall be returned to the applicant [sponsor] and not accepted for resubmission.

(5) Each site of a multiple-site project shall be scored individually. Individual site scores will be weighted on a pro-rata share of the total budget for the entire project. All weighted scores will be added together for the total project score.

(6) If the applicant [sponsor] is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, the application will be scored and presented for award consideration. If the applicant [sponsor] does not meet the requirements of this paragraph, the application will not be scored or considered further.

(7) A project proposal meeting the requirements of paragraph (6) of this subsection shall be evaluated according to the extent that:

(A) the population of the applicant [sponsor] is 2,500 or less, based on the most recent federal census data. Three points will be awarded if the community population is 2,500 or less.

(B) the project will improve the geographic distribution [or innovative use] of park and recreation lands and facilities in the project's service area or within the applicant's [sponsor's] jurisdiction, up to a maximum of 10 points.

(i) the project provides the first public park in the applicant's [sponsor's] jurisdiction or intended service area: 10 points; or

(ii) the project provides significantly new and different park and recreation opportunities (other than school facilities) at the project site. One point per facility identified by documented public input process to be a need: up to 3 points. Points for this criteria will be awarded only if each recreation element is identified by a documented public input process.

(C) the project maximizes the use of development funds for direct outdoor recreation and conservation [~~facilities which provide direct park and recreation~~] opportunities, up to a maximum of 10 points, as determined by dividing the direct recreational and conservation [~~facilities~~] costs by the total construction costs and multiplying the result by 10. [~~"Total Facilities Costs" include park and recreation facilities, support and infrastructure facilities, contingency costs, and all required program signage costs in excess of $1,000.~~]

(D) the project improves park and recreation opportunities for an underserved population [~~low-income, minority, and elderly citizens~~], up to a maximum of 12 [~~15~~] points.

(i) the project improves opportunities for low-income citizens, based on economic and demographic data for the service area from the most recent federal census data. Points will be calculated [~~as determined~~] by multiplying the percentage of population qualifying as low income by five. Maximum of five points.

(ii) the project improves opportunities for minority citizens, based on economic and demographic data for the service area from the most recent federal census data. Points will be calculated [~~as determined~~] by multiplying the percentage of population qualifying as minority by five. Maximum of five points.

(iii) the project provides park and recreation opportunities for physically/mentally challenged citizens, which exceed the federal and state required accessibility standards. 2 points.

~~*[(iii)* the project improves opportunities for the elderly. One point is awarded for each facility or activity that is identified as a needed recreational opportunity for this special population by a documented public input process. Maximum of five points.]~~

(E) the project involves local resources or documented cooperation between the applicant [~~sponsor~~] and other public or private entities to provide park and recreation opportunities at the project site(s). Maximum of 10 points.

(i) the project includes documented contributions via the applicant or outside resources above the 50% required match. Up to five points will be awarded based on the following criteria: (Additional Contribution Amount / Required Match) x 5.

(ii) [~~(i)~~] the project involves the contribution of resources from sources other than the sponsor, including publicly owned non-parkland, which serves as all or part of the sponsor's matching share of funds. Up to five points may be awarded on a percentage basis, as determined by dividing the total outside contribution value by the total match and multiplying the result by five.

~~*[(ii)* the project involves cooperation between the sponsor and other entities where resources are contributed to the overall project for non-grant assisted facilities (example: a county constructs roads/parking facilities for a city, but no grant funds are requested for roads/parking): one point per activity, up to a maximum of five points.]~~

(F) the project provides for the renovation of an existing obsolete facility [~~park and recreation area or facilities~~], as determined by dividing the renovation cost by the total construction cost and multiplying the result by ten. Maximum of ten points.

(G) the project promotes sustainable park design and development. [~~environmentally responsible activities and development through the use of activities or techniques such as xeriscape/native plant materials, drip or treated effluent irrigation systems, energy efficient lighting systems, recycled materials for facility construction, environmental education and interpretation, significant tree plantings where no trees exist, alternative energy sources, water catchment systems, or other resource conservation measures.~~] Points for this category will be awarded based on how the overall project embraces sustainable techniques in the design and construction of the park, including but not limited to the diversity, innovative nature and/or cost of the project elements, up to a maximum of 5 points.

(H) project supports the department's Land and Water Resources Conservation and Recreation Plan (Plan). Applicant [~~Sponsor~~] must address how the project meets the goals of the Plan in the proposal narrative, up to a maximum of 2 points.

(I) applicant [~~sponsor~~] is in compliance with previously funded projects. If applicant [~~sponsor~~] is not in compliance with existing grant obligations, 5 points will be deducted from the project score.

(J) a complete application was received by the application deadline - 5 points will be awarded to the project score.

~~[(K) sponsor is not in compliance with previously funded projects, if not, (-5) points will be deducted from the project score.]~~

§61.138. Outdoor Urban Park Grants Program.

(a) Program purpose and priorities. All Urban Park Program Outdoor Recreation Grant Program applications are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Multiple-site projects are allowed and will be scored as one project. A project's priority ranking depends on its score in relation to the scores of other projects under consideration. Scored applications are presented to the Texas Parks and Wildlife Commission (Commission) for approval. Funding of projects will depend on the availability of funds.

(b) A project that has been considered twice by the Commission but not approved will not be considered again unless it has been significantly altered to raise the project score.

(c) Points will be awarded based on the compatibility of project elements with the scoring criteria in this subsection.

(1) Acquisition. The project proposes to acquire land that would satisfy one or more of the following:

(A) significant natural area. An area that is significant for a relatively undisturbed ecosystem that exhibits regionally representative geological, floral, faunal, or hydrological features and has the potential to serve regional or statewide recreation needs. Natural areas can serve as: greenbelts/open spaces; locations for passive activities; preservation areas for unique natural features; and interpretive sites which highlight or explain ecosystem processes (points based on acreage and quality) - (1-4 points);

(B) green corridor/connectivity to existing protected areas (points based on acreage and quality) - (1-4 points);

(C) pocket park. Pocket parks are defined as 1 acre or less in size with a service area of one-quarter mile - (2 points) [~~New parkland or additions to existing parkland in urban centers - (1-2 points)~~];

(D) intensive-use recreation facility such as an athletic complex - (2 points) [~~(1-2 points)~~];

(E) future conservation and recreation purposes that initially provide limited public access (points based on quality and size) - (1-4 points);

(F) expansion (to include in-holdings) of existing parks and conservation areas - (2 points) [~~(1-2 points)~~]; and

(G) adaptive reuse for recreation or conservation of lands that have limited use in their existing state - (1 point).[~~; and~~]

[(H) proximity to areas of high population density - (1 point).]

(2) Development. Project proposes development of one or more of the following:

(A) neighborhood park. Neighborhood park is defined as 1-15 acres in size with a service area of one-half mile (3 points) [(1-3 points)];

(B) nature center (natural-resource-based sites developed for outdoor recreation and education purposes such as trails, wildlife viewing, interpretive signage, etc.). NOTE: Indoor facilities are not eligible under this program (2 points) [. (1-2 points)];

(C) park and conservation area of regional significance (project is a component of a comprehensive or park and recreation master plan for 1 or more political jurisdictions) (2 points) [- (1-2 points)];

[(D) green construction/sustainability (1 point);]

(D) [(E)] multi-purpose recreation facility (1 point); and

(E) [(F)] outdoor aquatic recreation (1 point).

(3) Restoration. Project provides for the restoration and/or renovation of existing [recreation and conservation] infrastructure (or other facilities) that is no longer usable for its intended or original purpose:

(A) restoration of existing infrastructure. Points will be awarded based on percentage of the budget dedicated to the criterion (Renovation Cost divided by the Total Construction Cost multiplied by ten) - (1-10 points);

[(B) wildlife habitat management (removal of invasive species or significant planting of native species resulting in the restoration of wildlife habitat). Points will be awarded based on percentage of the budget dedicated to the criterion - (1-10 points);]

(B) [(C)] adaptive reuse of existing structures and facilities to provide new or different recreation opportunities (use of an existing slab from a demolished building as a recreation court, the reuse of a bridge for recreation purposes, remediated brownfield, etc.). Points will be awarded according to the formula: (Reuse Costs divided by Total Construction Costs multiplied by five) [based on the percentage of the total budget dedicated to the criterion] - (1-5 points);

(4) Trails/Corridors/Greenways. Project proposes one or more of the following (points awarded based on length of trail):

(A) major linear development (1 mile or longer) - (1-6 points);

(B) development that connects or extends an existing trail system or wildlife corridor - (1-5 points);

(C) major loop development (1 mile or more) - (1-4 points);

(D) neighborhood/loop trail development - (1-4 points);

(E) off-road trail development for non-motorized use - (1-2 points);

(F) aquatic paddling trail development - (1-2 points);

(G) interpretive nature trail development - (1-2 points);

(5) Sports Facilities. Project proposes the development of one or more of the following:

(A) large capacity, intensive-use sports facility - (7 points);

(B) competition or practice facilities in close proximity to users - (3 points);

(6) Underserved Populations. Project provides for one or more of the following:

(A) more equitable geographic distribution of facilities. Project proposal shall provide a map showing current distribution of parks in entire service area to support a need in a particular location [include a map showing the locations of existing parks in the sponsor's entire service area to justify additional facility] - (4 points);

(B) project improves opportunities for low-income citizens, based on the economic demographic information of the service area from the most recent census data, determined by multiplying the percentage of population qualifying as low-income by 2 - (0-2 points);

(C) project improves opportunities for ethnic minority citizens, based on the demographic information of the service area from the most recent census data: determined by multiplying the percentage of population qualifying as ethnic minority by 2 - (0-2 points);

(D) project provides park and recreation opportunities for physically/mentally challenged citizens, which exceed the federal and state required accessibility standards - (2 points);

[(B) improved park or recreation opportunities for low-income citizens (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State)). Project proposal must include an economic analysis of the relevant population demographics of the service area - (2 points);]

[(C) improved park or recreation opportunities for minority citizens. Project proposal must include a demographic analysis of the target population within the service area - (2 points);]

[(D) improved park or recreation opportunities for elderly citizens. Project proposal must demonstrate compatibility with the sponsor's master plan or public input process - (2 points);]

(7) Local Resources and Partnerships.

(A) project involves public-public or public-private cooperation, based on the percentage of the match contributed by partners. Points are calculated by dividing the partner contribution by the total match and multiplying by five - (0-5 points)

(B) Project includes documented contributions via the applicant or outside resources above the 50% required match. Up to 3 points will be awarded based on the following criteria: (Additional Contribution Amount / Required Match) x 3.

[(7) Joint ventures/partnerships. Project involves public-public or public-private cooperation (award is based on the percentage of the total budget contributed by partners; however, points are awarded based on all partners and not solely on the partners making a monetary contribution). The role of each partner must be explained. Application must include a partnership letter from each partnering organization or a current written and signed agreement between the project sponsor and each proposed partnership group. Partnerships that are programming-only will not be awarded. 1-5 points may be awarded on the basis of the number of partners, as follows:]

[(A) three partners (1 point);]

[(B) four partners (2 points); or]

[(C) five or more partners (3 points).]

(8) Master plan. Points will be awarded for planning, as follows:

(A) project applicant [sponsor] has a locally adopted and department-endorsed [department-approved] parks, recreation and open space master plan or other jurisdiction-wide plan that addresses outdoor recreation needs - (5 points); or

(B) project satisfies 1 [3] of the top 5 [3] priority needs 5 [10] points.[;]

[(C) project satisfies 2 of the top 3 priority needs - 6 points; or]

[(D) project satisfies 1 of the top 3 priority needs - 3 points.]

(9) Threat. Project reduces the threat to the public availability of a conservation or recreation opportunity. The project narrative must include a discussion of the particular compelling circumstances involving the project, such as imminent loss of opportunity or[;] time-sensitive economic factors (i.e. loss of potential funding partner if action is not undertaken quickly)[; a significant safety hazard, or needed restoration (without which the facility could be deemed unusable.) Basic maintenance is not an eligible expense].

(A) no evidence of threat is presented - (0 points);

(B) minimal threat; the conservation or recreation opportunity appears to be in no immediate danger of loss in the next 36 months - (1 point);

(C) actions under consideration [action in progress] that could result in the conservation or recreation opportunity becoming unavailable for public use - (2 points); and

(D) actions that will be taken to [action in progress that will] result in the conservation or recreation opportunity becoming unavailable for future public use or a threat situation has occurred or is imminent that will result in the acquisition of rights to the land by a land trust at the request of the applicant - (3 points).

(10) Historical/cultural resource. Project provides park and recreation opportunities that enhance and encourage appreciation and preservation of site-based cultural, natural, historical or archaeological resources by means of interpretation, facilities, or preservation strategies - (2 points).

(11) Consistency with Land and Water Conservation Plan (up to 10 points). Applicant [Sponsor] must specifically describe how the project meets the goals of the Land and Water Conservation Plan.

(12) Compliance.

(A) applicant [sponsor] is not in compliance with previously funded projects - (5 points deducted from total score).

(B) complete application received by the application deadline - (5 points).

(13) Urban biologist consultation. Applicant has consulted with an urban biologist from the department regarding the proposed site plan at least 30 days prior to the application deadline and the biologist's comments are included in the application materials - (5 points).

(14) Sustainable park design and development. The project embraces sustainable techniques in the design and construction of the park or includes wildlife habitat improvement/restoration. Points will be awarded based on but not limited to diversity, innovative nature and/or cost of the project elements. (1-5 points).

§61.139. Indoor Urban Park Grants Program.

(a) Program purpose and priorities. All Urban Park Program Indoor Recreation Grant Program applications are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Multiple-site projects are allowed and will be scored as one project. Individual site scores will be weighted on a pro-rata share of the total project score. A project's priority ranking depends on its score in relation to the scores of other projects under consideration. Scored applications are presented to the Texas Parks and Wildlife Commission (Commission) for approval. Funding of projects will depend on the availability of funds.

(b) A project that has been considered twice by the Commission but not approved will not be considered again unless it has been significantly altered to raise the project score.

(c) Points will be awarded based on the compatibility of project elements with the scoring criteria in this subsection.

(1) Development. Project proposes development of one or more of the following:

(A) nature center that provides natural resource conservation or environmental education visitor experiences - (5 points);

[(B) green construction/sustainability - (1 point);]

(B) [(C)] multi-purpose recreation facilities - (1 point);

(C) [(D)] diverse recreation facilities within the applicant's [sponsor's] jurisdiction - (one point will be awarded for each type of significant recreation opportunity, up to 3 points);

(2) Restoration. Project provides for the renovation of existing recreation and conservation facilities that are [infrastructure that is] no longer usable for the [its] intended or original purpose (renewal or revival of existing facilities. Basic maintenance is not an eligible expense);

(A) restoration of an existing structure. Points will be awarded based on percentage of the budget dedicated to restoration - (1-15 points);

(B) adaptive reuse of existing structure or facility to provide new or different recreation opportunities (Points will be awarded based on the percentage of the budget dedicated to the adaptive reuse) - (1-10 points);

(3) Underserved populations. Project provides for one or more of the following:

(A) more equitable geographic distribution of facilities. Project proposal shall include a map showing the current distribution of parks in the entire service area to support a need in a particular location [the locations of existing parks in the sponsor's entire service area to justify additional facility] - (4 points);

(B) project improves opportunities for low-income citizens, based on economic and demographic data for the service area from the most recent federal census data: determined by multiplying the percentage of population qualifying as low-income by 2 - (0-2 points);

(C) project improves opportunities for minority citizens, based on economic and demographic data for the service area from the most recent federal census data: determined by multiplying the percentage of population qualifying as minority by 2 - (0-2 points);

(D) project provides park and recreation opportunities for physically/mentally challenged citizens, which exceed the federal and state required accessibility standards - (2 points);

[(B) improved park or recreation opportunities for low-income citizens (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State)). Project proposal must include

an economic analysis of the relevant population demographics of the service area - (2 points);]

[(C) improved park or recreation opportunities for minority citizens. Project proposal must include a demographic analysis of the target population within the service area - (2 points);]

[(D) improved park or recreation opportunities for elderly citizens. Project proposal must demonstrate compatibility with the sponsor's master plan or public input process - (2 points);]

(4) Local Resources/partnerships.

(A) project involves public-public or public-private cooperation, based on the percentage of the match contributed by partners. Points are calculated by dividing the partner contribution by the total budget and multiplying by five - (0-5 points).

(B) Project includes documented contributions via the applicant or outside resources above the 50% required match. Up to 3 points will be awarded based on the following criteria: (Additional Contribution Amount / Required Match) x 3.

[(4) Joint efforts/partnerships. Project involves public-public or public-private cooperation (award is based on the percentage of the total budget contributed by partners; however, points are awarded based on all partners and not solely on the partners making a monetary contribution). The role of each partner must be explained. Application must include a partnership letter from each partnering organization or a current written and signed agreement between the project sponsor and each proposed partnership group. Partnerships that are programming-only will not be awarded. 1-3 points may be awarded on the basis of the number of partners, as follows:]

[(A) three partners - (1 point);]

[(B) four partners (2 points); or]

[(C) five or more partners (3 points).]

(5) Master plan. Points will be awarded for planning, as follows:

(A) project applicant [sponsor] has a locally adopted and department-endorsed [department-approved] parks, recreation and open space master plan or other jurisdiction-wide plan that addresses outdoor recreation needs - (5 points); or

(B) project satisfies 1 [3] of the top 5 [3] priority needs 5 [10] points.[;]

[(C) project satisfies 2 of the top 3 priority needs - 6 points; or]

[(D) project satisfies 1 of the top 3 priority needs - 3 points.]

(6) Threat. Project reduces the threat to the public availability of a recreation opportunity. The project narrative must include a discussion of the particular compelling circumstances involving the project, such as imminent loss of opportunity or[,] time-sensitive economic factors (i.e. loss of potential funding partner if action is not undertaken quickly)[, a significant safety hazard, or needed restoration (without which the facility could be deemed unusable.) Basic maintenance is not an eligible expense].

(A) no evidence of threat is presented - (0 points);

(B) minimal threat; the recreation opportunity appears to be in no immediate danger of loss in the next 36 months - (1 point);

(C) actions under consideration [action in progress] that could result in the recreation opportunity becoming unavailable for public use - (2 points); and

(D) actions under consideration [action in progress] that will result in the recreation opportunity becoming unavailable for future public use or a threat situation has occurred or is imminent that will result in the acquisition of rights to the land by a land trust at the request of the applicant - (3 points).

(7) Historical/cultural resource. Project provides park and recreation opportunities that enhance and encourage appreciation and preservation of site-based cultural, natural, historical or archaeological resources by means of interpretation, facilities, or preservation strategies - (2 points).

(8) Consistency with Land and Water Conservation Plan (up to 10 points). Applicant [Sponsor] must specifically describe how the project meets the goals of the Land and Water Conservation Plan.

(9) Compliance.

(A) applicant [sponsor] is not in compliance with previously funded projects - (5 points deducted from total score).

(B) complete application received by the application deadline - (5 points).

(10) Urban biologist consultation. Applicant has consulted with an urban biologist from the department regarding the proposed site plan at least 30 days prior to the application deadline and the biologist's comments are included in the application materials - (5 points).

(11) Sustainable park design and development. The project embraces sustainable techniques in the design and construction of the facility. Points will be awarded based on diversity, innovative nature and/or cost of the project elements - (1-5 points).

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Department (the department, or TPWD) proposes amendments to §§65.8, 65.10, 65.11, 65.32, 65.42, 65.46, 65.48, and 65.64, concerning the Statewide Hunting Proclamation. The proposed amendment to §65.8, concerning Alternative Licensing System, would clarify that the tagging requirements of Parks and Wildlife Code with respect to white-tailed deer, mule deer, or turkey apply to lifetime hunting licenses and lifetime resident super combination hunting and "all water" fishing packages. Lifetime licenses are sold without tags; the holder of the license is supplied with tags by the department on

an annual basis. The current rule was promulgated in 2002 as part of a contingency plan to in the event the department's automated point-of-sale license system became inoperable, and was not intended to relieve lifetime license holders of the requirement to obtain or use tags when otherwise legally required to do so.

The proposed amendment to §65.10, concerning Possession of Wildlife Resources, would eliminate current subsection (l)(2)(C), regarding possession of desert bighorn sheep skull/horns from rams that are found in the wild. Under current rule, a person who wishes to possess the skull/horns of a desert bighorn ram found dead in the wild may do so, provided the person did not cause or participate in the death of the ram, has notified the department within 48 hours of discovering the ram and arranged to have the skull marked with an identification plug, and acquires an affidavit from the landowner attesting to the place and date that the person discovered the ram. The affidavit requirement was promulgated in 2003 during the early stages of the department's efforts to restore desert bighorn sheep and was intended to document desert bighorn sheep mortality for purposes of analyzing population status. Because the restoration effort has been quite successful, staff has determined that the affidavit requirement is no longer necessary. The other requirements for possession of desert bighorn sheep skull/horns from rams that are found in the wild would still need to be satisfied.

The proposed amendment to §65.11, concerning Lawful Means, would eliminate the current provision that prohibits the possession of firearms while hunting deer or turkey during an open archery season. The proposed amendment would also make air guns meeting certain specifications lawful for the take of squirrel.

Under current rule, it is an offense for any person to be in possession of a firearm while hunting deer or turkey with a broadhead hunting point during an archery-only season. The purpose of the rule is to prevent unscrupulous persons from using firearms during archery-only seasons. By policy, the department has historically allowed persons licensed to carry a concealed handgun under the provisions of Government Code, Chapter 411, Subchapter H, to be in possession of a handgun while hunting during an archery season. The department has determined that rather than have a confusing regulation that allows firearms to be possessed during archery seasons in some circumstances, but not in others, it is prudent to allow any person to possess a firearm while hunting during archery seasons; however, the use of a firearm to take turkey or deer during an archery season would still be prohibited.

The proposed amendment to §65.11 also would create new paragraph (4) to allow the use of air rifles to hunt squirrel. The department received a petition for rulemaking earlier this year requesting that air rifles be designated a lawful means for the take of squirrel. The department has determined that modern air rifles have achieved ballistic performance characteristics that approximate those of rimfire ammunition at close ranges and are capable of humanely killing squirrels at such distances. Therefore, the proposed new paragraph would allow the use of air rifles to take squirrel, provided the rifle is designed to be fired from the shoulder, the projectile size is a minimum of .177 caliber (4.5mm), and the projectile is delivered by means of the force of a spring, air, or non-ignited compressed gas at a muzzle velocity of no less than 600 feet per second. The department selected the minimum projectile size and muzzle velocity on the basis of creating a reasonable likelihood of instant lethality.

The proposed amendment to §65.32, concerning Antlerless Mule Deer, would clarify the utilization of antlerless mule deer permits. The antlerless mule deer permit is available to landowners and land managers who do not wish to participate in the department's managed lands program (see, 31 TAC §65.34) but who wish to harvest surplus antlerless mule deer. The department reasons that because by current rule the harvest of antlerless mule deer on any property is by permit only, there is no biological reason to restrict either the take of multiple antlerless mule deer by a single hunter or the season in which the harvest occurs (i.e., archery season or general season), so long as the hunter is in compliance with the permit requirements. The proposed amendment would allow antlerless mule deer permits to be used during any open season for mule deer without respect to bag limits; however, permit utilization during an archery-open season would still be required to be by means of lawful archery equipment or crossbow.

The proposed amendment to §65.42, concerning Deer, would eliminate the list of counties in subsection (b)(15) and replace it with language to the effect that in all counties not specifically designated as having an open season, there is no open season. By implementing a generic statement the department eliminates the need to modify the list by rule as seasons are implemented or closed.

The proposed amendment to §65.42 also would amend subsection (c) to open an archery-only special season and 16-day general open season for mule deer in Knox County and a 9-day general open season for mule deer in Castro, Hale, Lubbock and Lynn counties. The majority of the landscape utilization in the affected counties is large-scale farming and grazing operations, but survey data indicate the existence of mule deer populations that can sustain hunting pressure in those areas where suitable mule deer habitat exists. The literature suggests that the implementation of a buck-only season will have no measurable impact on herd productivity or expansion; however, a measurable change in the age structure of the buck segment of the population is possible if there is intense harvest pressure. If adopted, the new seasons would create increased hunter opportunity with no measurable effect on reproduction or distribution of mule deer populations in these counties. The proposed archery/16-day general season in Knox County was selected to be consistent with surrounding counties that have similar habitat, land use, and population dynamics. The proposed season for Castro, Hale, Lubbock and Lynn counties was chosen for the same reason.

The proposed amendment to §65.46, concerning Squirrel: Open Seasons, Bag, and Possession Limits, would eliminate the bag limit in the counties listed in subsection (a), which would give those counties a year-round season with no bag limit. The proposed amendment also would lengthen the squirrel season for the counties listed in subsection (b) by extending the winter segment of the season for approximately three weeks, to the last Sunday in February. The proposed amendment is intended to increase hunter opportunity and no negative biological impacts are anticipated.

The proposed amendment to §65.48, Desert Bighorn Sheep: Open Season and Annual Bag Limit, would shorten the open season from 12 months to 11 months in length. The department typically conducts bighorn sheep population surveys in August. Because of the mountainous and remote nature of bighorn sheep habitat, population surveys must be conducted from helicopters. The department has encountered several situations in which hunting activities were inadvertently adversely affected by department survey efforts. By closing the season at the end of

July, the department believes these situations can be avoided. The proposed amendment, if adopted, would also provide the benefit of precluding the accidental over-issuance of permits due to post-survey harvest.

The proposed amendment to §65.64, concerning Turkey, would allow hunters to perform the mandatory registration of harvested Eastern turkey via the department's internet or mobile application. The department has developed computer and mobile device based applications that make it possible for hunters to register harvested birds without having to physically present the birds at check stations.

Mr. Clayton Wolf, Wildlife Division Director, has determined that for each year of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Wolf also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules will not directly affect small businesses or micro-businesses. The proposed amendments affect the regulation of recreational license privileges that allow individual persons to pursue and harvest mule deer and pronghorn antelope. The proposed amendments would not directly regulate any business and would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or require the purchase or modification of equipment or services by small businesses or micro-businesses. Therefore, the department therefore has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed amendments may be submitted by phone or e-mail to Robert Macdonald (512) 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Comments also may be submitted via the department's website at http://www.tpwd.state.tx.us/business/feedback/public_comment/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.8, 65.10, 65.11, 65.32

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapters 42 and 61.

§65.8. Alternative Licensing System.

(a) Except for lifetime hunting licenses and lifetime resident super combination hunting and "all water" fishing packages, the [~~The~~] tagging requirements of Parks and Wildlife Code, §§42.018, 42.0185, 42.020, and 46.0086 do not apply to any person in lawful possession of a license that was sold by the department without tags for white-tailed deer, mule deer, or turkey.

(b) Except for lifetime hunting licenses and lifetime resident super combination hunting and "all water" fishing packages, the [~~The~~] requirements of this subchapter that require the attachment of license tags to wildlife resources do not apply to any person in lawful possession of a license that was sold by the department without tags for white-tailed deer, mule deer, or turkey. A properly executed wildlife resource document must accompany any white-tailed deer, mule deer, or turkey until the provisions of this title and Parks and Wildlife Code governing the possession of the particular wildlife resource cease to apply.

(c) The provisions of this section do not exempt any person from any provision of this subchapter that requires or prescribes the use of a wildlife resource document.

§65.10. Possession of Wildlife Resources.

(a) - (k) (No change.)

(l) The identification requirements for desert bighorn sheep skulls are as follows.

(1) No person may possess the skull of a desert bighorn ram in this state unless:

(A) one horn has been marked with a department identification plug by a department representative; or

(B) the person also possesses evidence of lawful take in the state or country where the ram was killed.

(2) A person may possess the skull and horns of a desert bighorn ram found dead in the wild, provided:

(A) the person did not cause or participate in the death of the ram; and

(B) the person notifies a department biologist or game warden within 48 hours of discovering the dead ram and arranges for marking with a department identification plug by a department representative. [; and]

[(C) the landowner on whose property the skull was found signs an affidavit prior to the time the skull is marked that attests the place and date that the person discovered the ram.]

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

§65.11. Lawful Means.

It is unlawful to hunt any of the wildlife resources of this state except by the means authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) (No change.)

(2) Archery.

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

[(D) It is unlawful to hunt deer or turkey with a broadhead hunting point while in possession of a firearm during an archery-only season.]

(D) [(E)] Lawful archery equipment and crossbows are the only lawful means that may be used during archery-only seasons, except as provided in paragraph (3) of this section.

(3) (No change.)

(4) Air guns. It is lawful to hunt squirrels with an air gun, provided:

(A) the gun is designed to be fired from the shoulder;

(B) the gun operates by using the force of a spring, air, or non-ignited compressed gas to expel a projectile;

(C) the muzzle velocity of the gun is at least 600 feet per second; and

(D) the projectile is at least .177 caliber (4.5 mm) in diameter.

(5) [(4)] Falconry. It is lawful to hunt any game bird or game animal by means of falconry under the provisions of Subchapter K of this chapter (relating to Raptor Proclamation).

(6) [(5)] Alligator.

(A) Legal devices for taking alligators in the wild are as follows:

(i) hook and line (line set);

(ii) alligator gig;

(iii) lawful archery equipment and barbed arrow;

(iv) hand-held snare with integral locking mechanism; and

(v) lawful firearms, in counties where take by firearm is allowed.

(B) A line of at least 300-pound test shall be securely attached to all taking devices other than firearms used to hunt alligators. Except as provided in this subsection, hook-bearing lines must be attached to a stationary object capable of maintaining a portion of the line above water when an alligator is caught on the line. A line attached to an arrow, snare, or gig must have a float attached when used to take alligators. The float shall be no less than six inches by six inches by eight inches, or, if the float is spherical, no less than eight inches in diameter.

(C) Line-set provisions.

(i) Hook-bearing lines may not be set prior to the general open season and shall be removed no later than sunset of the last day of the open season.

(ii) From sunset to one-half hour before sunrise:

(I) no person shall use any taking device other than line sets to hunt alligators; and

(II) no person shall set any baited line capable of taking an alligator and no person shall remove alligators from line sets.

(iii) On a property for which the department has issued hide tags, no person shall set more than one line per unused hide tag in possession.

(iv) On a property that is not in a county listed in paragraph (1)(E) of this section and for which the department has not issued hide tags, no person shall set more than one line.

(v) Line sets shall be inspected daily, and alligators shall be killed, tagged or documented, and removed immediately upon discovery.

(vi) All line sets on properties for which hide tags have been issued shall be secured at one end on the tract of land specified for the hide tags. All other line sets shall be secured at one end on private property.

(vii) Each baited line shall be labeled with a plainly visible, permanent, and legibly marked gear tag that contains:

(I) the full name and current address of the person who set the line;

(II) the hunting license number of the person who set the line; and

(III) a valid hide tag number, if the line is set on a property for which hide tags have been issued.

(7) [(6)] Use of laser sighting devices. All provisions concerning hunter education requirements apply to persons hunting with laser sighting devices under this paragraph.

(A) Use of laser sighting devices by persons who are legally blind.

(i) A person who is legally blind may use a laser sighting device to hunt game animals and game birds during lawful hunting hours in open seasons, provided the person is assisted by a person who:

(I) is not legally blind;

(II) has a hunting license; and

(III) is at least 13 years of age.

(ii) A person who uses a laser sighting device under the provisions of this subparagraph must have in possession a signed statement from a physician or optometrist to the effect that the person is legally blind by the standard of Government Code, §62.104, and must present the statement to any peace officer or department employee acting within the scope of official duties.

(B) Use of laser sighting devices by persons who are physically disabled.

(i) A person with a physical disability may use a laser sighting device during lawful hunting hours in open seasons when assisted by a person who:

(I) is not legally blind or a person with a physical disability that renders the person incapable of using a traditional firearm sighting device;

(II) has a hunting license; and

(III) is at least 13 years of age.

(ii) A person who uses a laser sighting device under the provisions of this subparagraph must have in possession a signed statement from a physician or optometrist certifying that the person is incapable of using a traditional firearm sighting device.

(8) [~~(7)~~] Special Provisions.

(A) Desert bighorn sheep. Except as provided in this paragraph, no motorized conveyance of any type shall be used to herd or harass desert bighorn sheep.

(B) Hunting by remote control. It is an offense for any person to hunt a wildlife resource by the means listed in this section if that person is not physically present and personally operating the means of take at the location where the hunting occurs during the time that the hunting occurs.

§65.32. Antlerless Mule Deer Permit.

(a) At the request of a landowner, the department may, based on evaluations of habitat and population, issue antlerless mule deer hunting permits for a specific tract of land.

(b) No antlerless mule deer hunting permit is required for mule deer killed during an archery-only open season in a county for which the bag limit during an archery-only season is designated as either sex.

(c) The annual and county bag limits for antlerless mule deer do not apply on a property for which a permit under this section has been issued, provided a valid, unused permit is possessed for each antlerless mule deer harvested on the property.

(d) A permit issued under this section is valid during any open season for mule deer on the property for which it was issued; however, during an archery-only open season, antlerless mule deer may be taken only by means of lawful archery equipment and crossbow.

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 February 10, 2014.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 389-4775

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DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §§65.42, 65.46, 65.48, 65.64

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapters 42 and 61.

§65.42. Deer.

(a) (No change.)

(b) White-tailed deer. The open seasons, annual bag limits, and special provisions for white-tailed deer shall be as follows. If Managed Lands Deer Permits (MLDPs) have been issued for a tract of land in any county, they must be attached to all deer harvested on the tract of land, regardless of season. An MLDP buck permit may not be used to harvest or tag an antlerless deer. An MLDP antlerless permit may not be used to tag a buck deer.

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

(15) In all other counties [~~Andrews, Bailey, Castro, Cochran, Collin, Dallas, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Parmer, Rockwall, Terry, Winkler, and Yoakum counties~~], there is no general open season.

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

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Knox, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Sherman, Stonewall, Swisher, and Wheeler counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) (No change.)

(3) In Andrews, Bailey, Castro, Cochran, Dawson, Gaines, Hale, Hockley, Lamb, Lubbock, Lynn, Martin, Parmer, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken by permit only.

(4) (No change.)

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may

be taken only as provided for in §65.11(2) and (3) of this title (relating to Lawful Means). No antlerless permit is required unless MLD antlerless permits have been issued for the property.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Knox, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Sherman, Stonewall, Swisher, Upton, Val Verde, Ward, Wheeler, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(ii) Bag limit: one buck deer.

(B) - (C) (No change.)

§65.46. Squirrel: Open Seasons, Bag, and Possession Limits.

~~[(a) In Brazos, Burleson, Collin, Dallas, Ellis, Falls, Grayson, Grimes, Kaufman, Madison, Milam, and Rockwall counties, there is an open season from September 1 through August 31.]~~

~~[(1) Daily bag limit: 10 squirrels.]~~

~~[(2) Possession limit: 20 squirrels.]~~

(a) [~~(b)~~] In Anderson, Angelina, Bowie, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Franklin, Freestone, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Lamar, Leon, Liberty, Limestone, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood Counties, there is a general open season for squirrel.

(1) Open season: May 1-May 31 and October 1 through the last [~~first~~] Sunday in February.

(2) Daily bag limit: 10 squirrels.

(3) Possession limit: 20 squirrels.

(b) [~~(c)~~] In Andrews, Bailey, Borden, Brewster, Briscoe, Carson, Castro, Cochran, Crane, Culberson, Dallam, Dawson, Deaf Smith, Ector, El Paso, Floyd, Gaines, Glasscock, Hale, Hansford, Hartley, Hockley, Howard, Hudspeth, Hutchinson, Jeff Davis, Lamb, Loving, Lubbock, Lynn, Martin, Midland, Moore, Oldham, Parmer, Potter, Presidio, Reagan, Reeves, Sherman, Swisher, Terry, Upton, Ward, Winkler, and Yoakum counties, there is no open season on squirrel.

(c) [~~(d)~~] In all other counties, there is an open season from September 1 through August 31, during which there is no bag limit.

(d) [~~(e)~~] In the counties listed in subsection (a) [~~(b)~~] of this section, there shall be a special youth-only general hunting season during which only licensed hunters 16 years of age or younger may hunt.

(1) open season: the Saturday and Sunday immediately preceding October 1.

(2) bag and possession limits: as specified in subsection (b) of this section.

§65.48. Desert Bighorn Sheep: Open Seasons and Annual Bag Limit.

(a) In Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio counties, there is a general open season for desert bighorn sheep.

(b) Open Season: From September 1 through July 31 [~~August 31~~].

(c) Bag limit: One desert bighorn sheep ram as specified on the permit, by permit only.

(d) Possession Limit: One desert bighorn sheep ram.

§65.64. Turkey.

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

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Brazoria, Camp, Cass, Fannin, Fort Bend, Franklin, Grayson, Harrison, Hopkins, Jasper, Lamar, Marion, Matagorda, Morris, Nacogdoches, Newton, Panola, Polk, Red River, Sabine, San Augustine, Titus, Trinity, Upshur, Wharton, and Wood counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: from April 15 through May 14.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered via the department's internet or mobile application or at a designated check station [~~stations~~] within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(d) (No change.)

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

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400606
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §302.5

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §302.5, concerning Correction of Errors, to replace each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The proposed amendments

are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner with regard to the System to the state board and its appointed executive director. The amendments are nonsubstantive in nature and meant to conform the rule to the provisions of Subtitle H, Title 8, Government Code.

Michelle Jordan, Executive Director, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional cost, reduction in cost, or revenue to local governments or the state as a result of adoption of the amended rule.

Ms. Jordan also has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that the rule is consistent with state law, as amended by the 83rd Legislature, Regular Session, 2013.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577 not later than March 24, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006.

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

§302.5. Correction of Errors.

(a) A local board may correct an error in enrollment in membership or computation of qualified service by completing and submitting to the Executive Director [~~commissioner~~] a form provided by the pension system. The completed form must be:

(1) signed by the chair and secretary of the local board and the administrative head of the department; and

(2) accompanied by any applicable past due contributions necessitated by the change.

(b) The Executive Director [~~Commissioner~~] may require the local board to provide additional documentation.

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 February 10, 2014.

TRD-201400627
Michelle Jordan
Executive Director
Texas Emergency Services Retirement System
Proposed date of adoption: April 3, 2014
For further information, please call: (512) 936-3474

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CHAPTER 304. MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §304.1

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §304.1, concerning Participation by Department, to replace each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The proposed amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner with regard to the System to the state board and its appointed executive director. The amendments are nonsubstantive in nature and meant to conform the rules to the provisions of Subtitle H, Title 8, Government Code.

Michelle Jordan, Executive Director, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional cost, reduction in cost, or revenue to local governments or the state as a result of adoption of the amended rule.

Ms. Jordan also has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that the rule is consistent with state law, as amended by the 83rd Legislature, Regular Session, 2013.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577 not later than March 24, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006.

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

§304.1. Participation by Department.

(a) The governing body of a department that performs emergency services may, in the manner provided for taking official action by the body, elect to participate in the pension system. A governing body shall notify the Executive Director [~~commissioner~~] as soon as practicable of an election made under this section. An election made under this section is irrevocable except as provided by §862.001, Government Code.

(b) The effective date of a department's participation in the pension system must be the first day of a month but may pre-date the date of the election as determined by contract between the governing body and the pension system.

(c) A department may purchase prior service credit under §306.1 of this title under the terms of that section for service performed before the date of the election to participate in the pension system but is not liable for the payment of benefits because of any disability or death that occurred before that 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 February 10, 2014.

TRD-201400628
Michelle Jordan
Executive Director
Texas Emergency Services Retirement System
Proposed date of adoption: April 3, 2014
For further information, please call: (512) 936-3474

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CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §306.1

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §306.1, concerning Prior Service Credit for Members of Participating Departments, to replace each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The proposed amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner with regard to the System to the state board and its appointed executive director. The amendments are nonsubstantive in nature and meant to conform the rules to the provisions of Subtitle H, Title 8, Government Code.

Michelle Jordan, Executive Director, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional cost, reduction in cost, or revenue to local governments or the state as a result of adoption of the amended rule.

Ms. Jordan also has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that the rule is consistent with state law, as amended by the 83rd Legislature, Regular Session, 2013.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577 not later than March 24, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006.

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

§306.1. Prior Service Credit for Members of Participating Departments.

(a) A department that elects to participate in the pension system and is not merging an existing pension plan into the system may, before the second anniversary of the date the department begins participation, make a one-time election to purchase service credit for qualified service performed for the department before the effective date of departmental participation by the persons who became members of the pension system on the effective date of the departmental participation.

(b) A department that elects or has previously elected to participate in the pension system and is merging or has merged an existing pension plan into the system may at any time purchase service credit for qualified service performed for the department before the effective date of participation by persons who are members of the system on the date the department contracts for the purchase.

(c) The maximum amount of prior service credit a member may receive under this section is 10 years. A department may choose to purchase prior service credit for a maximum number of less than 10 years. The pension system shall grant prior service credit under this section if the department agrees in writing to finance the prior service credit by a lump-sum payment or within a period not to exceed 10 years from the effective date of the election to purchase the credit.

(d) The cost to finance the purchase of prior service credit is based on the actuarially assumed rate of investment return on fund assets at the time payment for the credit begins. A department may purchase prior service credit under subsection (a) of this section at any contribution rate at or above the minimum provided by statute or board rule for the period purchased and under subsection (b) of this section at any contribution rate at or above the current minimum provided by board rule at the time payment for the credit begins.

(e) To purchase prior service credit, a department must provide the Executive Director [~~commissioner~~] with a detailed, verified record of prior service showing the amount of service performed by each member of the department. The record for each member must include the member's date of birth and entry date in the department.

(f) The maximum amount of prior service credit provided by this rule applies only to prior service credit purchased, or under a written agreement to be financed that is instituted, on or after September 1, 2007. Prior service credit purchased, or under a written agreement to be financed, under a procedure administered by the pension system before September 1, 2007, is subject to the maximum amount of credit and the terms and value in effect under system procedures at the time of purchase or written agreement to purchase.

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 February 10, 2014.

TRD-201400629
Michelle Jordan
Executive Director
Texas Emergency Services Retirement System
Proposed date of adoption: April 3, 2014
For further information, please call: (512) 936-3474

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CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §308.2

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §308.2, concerning Service Retirement Annuity, to replace each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The proposed amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner with regard to the System to the state board and its appointed executive director. The amendments are nonsubstantive in nature and meant to conform the rules to the provisions of Subtitle H, Title 8, Government Code.

Michelle Jordan, Executive Director, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional cost, reduction in cost, or revenue to local governments or the state as a result of adoption of the amended rule.

Ms. Jordan also has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that the rule is consistent with state law, as amended by the 83rd Legislature, Regular Session, 2013.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577 not later than March 24, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006.

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

§308.2. Service Retirement Annuity.

(a) In this section, normal retirement age is the later of the month a member completes 15 years of credited qualified service or attains the age of 55, and early retirement age is the age of 55.

(b) A member who has terminated service with all participating departments may apply for a service retirement annuity by filing an application for retirement with the Executive Director [~~commissioner~~]. The application may not be filed more than one calendar month before the date the member wishes to retire and must designate a retirement date, which may not precede the date of filing or the date of first eligibility to retire. The effective date of a member's retirement is the first day of the calendar month after which a member files an application that meets the requirements of this subsection.

(c) The local board of trustees shall hold a hearing on an application for service retirement within 15 days of the date of notice by the Executive Director [~~commissioner~~] of the filing of the application.

(d) A monthly service retirement annuity is payable for the period beginning on the effective date of retirement through the month in which the retiree dies but is not payable for any month for which the retiree was eligible to retire but did not.

(e) A service retirement annuity is payable in equal monthly installments to a member who terminates service after attaining early retirement age or normal retirement age, subject to the vesting requirements of §308.1 of this title.

(f) Except as otherwise provided by this section, the monthly service retirement annuity is equal to six times the governing body's average monthly contribution during the retiring member's term of qualified service.

(g) For credited qualified service in excess of 15 years, a retiring member is entitled to receive an additional 6.2 percent of the annuity compounded annually and adjusted for days or months of credited qualified service that constitute less than a year.

(h) Notwithstanding subsection (g) of this section, a person who had more than 15 years of qualified service as of December 31, 2006, is entitled to a service retirement annuity computed as the greater of the amount that existed on that date or the amount computed under the formula in effect on the date the person terminates service with all participating departments.

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 February 10, 2014.

TRD-201400630
Michelle Jordan
Executive Director
Texas Emergency Services Retirement System
Proposed date of adoption: April 3, 2014
For further information, please call: (512) 936-3474

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34 TAC §308.3

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §308.3, concerning Disability Retirement Benefits, to replace each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The proposed amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner with regard to the System to the state board and its appointed executive director. The amendments are nonsubstantive in nature and are meant to conform the rules to the provisions of Subtitle H, Title 8, Government Code.

Michelle Jordan, Executive Director, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional cost, reduction in cost, or revenue to local governments or the state as a result of adoption of the amended rule.

Ms. Jordan also has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that the rule is consistent with state law, as amended by the 83rd Legislature, Regular Session, 2013.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577 not later than March 24, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006.

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

§308.3. Disability Retirement Benefits.

(a) Except as otherwise provided by §864.004 and §864.005, *Government Code,* and this section, a member whose disability results from performing emergency service duties is entitled to a monthly annuity during the period of the disability in an amount equal to $300 plus $50 for every $12 increase in contributions above $12 by the governing body for which the person was performing emergency service duties at the time of the disability.

(b) An increase in contributions by a governing body after the payment of a monthly annuity begins does not increase the amount of the annuity.

(c) Disability benefits are prorated for portions of months during which a person is disabled.

(d) A local board shall report to the Executive Director [~~commissioner~~], in a manner provided by the pension system, a determination of temporary disability not later than the 45th day after the date the disability begins.

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 February 10, 2014.

TRD-201400631
Michelle Jordan
Executive Director
Texas Emergency Services Retirement System
Proposed date of adoption: April 3, 2014
For further information, please call: (512) 936-3474

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CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.4

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §310.4, concerning Standard of Conduct for Financial Advisors and Service Providers, to replace each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The proposed amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner with regard to the System to the state board and its appointed executive director. The amendments are nonsubstantive in nature and are meant to conform the rules to the provisions of Subtitle H, Title 8, Government Code.

Michelle Jordan, Executive Director, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional cost, reduction in cost, or revenue to local governments or the state as a result of adoption of the amended rule.

Ms. Jordan also has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that the rule is consistent with state law, as amended by the 83rd Legislature, Regular Session, 2013.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577 not later than March 24, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006.

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

§310.4. Standard of Conduct for Financial Advisors and Service Providers.

(a) In accordance with §2263.004, Government Code, financial advisors and service providers that directly or indirectly receive more than $10,000 in compensation from the pension system during a state fiscal year and that provide financial services to the Executive Director [~~commissioner~~], the state board, or individual members of the state board regarding the investment or management of the fund's assets shall comply with all applicable standards of conduct with which they are required to comply in accordance with federal or state law, rules, or regulations, relevant trade or professional associations, and the state board's investment policy.

(b) A financial advisor or service provider must agree to comply with these standards of conduct as a prerequisite to establishing and continuing any business relationship regarding the fund.

(c) The state board is authorized to terminate any business or contractual relationship with a financial advisor or service provider that the board has determined to have failed to comply with an applicable standard of conduct.

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 February 10, 2014.

TRD-201400632
Michelle Jordan
Executive Director
Texas Emergency Services Retirement System
Proposed date of adoption: April 3, 2014
For further information, please call: (512) 936-3474

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34 TAC §310.6

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §310.6, concerning Local Contributions, to replace each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The proposed amendments are

made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner with regard to the System to the state board and its appointed executive director. The amendments are nonsubstantive in nature and are meant to conform the rules to the provisions of Subtitle H, Title 8, Government Code.

Michelle Jordan, Executive Director, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional cost, reduction in cost, or revenue to local governments or the state as a result of adoption of the amended rule.

Ms. Jordan also has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that the rule is consistent with state law, as amended by the 83rd Legislature, Regular Session, 2013.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577 not later than March 24, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006.

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

§310.6. Local Contributions.

(a) Except as otherwise provided by this section, each participating department shall contribute at least $12 for each month or a portion of a month a member performs emergency services for the department. A participating department may elect to make contributions at a greater rate by notifying the Executive Director [~~commissioner~~] of the rate. Contributions are payable for each month or portion of a month of service regardless of whether the member receives a year of qualified service. Contributions are payable as provided by §865.014, Government Code, and §310.8 of this title.

(b) The minimum contribution rate for a department that begins participation in the pension system after September 1, 2005, is $36.

(c) The minimum monthly contribution rate for a department participating in the pension system on September 1, 2005, is subject to increase according to the following schedule:

(1) on September 1, 2006, $16;

(2) on September 1, 2007, $20;

(3) on September 1, 2008, $24;

(4) on September 1, 2009, $28;

(5) on September 1, 2010, $32; and

(6) on September 1, 2011, $36.

(d) Contributions are payable during a period of temporary disability or when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.), but are not payable when a member is performing active military duty, although the member receives credit for qualified service when performing active military duty.

(e) Contributions required under this section are not considered compensation to the members for whom they are made.

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 February 10, 2014.

TRD-201400633
Michelle Jordan
Executive Director
Texas Emergency Services Retirement System
Proposed date of adoption: April 3, 2014
For further information, please call: (512) 936-3474

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34 TAC §310.8

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §310.8, concerning Billings, to replace each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The proposed amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner with regard to the System to the state board and its appointed executive director. The amendments are nonsubstantive in nature and are meant to conform the rules to the provisions of Subtitle H, Title 8, Government Code.

Michelle Jordan, Executive Director, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional cost, reduction in cost, or revenue to local governments or the state as a result of adoption of the amended rule.

Ms. Jordan also has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that the rule is consistent with state law, as amended by the 83rd Legislature, Regular Session, 2013.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577 not later than March 24, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006.

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

§310.8. Billings.

(a) The Executive Director [~~commissioner~~] shall bill governing bodies of participating departments and governing bodies of municipalities for which the Executive Director [~~commissioner~~] is administering pensions under the Texas Local Fire Fighters Retirement Act quarterly on the last business day of November, February, May, and August.

(b) Each billing shall include, as appropriate, charges for:

(1) monthly contributions for participating members;

(2) prior service contributions;

(3) late-payment interest charges; and

(4) unpaid administrative penalties.

(c) At least 30 days before the last day of each quarter, the Executive Director [~~commissioner~~] shall send to the chair of the local board of each participating department a pension roster report that includes the name of each person who performs emergency services for the department and is identified as a member of the pension system.

(d) The chair of the local board or the administrative head of the department shall verify the accuracy of the report, make needed changes in the roster, and return the report to the Executive Director [~~commissioner~~] not later than the fifth day before the last day of the quarter.

(e) Payments under a billing issued under this section become due within 30 days of the invoice date. Late payments accrue interest at the current actuarially assumed rate of investment return on fund assets.

(f) In this section:

(1) The term "ACH" (Automated Clearing House) means the legal framework of rules and operational procedures adopted by financial institutions for the electronic transfer of funds.

(2) The term "ACH Credit" means an ACH transaction initiated by the governing body of a participating department for the electronic transfer of funds from the account of the governing body to the account of the pension system.

(3) The term "ACH Debit" means an ACH transaction initiated by the pension system for the electronic transfer of funds from the account of the governing body of a participating department to the account of the pension system.

(4) The term "electronic transfer of funds" means the transfer of funds, other than by check, draft or similar paper instrument, that is initiated electronically to order, instruct, or authorize a financial institution to debit or to credit an account.

(5) The term "pre-authorized direct debit" means the method available to the governing body of a participating department for electronically paying required contributions by granting a continuing authorization to the pension system to initiate an ACH Debit each quarter for the electronic transfer of funds from the designated bank account of the governing body to the account of the pension system in an amount equal to the contributions required to be paid based on the quarterly report as filed.

(6) The term "wire transfer" generally means a single transaction, initiated by the governing body of a participating department, in which funds are electronically transferred to the account of the pension system using the Federal Reserve Banking System rather than the ACH.

(g) Amounts required to be contributed to the pension system in accordance with Chapter 865 of the Texas Government Code may be made by preauthorized direct debits (ACH Debits). ACH Credits and wire transfers may not be used to transfer funds to the pension system except as authorized under subsection (j) of this section.

(h) The governing body of a participating department may elect to use the preauthorized direct debit method of payment by filing a signed authorization agreement with the pension system in which the governing body has designated a single bank account from which all transfers will be made.

(i) The authorization agreement entered into for this purpose constitutes continuing authority for the pension system to initiate a direct debit of the governing body's designated bank account each quarter and is effective with respect to each quarterly report of the governing body, whether filed by mail or by electronic transmission.

(j) An authorization agreement remains in effect until the pension system receives either a written revocation of the agreement, or a subsequent written agreement, which automatically revokes the existing authorization. A new authorization agreement must be filed if there is any change in the designated bank account. The pension system, in its sole discretion, may terminate the authorization agreement by mailing written notice to the governing body. Thereafter, the governing body must remit all contributions by check or other monetary means approved by the Executive Director [~~commissioner~~]. The alternative method of payment may include a fee to recover the cost of administering this subsection.

(k) Following receipt of a roster report filed under an unrevoked authorization agreement, the pension system will initiate an ACH Debit in the amount required to be contributed for that period based on the report; however the actual transfer of funds from the governing body's designated account will not occur before the due date of the report.

(l) The receipt of a quarterly roster report filed under an unrevoked authorization agreement is considered to be receipt by the pension system of the amount required to be contributed for the period based on that report if there are sufficient funds available for transfer from the governing body's designated account on the later of the due date of the report or the date the report is received. An ACH Debit that is reversed by a governing body or that fails because sufficient funds are not available for transfer constitutes nonpayment of the required contributions with respect to that report and, thereafter, the required contributions will not be considered to have been received until the day the funds are actually transferred to the account of the pension system. A governing body failing to timely file the required information or remit the required contributions by the due date of the report is subject to a penalty for late reporting in accordance with §310.9 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.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400634
Michelle Jordan
Executive Director
Texas Emergency Services Retirement System
Proposed date of adoption: April 3, 2014
For further information, please call: (512) 936-3474

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34 TAC §310.9

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §310.9, concerning Periodic Reports; Administrative Penalties, to replace each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The proposed amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd

Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner with regard to the System to the state board and its appointed executive director. The amendments are nonsubstantive in nature and are meant to conform the rules to the provisions of Subtitle H, Title 8, Government Code.

Michelle Jordan, Executive Director, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional cost, reduction in cost, or revenue to local governments or the state as a result of adoption of the amended rule.

Ms. Jordan also has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that the rule is consistent with state law, as amended by the 83rd Legislature, Regular Session, 2013.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577 not later than March 24, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006.

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

§310.9. Periodic Reports; Administrative Penalties.

(a) The Executive Director [~~commissioner~~] shall require periodic reports of local boards. The Executive Director [~~commissioner~~] shall specify the content to ensure the ability of the state board and the Executive Director [~~commissioner~~] to administer the pension system in a manner that uses fund assets in a manner required by statute.

(b) A report required in accordance with this section is late if it is not received by the Executive Director [~~commissioner~~] before the end of the month following the last month required to be covered in the report.

(c) An administrative penalty is imposed on each late periodic report required in accordance with this section. The penalty is $500 for each violation, except that a surcharge of $100 will be added to the penalty for each month the report remains late.

(d) The Executive Director [~~commissioner~~] may waive an administrative penalty under this section if the Executive Director [~~commissioner~~] determines, after a written request by a local board for a waiver, that the delay in reporting was beyond the control of the entities responsible for preparing and submitting the report and was not the result of neglect, indifference, or lack of diligence.

(e) A local board may appeal the Executive Director's [~~commissioner's~~] denial of a waiver to the state board to be determined at the board's next scheduled meeting. On appeal to the state board, the board is subject to the same standard for determination as the Executive Director [~~commissioner~~] but may in its discretion accept additional information from the local board.

(f) A determination by the state board on appeal under this section may not be appealed to a court and is not subject to any other legal process.

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 February 10, 2014.

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Michelle Jordan
Executive Director
Texas Emergency Services Retirement System
Proposed date of adoption: April 3, 2014
For further information, please call: (512) 936-3474

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34 TAC §310.10

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §310.10, concerning Voluntary Payments by Departments, to replace each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The proposed amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner with regard to the System to the state board and its appointed executive director. The amendments are nonsubstantive in nature and are meant to conform the rules to the provisions of Subtitle H, Title 8, Government Code.

Michelle Jordan, Executive Director, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional cost, reduction in cost, or revenue to local governments or the state as a result of adoption of the amended rule.

Ms. Jordan also has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that the rule is consistent with state law, as amended by the 83rd Legislature, Regular Session, 2013.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577 not later than March 24, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006.

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

§310.10. Voluntary Payments by Departments.

(a) A participating department, as authorized by this section, may make one or more supplemental payments to retirees and other beneficiaries of the pension system, or may provide an increase in the amount of annuities paid to retirees and other beneficiaries of the system. A department may choose to apply a supplemental payment or increase in annuities to all beneficiaries as of the date of the payment or increase or to only those whose benefits are derived from a person who was eligible to retire under §308.1(a) of this title (relating to Eli-

gibility for Retirement Annuity) or with a specified greater number of years of qualified service.

(b) An increase in benefits may consist of:

(1) an additional payment that does not exceed 100 percent of an annuitant's monthly scheduled payment;

(2) an annuity increase based on the 12-month increase in the Consumer Price Index for All Urban Consumers as of December of the preceding year;

(3) an increase to allow each annuity to reach a minimum monthly amount;

(4) an increase that adds to each annuity a specified amount for each whole year of credited service for the department; or

(5) a percentage increase to each annuity.

(c) Before it may implement a supplemental payment or annuity increase under this section, a participating department shall:

(1) obtain from the Executive Director [~~commissioner~~] a determination from the system's actuary that the department's payments to the pension system will be sufficient to finance the anticipated additional benefits; and

(2) contract with the Executive Director [~~commissioner~~] to make quarterly payments to the system that are necessary to finance the increase in benefits.

(d) A supplemental payment or increase in benefits must apply to all annuitants in the same classification but may be based on persons who qualified for an annuity under a previously lower contribution rate.

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 February 10, 2014.

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Michelle Jordan
Executive Director
Texas Emergency Services Retirement System
Proposed date of adoption: April 3, 2014
For further information, please call: (512) 936-3474

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER E. APPEALS AND HEARING PROCEDURES

DIVISION 4. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

40 TAC §101.1211

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes to amend §101.1211, concerning Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate.

Elsewhere in this issue of the *Texas Register,* DARS contemporaneously proposes amendments to §109.205, concerning Definitions, and §109.315, concerning Qualifications and Requirements for Court Certificate.

BACKGROUND AND PURPOSE

The 83rd Texas Legislature enacted House Bill 798, relating to certain actions taken by certain licensing authorities regarding a license holder or applicant who has been convicted of a Class C misdemeanor. In addition, Senate Bill 162 was enacted, relating to the occupational licensing of spouses of members of the military and the eligibility requirements for certain occupational licenses issued to applicants with military experience. Pursuant to these enactments and to comply with the law, DARS proposes amendments to §§101.1211, 109.205 and 109.315.

SECTION-BY-SECTION SUMMARY

DARS proposes to amend §101.1211, by adding language to stipulate that other rules do not apply to an offense punishable as a Class C misdemeanor as it relates to a BEI certificate holder or applicant for testing.

FISCAL NOTE

William Briggs, DARS Chief Financial Officer, has determined that for each year of the first five years that the proposed amendment is in effect, there are no foreseeable fiscal implications to either costs or revenues of state or local governments as a result of enforcing or administering the rule. The proposed amendment does not pose a fiscal impact. The amendment provides clarity and guidance for DARS certification program to accept and process applications from eligible test candidates who possess a Misdemeanor C conviction without delay, and to expand services to qualified or eligible military services members, veterans, and or spouses who seek to become a certified interpreter for the deaf.

PUBLIC BENEFIT

Mr. Briggs has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit anticipated as a result of administering and enforcing the amended rule will be to assure the public that the necessary rule is in place to provide a clear and concise understanding of the services provided by DHHS. Mr. Briggs has also determined that there is no probable economic cost to persons who are required to comply with the proposal. The proposed amendment establishes authority for DARS to accept verified training from military service member or veteran to meet qualifications for certification, and allows acceptance of a military spouse's certification issued by another jurisdiction that has licensing requirements that are substantially equivalent to DARS.

SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code §2001.022, Mr. Briggs has determined that the proposed amendment will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Briggs has determined

that the proposed amendment will not have adverse economic effect on small businesses or micro-businesses.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

DARS has determined that the proposed rule amendment 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, do not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposed amendment may be submitted within 30 days of publication of this proposal in the *Texas Register* to the Texas Department of Assistive and Rehabilitative Services, 4900 N. Lamar Blvd., Brown-Heatly Bldg., Austin, Texas 78751 or electronically to DARSRules@dars.state.tx.us.

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Human Resources Code Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§101.1211. Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate.

DHHS may deny application; suspend or revoke certification; or otherwise discipline, reprimand, or place on probation a certificate holder for any of the following causes:

(1) violations of federal or state laws that are substantiated by credible evidence, whether or not there is a complaint, indictment, or conviction, such violations include, but are not limited to, the following:

(A) (No change.)

(B) any Class A or Class B misdemeanor involving moral turpitude that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence, or that reflects adversely on the certificate holder's honesty, trustworthiness, or fitness to interpret under the scope of the person's certificate; or

(C) any offense, excluding an offense punishable as a Class C misdemeanor, involving theft or controlled substances;

(2) - (18) (No change.)

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

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400592
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 424-4050

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CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes to amend Subchapter A, General Rules, §108.103, Definitions; and Subchapter H, Eligibility, Evaluation, and Assessment, §108.817, Eligibility Determination Based on Developmental Delay. In addition, HHSC, on behalf of DARS, proposes the repeal of Subchapter L, Transition, §§108.1201, 108.1203, 108.1205, 108.1207, 108.1211, 108.1213, 108.1215, 108.1217, 108.1219, and 108.1221; and proposes new Subchapter L, Transition, §§108.1201 - 108.1203, 108.1205, 108.1207, 108.1209, 108.1211, 108.1213, 108.1215, 108.1217, 108.1219, and 108.1221.

BACKGROUND AND PURPOSE

DARS proposes the amendments, repeals, and new sections to make revisions as directed by the United States Department of Education Office of Special Education Programs (OSEP) and to increase clarity for DARS Early Childhood Intervention (ECI) contractors and families receiving ECI services.

SECTION-BY-SECTION SUMMARY

DARS proposes to amend §108.103, Definitions, to clarify that a child's native language is used when determined developmentally appropriate by qualified personnel.

DARS proposes to amend §108.817 to correct federal citations in subsections (a)(1) and (b)(6).

DARS proposes the repeal of current Subchapter L, Transition, in its entirety and further proposes new Subchapter L, Transition, to reflect the language used in 34 CFR Part 303, Early Intervention Program for Infants and Toddlers with Disabilities, as directed by OSEP and to improve clarity and readability. DARS proposes the repeal of §108.1201, Purpose; §108.1203, Definitions; §108.1205, Transition Education and Information for the Family; §108.1207, Transition Planning; §108.1211, LEA Notification of Potentially Eligible for Special Education Services; §108.1213, LEA Notification Opt Out; §108.1215, Reporting Late LEA Notifications of Potentially Eligible for Special Education Services; §108.1217, LEA Transition Conference; §108.1219, Transition to LEA Services; and §108.1221, Transition Into the Community.

DARS proposes new §108.1201, Purpose, to move content from current §108.1201; and to establish the purpose for the subchapter.

DARS proposes new §108.1202, Legal Authority, to add the legal authority for the subchapter.

DARS proposes new §108.1203, Definitions, to move some content from current §108.1203; and to add a definition for LEA Notification.

DARS proposes new §108.1205, Transition Education and Information for the Family, to move some content from current §108.1205; and to clarify requirements related to explaining ECI transition to the family and documentation of the conversation with the family.

DARS proposes new §108.1207, Transition Planning, to move some content form current §108.1207; and to clarify the requirements related to the meeting to plan appropriate steps and transition services, that the IFSP must contain confirmation that the transition notification has occurred and the identification of transition services deemed necessary by the IFSP team, requirements for transition planning that occur at a periodic review, transition requirements for children referred fewer than 45 days before the child's third birthday, and that the contractor must refer the child to the LEA if the parent provides consent.

DARS proposes new §108.1209, SEA Notification, to clarify the State Education Agency's notification requirements.

DARS proposes new §108.1211, LEA Notification of Potentially Eligible for Special Education Services, to move some content from current §108.1211; and to clarify requirements related to the information transmitted to the LEA and LEA notification requirements for children referred to ECI later than 90 days before the child's third birthday.

DARS proposes new §108.1213, LEA Notification Opt Out, to move some content from current §108.1213; and to clarify how and when the parent can opt out of the LEA notification and the parent's opt out options when the child is referred later than 90 days before the child's third birthday.

DARS proposes new §108.1215, Reporting Late LEA Notifications, to move some content from current §108.1215; and to clarify LEA Notification requirements for a child aged 33 to 36 months whom the IFSP team determines is potentially eligible for special education.

DARS proposes new §108.1217, LEA Transition Conference, to move some content from current §108.1217; and to clarify the timeline frame for conducting the LEA transition conference.

DARS proposes new §108.1219, Transition to LEA Services, to move some content from current §108.1219; and to clarify when the contractor may discontinue early intervention services and documentation requirements.

DARS proposes new §108.1221, Transition Into the Community, to move some content from current §108.1221; and to clarify when the contractor must assist the family with transition activities to community setting and that the parent is not required to request a conference before the contractor initiates reasonable transition efforts.

FISCAL NOTE

William Briggs, DARS Chief Financial Officer, has determined that for each year of the first five years that the proposal will be in effect, there are not foreseeable fiscal implications to either costs or revenues of state or local governments as a result of enforcing or administering the proposal.

PUBLIC BENEFIT

Mr. Briggs has determined that for each year of the first five years that the proposal will be in effect, the public benefit anticipated as a result of administering and enforcing the proposal will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the services provided by ECI. Mr. Briggs has also determined that there is not probable economic cost to persons who are required to comply with the proposal.

SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code, §2001.022, Mr. Briggs has determined that the proposal will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Briggs has determined that the proposal will not have adverse economic effect on small businesses or micro-businesses.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

DARS has determined that the proposed amendments, repeals, and new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Written comments may be submitted within 30 days of publication of this proposal in the *Texas Register* to the Texas Department of Assistive and Rehabilitative Services, 4900 N. Lamar Boulevard, Brown-Heatly Building, Austin, Texas 78751, or electronically to DARSRules@dars.state.tx.us.

SUBCHAPTER A. GENERAL RULES

40 TAC §108.103

STATUTORY AUTHORITY

The proposed amendment is authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. The amendment is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.103. Definitions.

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

(1) - (29) (No change.)

(30) Native Language--As defined in 34 CFR §303.25.

(A) When used with respect to an individual who is limited English proficient (as that term is defined in section 602(18) of the Act), native language means:

(i) (No change.)

(ii) for evaluations and assessments conducted pursuant to 34 CFR §303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(B) When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, native language means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(31) - (40) (No change.)

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

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400586
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 424-4050

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SUBCHAPTER H. ELIGIBILITY, EVALUATION, AND ASSESSMENT

40 TAC §108.817

STATUTORY AUTHORITY

The proposed amendment is authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. The amendment is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.817. Eligibility Determination Based on Developmental Delay.

(a) The contractor must:

(1) comply with all requirements in 34 CFR §303.321(b) [~~§303.21(b)~~] (relating to Procedures for Evaluation of the Child);

(2) - (4) (No change.)

(b) The parent and at least two professionals from different disciplines must conduct the evaluation to determine initial and continuing eligibility based on developmental delay as defined by §108.809(3) of this title (relating to Initial Eligibility Criteria). Service coordination is not considered a discipline for evaluation. The evaluation procedures must include:

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

(6) in addition to 34 CFR §303.321(b) [~~§303.21(b)~~], determining the most appropriate setting, circumstances, time of day, and participants for the evaluation in order to capture the most accurate picture of the child's ability to function in his or her natural environment.

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

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

Filed with the Office of the Secretary of State on February 10, 2014.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 424-4050

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SUBCHAPTER L. TRANSITION

40 TAC §§108.1201, 108.1203, 108.1205, 108.1207, 108.1211, 108.1213, 108.1215, 108.1217, 108.1219, 108.1221

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

STATUTORY AUTHORITY

The proposed repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. The repeal is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1201. Purpose.
§108.1203. Definitions.
§108.1205. Transition Education and Information for the Family.
§108.1207. Transition Planning.
§108.1211. LEA Notification of Potentially Eligible for Special Education Services.
§108.1213. LEA Notification Opt Out.
§108.1215. Reporting Late LEA Notifications of Potentially Eligible for Special Education Services.
§108.1217. LEA Transition Conference.
§108.1219. Transition to LEA Services.
§108.1221. Transition Into the Community.

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 February 10, 2014.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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40 TAC §§108.1201 - 108.1203, 108.1205, 108.1207, 108.1209, 108.1211, 108.1213, 108.1215, 108.1217, 108.1219, 108.1221

STATUTORY AUTHORITY

The proposed new sections are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. The new sections are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1201. Purpose.

The purpose of this subchapter is to:

(1) establish the ECI requirements to assist the family to smoothly transition from early childhood intervention services; and

(2) implement all federal requirements in 20 USC §1437 and 34 CFR §303.209 related to transition planning and services.

§108.1202. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) Texas Human Resources Code, Chapter 73;

(2) the Individuals with Disabilities Education Act, Part C (20 USC §§1431-1444);

(3) implementing federal regulations 34 CFR Part 303; and

(4) Code of Federal Regulations, Title 34, Part 99, Family Educational Rights and Privacy.

§108.1203. Definitions.

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

(1) Community Transition Meeting--A meeting held to discuss how the contractor will assist the family with transitioning from early childhood intervention services to community services, activities, places, or programs that the family would like the child to participate in after exiting early childhood intervention services.

(2) LEA Notification--Notification to the LEA of a child who is potentially eligible for LEA services. The parent may opt out of the LEA Notification.

(3) LEA Notification Opt Out--The parent's choice not to allow the contractor to send the child's limited personally identifiable information to the LEA to meet LEA Notification requirements.

(4) LEA Transition Conference--A meeting to discuss LEA special education services, eligibility determination for special education services, and appropriate steps and transition services for children who are potentially eligible for special education services.

(5) Limited Personally Identifiable Information--The child's and parent's names, addresses, and phone numbers; child's date of birth; service coordinator's name; and language spoken by the child and family.

(6) Transition Planning--The process of identifying and documenting appropriate steps and transition services to support the child and family to smoothly and effectively transition from early childhood intervention services to LEA special education services or other community services, activities, places, or programs the family would like the child to participate in after exiting early childhood intervention services.

§108.1205. Transition Education and Information for the Family.

(a) At the first meeting with the family after the referral, the contractor must explain:

(1) circumstances that would cause the child no longer to meet the eligibility requirements for early intervention services; and

(2) the ECI transition process.

(b) The contractor must provide the enrolled family an overview of transition concepts and activities including:

(1) ways to plan ahead and help the child adjust to and function in new settings;

(2) future placement options for the child such as LEA special education services, community childcare settings, and home care;

(3) referral and contact information for relevant advocacy groups, local resources, parent support organizations, Medicaid programs, and other governmental agencies; and

(4) LEA Notification requirements and the LEA Notification Opt Out option.

(c) The contractor must document the transition conversation with the family in a progress note.

§108.1207. Transition Planning.

(a) Transition planning is a process that involves developing and updating appropriate steps and transition services:

(1) jointly with families; and

(2) based on recommendations from the IFSP team.

(b) All transition activities must be documented in the child's record.

(c) The IFSP must contain an appropriate general transition statement.

(d) The contractor must conduct a meeting, which includes the parent, in accordance with 34 CFR §303.342(d) and (e) and §303.343(a), to plan appropriate steps and transition services in the IFSP.

(1) Except as provided in subsections (f) - (h) of this section, the meeting to plan appropriate steps and transition services must establish a transition plan in the IFSP not fewer than 90 days, and at the discretion of all parties, not more than nine months before the child's third birthday.

(2) If transition planning occurs at a periodic review instead of an initial or annual IFSP meetings, the meeting must meet the requirements in 34 CFR §303.342(d) and (e) and §303.343(a).

(3) The appropriate steps and transition services that the IFSP team plans at the meeting must be documented in the IFSP and must include:

(A) timelines and responsible party for each transition activity;

(B) discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;

(C) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

(D) the family's choice for the child to transition into a community or educational program or for the child to remain in the home;

(E) identification of appropriate steps and transition services, deemed necessary by the IFSP team, to support the family's exit from early childhood intervention services to LEA special education services or other appropriate activities, places, or programs the family would like the child to participate in after exiting early childhood intervention services;

(F) confirmation that the transition notification, which requires child find information to be transmitted to the LEA or other relevant agency, has occurred; and

(G) program options, if the child is potentially eligible for special education services, for the period from the child's third birthday through the remainder of the school year.

(e) The child's planned steps and transition services must be updated and documented in the IFSP anytime the:

(1) IFSP team identifies new appropriate steps and transitional services; and

(2) parent's goals for the child evolve and change.

(f) At any time during the child's enrollment in early childhood intervention services, the IFSP team must, upon parental request, meet to plan steps to support the child and family to transition:

(1) from one contractor to another contractor;

(2) from one family setting to another family setting; or

(3) when the family is moving out of state.

(g) If the child is referred 45 days to six months before the child's third birthday, the IFSP team must plan and document appropriate steps and transition services as a part of the initial IFSP development.

(h) If the child is referred fewer than 45 days before the child's third birthday, the IFSP team is not required to plan steps and transition services. If the child is potentially eligible for preschool special education services, the contractor must, with written parental consent, refer the child directly to the LEA as soon as possible.

(i) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures).

§108.1209. SEA Notification.

DARS will coordinate the State Education Agency's (SEA) notification of children potentially eligible for special education services, in compliance with 34 CFR §303.209(b). DARS will send notification of children potentially eligible for special education services to the SEA at least 90 days before each child's third birthday, or as soon as possible for children referred between 90 and 45 days before the child's third birthday. If a referral is received for a child fewer than 45 days before the child's third birthday, and the child may be potentially eligible for preschool special education services, DARS will, with written parental consent, refer the child directly to the SEA.

§108.1211. LEA Notification of Potentially Eligible for Special Education Services.

(a) The contractor's IFSP team determines if a two year old receiving early childhood intervention services is potentially eligible for preschool special education services.

(b) Written parental consent is not required for the contractor to send LEA Notification of Potentially Eligible for Special Education Services, but the parent may opt out of LEA Notification as described in §108.1213 of this title (relating to LEA Notification Opt Out). Written parental consent is required before sending information other than the child's limited personally identifiable information to the LEA.

(c) For a child whose parent has not opted out of the disclosure as described in §108.1213 of this title, the contractor must notify the LEA at least 90 days before the child's third birthday that the child is potentially eligible for preschool special education services. The contractor must send the LEA for the area in which the child resides the LEA Notification of Potentially Eligible for Special Education Services, which contains the child's limited personally identifiable information as defined in §108.1203(5) of this title (relating to Definitions).

(d) If the contractor determines a child is eligible for early childhood intervention services fewer than 90 days and more than 45 days before the child's third birthday, the contractor must determine as soon as possible whether the child is potentially eligible for preschool special education services. If the contractor determines the child is potentially eligible for preschool special education services, the contractor must provide notification to the LEA as soon as possible, unless the parent opts out of the disclosure as described in §108.1213 of this title.

(e) If the contractor receives a referral for a child fewer than 45 days before the child's third birthday and the child may be potentially eligible for preschool special education services, the contractor must, with written parental consent, refer the child directly to the LEA. The contractor is not required to conduct pre-enrollment procedures, an evaluation, an assessment, or an initial IFSP meeting.

(f) To assist the LEA in determining eligibility, the contractor, with written parental consent, must send the LEA the most recent:

(1) evaluations;

(2) assessments; and

(3) IFSPs.

§108.1213. LEA Notification Opt Out.

(a) The parent may choose not to allow the contractor to send the child's limited personally identifiable information to the LEA. The contractor must:

(1) inform the parent of the LEA Notification of Potentially Eligible for Special Education Services requirements before the parent signs the initial IFSP; and

(2) explain LEA Notification Opt Out to the parent and the consequences of this choice.

(b) The parent may choose to opt out of the LEA Notification of Potentially Eligible for Special Education Services. The parent must inform the contractor of their LEA Notification Opt Out choice in writing before the scheduled notification date.

(c) The contractor must provide the parent written communication regarding LEA Notification that includes the following information:

(1) what information will be disclosed to the LEA;

(2) the scheduled LEA Notification date;

(3) a clear statement that the parent must inform the contractor in writing of their LEA Notification Opt Out choice in writing before the scheduled notification date; and

(4) the child's limited personally identifiable information will be sent for LEA Notification, unless the parent informs the contractor in writing of their LEA Notification Opt Out choice before the scheduled notification date.

(d) The contractor must provide the parent the written communication regarding LEA Notification as required in subsection (c) of this section at least 10 days before limited personally identifiable information is scheduled to be released for LEA Notification of Potentially Eligible for Special Education Services.

(e) If the parent opts out of LEA Notification of Potentially Eligible for Special Education Services at any time before the scheduled notification date, the contractor must:

(1) not send the child's limited personally identifiable information to the LEA;

(2) inform the parent that even if he or she opts out of LEA Notification, he or she can later request that the child's limited personally identifiable information be sent to the LEA; and

(3) document in the child's record:

(A) the date the written communication regarding LEA Notification was provided to the parent; and

(B) the parent's written request to opt out of LEA Notification of Potentially Eligible for Special Education Services.

(f) If the contractor receives the child's referral between 90 and 45 days before the child's third birthday and the IFSP team determines the child is potentially eligible for special education services, the contractor must:

(1) immediately inform the parent of the LEA Notification requirements;

(2) explain LEA Notification Opt Out to the parent and the consequences of this choice; and

(3) comply with all other requirements in this section related to LEA Notification Opt Out.

§108.1215. Reporting Late LEA Notifications.

When the contractor provides the LEA Notification of Potentially Eligible for Special Education Services to districts or charter schools less than 90 days before the child's third birthday, the contractor's ECI program must include in the notification the reason for the delay. The contractor must send the LEA for the area in which the child resides a late LEA Notification for any child aged 33-36 months whom the IFSP team determines is potentially eligible for special education services.

§108.1217. LEA Transition Conference.

(a) The IFSP team determines whether a child is potentially eligible for special education services. The IFSP team's decision regarding a child's potential eligibility for special education services is documented in the child's record.

(b) If the parent gives approval to convene the LEA Transition Conference, the contractor must:

(1) meet the requirements in 34 CFR §303.342(d) and (e) and §303.343(a), which requires:

(A) the face-to-face attendance of the parent and the service coordinator; and

(B) at least one other ECI professional who is a member of the IFSP team who may participate through other means as permitted in 34 CFR §303.343(a)(2);

(2) send an invitation at least 14 days in advance to the appropriate representatives for the LEA which serves the area where the child resides;

(3) conduct the LEA Transition Conference at least 90 days before the child's third birthday. At the discretion of all parties, the conference may occur up to nine months before the child's third birthday; and

(4) document the date of the conference in the child's record.

(c) The contractor must conduct the LEA Transition Conference, even if the representatives for the LEA which serves the area where the child resides do not attend, and provide the parent information about preschool special education and related services, including a description of the:

(1) eligibility definitions;

(2) timelines;

(3) process for consenting to an evaluation and eligibility determination; and

(4) extended year services.

(d) The contractor is not required to conduct the LEA Transition Conference for children referred to the contractor's ECI program less than 90 days before the child's third birthday.

(e) The 14-day timeline for inviting the LEA representative may be changed by written local agreement between the LEA and the contractor. If the contractor becomes aware of a consistent pattern of the LEA representative not attending transition conferences, the contractor must make efforts to meet with the LEA to reach a cooperative agreement to maximize LEA participation.

(f) If the parent gives approval to have an LEA Transition Conference, but does not give written consent to release records to the LEA, then the contractor may only release limited personally identifiable information to the LEA. With written parental consent, other personally identifiable information may be released to the LEA.

§108.1219. Transition to LEA Services.

(a) The contractor may continue to provide early childhood intervention services to the child until the child's third birthday even if the Admission, Review, and Dismissal (ARD) meeting has occurred and the Individualized Education Plan (IEP) has been signed.

(b) The contractor may discontinue early childhood intervention services if the child begins receiving the same services from the LEA when:

(1) prior written notice is given to the parent regarding the discontinuation of early childhood intervention services; and

(2) the IFSP is revised at an IFSP meeting.

(c) All transition activities must be clearly documented in the child's record.

§108.1221. Transition Into the Community.

(a) The contractor must assist the family with transition activities to appropriate community settings before the child's third birthday if the:

(1) parent chooses for the child to transition to community services;

(2) parent opts out of LEA Notification of Potentially Eligible for Special Education Services;

(3) parent refuses LEA services; or

(4) child is determined to be ineligible for special education services.

(b) With written parental consent, the contractor must make a reasonable effort to convene a Community Transition Meeting that meets the requirements in 34 CFR §303.342(d) and (e) and §303.343(a), which requires the attendance of the service coordinator and at least one other ECI professional who is a member of the IFSP team who may participate through other means as permitted in 34 CFR §303.343(a)(2), and also invite:

(1) representatives of the identified community settings;

(2) the DARS Division for Blind Services specialist if the child has a vision impairment or the DARS Office for Deaf and Hard of Hearing Services regional specialist if the child has a hearing impairment; and

(3) other program or agency representatives as appropriate.

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 February 10, 2014.

TRD-201400589
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 424-4050

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SUBCHAPTER N. FAMILY COST SHARE SYSTEM

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes the repeal of Subchapter N, Family Cost Share System, §§108.1401, 108.1403, 108.1405, 108.1407, 108.1409, 108.1411, 108.1413, 108.1415, 108.1419, 108.1421, 108.1423, 108.1425, 108.1427, and 108.1429. HHSC on behalf of DARS, proposes to replace the above-mentioned rules and/or their subject matter with new §§108.1401, 108.1403, 108.1405, 108.1407, 108.1409, 108.1411, 108.1413, 108.1417, 108.1419, 108.1421, 108.1423, 108.1425, 108.1427, 108.1429, 108.1431, 108.1433, 108.1435, 108.1437, and 108.1439.

BACKGROUND AND PURPOSE

DARS proposes the repeal and new rules in response to direction from the United States Department of Education Office of Special Education Programs (OSEP) and to increase clarity for DARS ECI contractors and families receiving ECI services.

SECTION-BY-SECTION SUMMARY

DARS proposes the repeal of current Subchapter N, Family Cost Share System, in its entirety and further proposes new Subchapter N, Family Cost Share System, in order to respond to direction from OSEP and to improve clarity and readability. DARS proposes the repeal of §108.1401, Purpose; §108.1403, Definitions; §108.1405, Family Cost Share System Administration; §108.1407, Parent Rights Related to the Family Cost Share System; §108.1409, Early Childhood Intervention Services Provided at No Cost to the Parent; §108.1411, IFSP Services Subject to the Family Cost Share Amount; §108.1413, Family Monthly Maximum Payment; §108.1415, Information Used to Calculate Family Monthly Maximum Payment; §108.1419, Third-Party Payors; §108.1421, Review of Family Cost Share Amount; §108.1423, Reconsideration and Adjustment of Family Cost Share Obligation; §108.1425, Billing Families for IFSP Services; §108.1427, IFSP Services Subject to Suspension for Nonpayment; and §108.1429, Program Fiscal and Recordkeeping Policies.

DARS proposes new §108.1401, Purpose, to move the content from current §108.1401; and to establish the purpose of the subchapter.

DARS proposes new §108.1403, Legal Authority, to add the legal authority for the subchapter.

DARS proposes new §108.1405, Definitions, to move some of the content of current §108.1403, remove unnecessary definitions (Family, Family Cost Share Amount, Family Fees, and Family Monthly Maximum Payment), add new definitions (Family Size, Maximum Charge and Out-of-Pocket), and revise the definitions of Ability to Pay and Inability to Pay to align with federal requirements.

DARS proposes new §108.1407, Family Cost Share System Administration, to move some content from current, §108.1405, include the payor of last resort requirement in compliance with federal regulations, and clarify requirements related to coordination of funding sources.

DARS proposes new §108.1409, Parent Rights Related to the Family Cost Share System, to move some of the content from §108.1407; clarify that a family with an inability to pay will receive all IDEA Part C services at no cost and the requirements to notifying the parent of their due process rights concerning the imposition of a fee; and establish the requirements related to providing the parent a copy of the ECI Family Cost Share publication, which explains the family cost share process, describes the parent's procedural safeguards, and identifies potential costs that the parent may incur when paying out-of-pocket or using private or public insurance to pay for their child's services.

DARS proposes new §108.1411, Early Childhood Intervention Services Provided with No Out-of-Pocket Payment from the Parent, to move some content of current §108.1409; and to clarify that a family with an inability to pay will receive all IDEA Part C services at no cost.

DARS proposes new §108.1413, IFSP Service Subject to Out-of-Pocket Payment from the Family, to move some content from current, §108.1411; and to clarify the family pays out-of-pocket up to their maximum charge, which is based on family size and adjusted income.

DARS proposes new §108.1417, Family Cost Share Agreement, to move some content from other sections in current Subchapter N; and to establish requirements related to the Family Cost Share Agreement.

DARS proposes new §108.1419, Private Insurance to move some content from other sections in current Subchapter N; and to clarify requirements related to obtaining parental consent and using a family's private insurance for early childhood intervention services; that if the parent does not give consent to use private insurance, the family is still entitled to receive services for which they have provided consent and the parent pays according to the DARS ECI Sliding Fee Scale, which is based on family size and income; and that a family with insurance will not be charged disproportionately more than a family without insurance.

DARS proposes new §108.1421, Insurance Premiums, to clarify that neither the contractor nor DARS pays for a family's private insurance premiums, that insurance premiums do not count toward the monthly charge, and that the family's insurance premiums may be used as an ECI deduction when calculating adjusted income.

DARS proposes new §108.1423, Co-pays, Co-insurance, and Deductibles, to move content from other sections in current Subchapter N; and to clarify the use of co-pays, co-insurance, and deductibles when calculating the family's out-of-pocket charge.

DARS proposes new §108.1425, Public Benefits and Insurance, to move some content from other sections in current Subchapter N, and to clarify the requirements related to obtaining consent and using a family's public benefits or insurance to pay for early childhood intervention services; that if a child has private insurance in addition to public insurance, private insurance is the primary payor; the parent is not required to enroll in public benefits in order to receive early childhood intervention services; that if the parent does not give consent to use their public insurance, they are still entitled to receive services for which they have provided consent; that if the parent refuses to give consent to use their public benefits or insurance, the parent pays based on their placement on the DARS ECI Sliding Fee Scale; and that a family with public benefits or insurance will not be charged disproportionately more than a family without public benefits or insurance.

DARS proposes new §108.1427, Maximum Charge, to move some content from other sections in current Subchapter N; and to clarify the maximum charge the family will be billed for services delivered in one calendar month, when the contractor determines the family's ability to pay, and calculates the family's maximum charge.

DARS proposes new §108.1429, Family Size and Adjusted Income, to move some content from other sections in current Subchapter N; and to clarify how family size and adjusted income are calculated to determine the family's placement on the DARS ECI Sliding Fee Scale.

DARS proposes new §108.1431, DARS ECI Sliding Fee Scale, to move some content from other sections in current Subchapter N; and to clarify how the family's placement on the DARS ECI Sliding Fee Scale determines the family's maximum charge for services delivered in one calendar month.

DARS proposes new §108.1433, Billing Families for IFSP Services, to move some content from current §108.1425 for IFSP Services; and to clarify requirements related to billing families up to their assigned maximum charge.

DARS proposes new §108.1435, Suspension of Services for Nonpayment, to move some content from current §108.1427.

DARS proposes new §108.1437, Extraordinary Circumstances, to move some content from current §108.1423.

DARS proposes new §108.1439, Program Fiscal and Recordkeeping Policies, to move some content from current §108.1429.

FISCAL NOTE

William Briggs, DARS Chief Financial Officer, has determined that for each year of the first five years that the proposal will be in effect, there are not foreseeable fiscal implications to either costs or revenues of state or local governments as a result of enforcing or administering the proposal.

While the rule change is not expected to have fiscal impact to state government, local government, small business or micro business, DARS does expect some fiscal effect on contracted providers of ECI services who depend on insurance billings for part of their revenue. The rule change could lead fewer families to consent to bill their insurance, resulting in a loss of insurance collections by these contractors.

PUBLIC BENEFIT

Mr. Briggs has determined that for each year of the first five years that the proposal will be in effect, the public benefit anticipated as a result of administering and enforcing the proposal will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the services provided by ECI. Mr. Briggs has also determined that there is not probable economic cost to persons who are required to comply with the proposal.

SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code §2001.022, Mr. Briggs has determined that the proposed rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Briggs has determined that the proposed rules will not have adverse economic effect on small businesses or micro-businesses.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

DARS has determined that these 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

Written comments may be submitted within 30 days of publication of this proposal in the *Texas Register* to the Texas Department of Assistive and Rehabilitative Services, 4900 N. Lamar Boulevard, Brown-Heatly Building, Austin, Texas 78751; or electronically to DARSRules@dars.state.tx.us.

40 TAC §§108.1401, 108.1403, 108.1405, 108.1407, 108.1409, 108.1411, 108.1413, 108.1415, 108.1419, 108.1421, 108.1423, 108.1425, 108.1427, 108.1429

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

STATUTORY AUTHORITY

The proposed repeals are authorized by the Texas Human Resources Code Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. The repeals are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1401. Purpose.
§108.1403. Definitions.
§108.1405. Family Cost Share System Administration.
§108.1407. Parent Rights Related to the Family Cost Share System.
§108.1409. Early Childhood Intervention Services Provided at No Cost to the Parent.
§108.1411. IFSP Services Subject to the Family Cost Share Amount.
§108.1413. Family Monthly Maximum Payment.
§108.1415. Information Used to Calculate Family Monthly Maximum Payment.
§108.1419. Third-Party Payors.
§108.1421. Review of Family Cost Share Amount.
§108.1423. Reconsideration and Adjustment of Family Cost Share Obligation.
§108.1425. Billing Families for IFSP Services.
§108.1427. IFSP Services Subject to Suspension for Nonpayment.
§108.1429. Program Fiscal and Recordkeeping Policies.

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 February 10, 2014.

TRD-201400590
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 424-4050

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40 TAC §§108.1401, 108.1403, 108.1405, 108.1407, 108.1409, 108.1411, 108.1413, 108.1417, 108.1419, 108.1421, 108.1423, 108.1425, 108.1427, 108.1429, 108.1431, 108.1433, 108.1435, 108.1437, 108.1439

STATUTORY AUTHORITY

The proposed new rules are authorized by the Texas Human Resources Code Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. These new rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1401. Purpose.

(a) The purpose of this subchapter is to establish a system of payments for early childhood intervention services. The family cost share system includes the collection of:

(1) private insurance;

(2) public insurance; and

(3) out-of-pocket payments from families.

(b) This subchapter also establishes procedures to determine the maximum out-of-pocket charge to the family.

§108.1403. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) Texas Human Resources Code, Chapter 73;

(2) the Individuals with Disabilities Education Act, Part C (20 USC §§1431-1444);

(3) Code of Federal Regulations, Title 34, Part 303, Early Intervention Program for Infants and Toddlers with Disabilities; and

(4) Code of Federal Regulations, Title 34, Part 99, Family Educational Rights and Privacy.

§108.1405. Definitions.

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

(1) Ability to Pay--The determination that the family is financially able to pay out-of-pocket, for their child's early childhood intervention services.

(2) Adjusted Income--The dollar amount equal to the family's annual gross income minus their allowable deductions. The contractor uses adjusted income to determine the family's ability to pay and to calculate the family's maximum charge.

(3) Allowable Deductions--Certain unreimbursed family expenses that are subtracted from the family's gross income to calculate their adjusted income.

(4) CHIP--The Children's Health Insurance Program (CHIP) administered by the Texas Health and Human Services Commission.

(5) Dependent--Any person who meets the definition of 26 USC §152 Dependent Defined.

(6) Family Cost Share System--The system of collecting reimbursement for early childhood intervention services from public insurance, private insurance, and out-of-pocket payments from families.

(7) Family size--The total number of people in the family, including the child's parents who live in the home, the child, and other dependents of the parent. Other dependents do not have to live in the home, but they must be financially dependent upon the parent.

(8) Federal Poverty Guidelines--The poverty guidelines updated periodically in the Federal Register by the United States

Department of Health and Human Services under the authority of 42 USC §9902(2).

(9) Gross Income--All income received by the family considered income by the Internal Revenue Service before federal allowable deductions are applied.

(10) Inability to Pay--The determination that the family is financially unable to make out-of-pocket payments because the family has an adjusted income at or below 100% of the federal poverty level.

(11) Maximum Charge--The maximum out-of-pocket amount the contractor can charge the family for services delivered in one calendar month.

(12) Out-of-Pocket--Payment received from the family to pay for their child's early childhood intervention services. This includes insurance co-pays, co-insurance, and deductibles as well as payment for services not covered by the family's insurance.

(13) Sliding Fee Scale--The DARS-developed scale of maximum charges that is based on the federal poverty guidelines.

(14) Third-Party Payor--A company, organization, insurer, or government agency that makes payments for the early childhood intervention services received by a child and family. Third-party payors include commercial insurance companies, HMOs, PPOs, and public insurance such as Medicaid, CHIP, and TRICARE.

(15) TRICARE--The U.S. Department of Defense health care entitlement for active duty, Guard and Reserve, retired members of the military, and their eligible family members and survivors.

§108.1407. Family Cost Share System Administration.

(a) The contractor must administer the family cost share system in compliance with the requirements in this title, DARS policy concerning ECI, and the contract.

(b) In compliance with 34 CFR §303.510(a) and (b) and §303.203(b)(1), IDEA Part C funding is the payor of last resort for early childhood intervention services. The contractor must comply with the requirements in §108.1621 of this title (relating to Financial Management and Recordkeeping Requirements). The contractor must:

(1) establish third-party billing systems, determine client eligibility for all third-party reimbursement sources, and complete and submit reimbursement requests to corresponding third-party sources, including private insurance, Medicaid programs, CHIP, and TRICARE;

(2) coordinate funding sources for services required under IDEA Part C; and

(3) use other funding for which the clients are eligible before billing services to the DARS contract, which includes distribution of IDEA Part C funds.

§108.1409. Parent Rights Related to the Family Cost Share System.

(a) The parent has the right to:

(1) receive certain early childhood intervention services at no cost;

(2) refuse any early childhood intervention services they do not wish to receive;

(3) receive information about any method the contractor may use to verify the family's allowable deductions;

(4) receive information about the contractor's process for determining their maximum charge before signing the family cost share agreement;

(5) not have their personally identifiable information released for billing purposes without prior written consent; and

(6) not have their private insurance billed without prior written consent.

(b) If the family has an inability to pay, all IDEA Part C services are provided with no out-of-pocket charge to the parent. The family's inability to pay for early childhood intervention services will not result in the delay or denial of early childhood intervention services to the child or the family.

(c) If the parent disagrees with the contractor's determination of the family's ability to pay, the calculated adjusted income, or the assigned maximum charge, the parent can:

(1) request a review by the contractor manager or program director;

(2) file an informal or formal complaint with the contractor;

(3) contact the DARS Inquiries Line at 1-800-628-5115 for help resolving a problem or concern with the contractor;

(4) file a formal complaint with DARS, in compliance with 34 CFR §303.434;

(5) participate in mediation, in compliance with 34 CFR §303.431; and

(6) participate in a due process hearing, in compliance with 34 CFR §303.436 or §303.441, whichever is applicable.

(d) The contractor must provide the parent a copy of the ECI Family Cost Share publication before the contractor initially bills the child's third-party payor to pay for early childhood intervention services.

(e) The ECI Family Cost Share publication:

(1) explains the family cost share process;

(2) describes the parent's procedural safeguards and related due process rights;

(3) notifies the parent that:

(A) parental consent must be obtained before the contractor releases personally identifiable information to third-party payors;

(B) if the parent does not consent under 34 CFR §303.520(a)(2), the contractor must still make available those Part C services on the IFSP to which the parent has consented;

(C) the parent has the right to withdraw their consent at any time;

(D) the parent may incur potential costs for co-pays as a result of using their public insurance and potential costs such as co-pays, co-insurance, or deductibles as a result of using their private insurance to pay for early childhood intervention services; and

(E) if the child has private insurance in addition to Medicaid, the private insurance is the primary payor and must be billed before filing a claim with Medicaid.

§108.1411. Early Childhood Intervention Services Provided with No Out-of-Pocket Payment from the Parent.

(a) The early childhood intervention services provided with no out-of-pocket payment from the parent are:

(1) child find;

(2) evaluation and assessment;

(3) development of the IFSP;

(4) services to children with auditory or visual impairments that are required by an individualized education program (IEP) pursuant to Texas Education Code, §29.003(b)(1);

(5) case management;

(6) translation and interpreter services; and

(7) administrative and coordination activities related to the implementation of procedural safeguards and other components of the statewide system of early childhood intervention services.

(b) Early childhood intervention services provided at no out-of-pocket charge to the parent must:

(1) not be denied or delayed if the family fails to provide information related to third-party coverage, gross income, or family size;

(2) begin or continue regardless of whether or not the parent has a signed family cost share agreement;

(3) not be denied or delayed if the family refuses to consent to bill or to release personally identifiable information to a third-party payor;

(4) begin or continue during any period of reconsideration; and

(5) continue during any suspension period.

(c) If the family has an inability to pay, all IDEA Part C services are provided with no out-of-pocket charge to the family.

§108.1413. IFSP Services Subject to Out-of-Pocket Payment from the Family.

(a) IFSP services subject to out-of-pocket payment from the family are:

(1) assistive technology;

(2) behavioral intervention;

(3) occupational therapy services;

(4) physical therapy services;

(5) speech-language pathology services;

(6) nutrition services;

(7) counseling services;

(8) nursing services;

(9) psychological services;

(10) health services;

(11) social work services;

(12) transportation;

(13) specialized skills training (previously known as developmental services); and

(14) any IFSP services to children with auditory or visual impairments that are not required by an individualized education program (IEP) pursuant to Texas Education Code, §29.003(b)(1).

(b) The family pays out-of-pocket up to their maximum charge. The family's maximum charge is determined based on their placement on the DARS ECI Sliding Fee Scale, as described in §108.1431 of this title (relating to DARS ECI Sliding Fee Scale).

§108.1417. Family Cost Share Agreement.

(a) The parent must sign a family cost share agreement. The parent's signature acknowledges their assigned maximum charge and provides written attestation that:

(1) information regarding third-party coverage, family size, gross income, and allowable deductions is true and accurate; or

(2) the parent chooses not to provide information regarding:

(A) third-party coverage;

(B) gross income and family size; or

(C) allowable deductions.

(b) The contractor must not initiate IFSP services subject to out-of-pocket payment until the parent signs the family cost share agreement.

(c) At the annual meeting to evaluate the IFSP, the contractor must review the family cost share agreement, obtain current public and private insurance information, and re-calculate the family's assigned maximum charge. The parent must update and sign their family cost share agreement if family size, gross income, deductions, or third-party coverage is modified.

(d) The parent must report changes to family size, gross income, deductions, and third-party coverage as soon as possible. When the parent reports a change, the contractor must review the family cost share agreement, obtain current public or private insurance information, and re-calculate the family's assigned maximum charge. The parent must update and sign their family cost share agreement.

(e) When the parent signs an updated family cost share agreement, the new maximum charge takes effect the beginning of the following month.

(f) If the child is in the conservatorship of the state, the contractor assigns the family a maximum charge of $0.

(1) The foster parent must sign the family cost share agreement acknowledging the $0 maximum charge and attesting to the child's third-party status and foster care status.

(2) The foster parent is not required to attest to family size, gross income, or allowable deductions.

§108.1419. Private Insurance.

(a) The contractor must obtain written parental consent to bill and to release personally identifiable information to private insurance.

(b) The contractor must obtain written parental consent when initially seeking to use their private insurance and subsequently each time the contractor obtains written parental consent due to an increase (in frequency, length, duration, or intensity) in the provision of services in the IFSP.

(c) If private insurance denies all claims, the contractor must bill the family up to their maximum charge, based on their placement on the sliding fee scale.

(d) The contractor must adjust the amount billed to the family if the contractor or parent successfully disputes a denied claim.

(e) The contractor must not deny or delay a child's services if:

(1) the family does not have private insurance; or

(2) the parent does not give consent to bill or to release personally identifiable information to their private insurance. If the parent does not give consent, the contractor bills the family up to their maximum charge, based on their placement on the sliding fee scale.

(f) A family with private insurance will not be charged disproportionately more than a family without private insurance.

§108.1421. Insurance Premiums.

The policyholder is responsible for paying health care premiums based on their individual policy. The contractor includes insurance premiums when calculating the family's allowable deductions, but insurance premiums do not count toward meeting the maximum charge. Neither DARS nor the contractor pays the family's private insurance premium.

§108.1423. Co-pays, Co-Insurance, and Deductibles.

(a) The contractor collects co-pays, co-insurance, and deductibles as set by the family's insurance plan, up to the family's maximum charge. The maximum charge includes and is not in addition to co-pays, co-insurance, and deductibles.

(b) DARS absorbs any additional costs that exceed the family's maximum charge, including costs for services not covered by insurance, co-pays, co-insurance, and deductibles.

§108.1425. Public Benefits and Insurance.

(a) Medicaid, CHIP, and TRICARE are public insurance programs.

(b) The contractor must assist the parent to:

(1) identify and access other available funding sources to pay for a child's early childhood intervention services; and

(2) enroll a potentially eligible child in Medicaid or CHIP.

(c) The contractor must not require a parent to enroll in public benefits or insurance programs as a condition of receiving early childhood intervention services.

(d) If the child is not already receiving public insurance, the contractor must obtain written parental consent before billing. The contractor may waive the maximum charge while eligibility is being determined, not to exceed 90 days.

(e) The contractor must obtain written parental consent to release personally identifiable information to Medicaid, CHIP, and TRICARE. If the parent does not give consent to release personally identifiable information, the contractor bills the parent up to their maximum charge, based on their placement on the sliding fee scale.

(f) The contractor must not bill the parent if the child is enrolled in Medicaid and the parent gives consent to release personally identifiable information to Medicaid.

(g) If the child is in foster care or kinship care, the contractor must obtain consent to release personally identifiable information to bill Medicaid.

(h) If the child has private insurance in addition to Medicaid, the private insurance is the primary payor. The contractor must bill the private insurance before filing a claim with Medicaid for all services other than targeted case management.

(i) If the child has CHIP or TRICARE and the parent gives consent to release personally identifiable information, the contractor must bill the family for services not paid for by CHIP or TRICARE and for any co-pays, up to the family's maximum charge, based on their placement on the sliding fee scale.

(j) If the child becomes ineligible for Medicaid, CHIP, or TRICARE, the contractor bills the parent up to their maximum charge, based on their placement on the sliding fee scale.

(k) The contractor must not deny or delay a child's services if:

(1) the family does not have public insurance; or

(2) the parent does not give consent to release personally identifiable information to their public insurance. If the parent does not give consent, the contractor bills the family up to their maximum charge, based on their placement on the sliding fee scale.

(l) A family with public insurance will not be charged disproportionately more than a family without public or private insurance.

§108.1427. Maximum Charge.

(a) Before initiating early childhood intervention services, the contractor determines the family's ability or inability to pay and calculates their out-of-pocket maximum charge.

(b) The family's maximum charge is the total amount of money billed to the family for services delivered in one calendar month. The maximum charge includes payments for services not covered by insurance, co-pays, co-insurance, and deductibles.

(c) The family's assigned maximum charge does not increase if the family has more than one child receiving IFSP services.

§108.1429. Family Size and Adjusted Income.

(a) The family size equals:

(1) the total number of people living in the home, including the child's parent(s) and the child; and

(2) other individuals who are financial dependents of the parent.

(b) The family's annual gross income equals the total of all income received by the family. The gross income includes all income classified as taxable income by the Internal Revenue Service before federal allowable deductions are applied. If the parent does not attest to the family's annual gross income, the contractor must bill the family the full cost of services.

(c) The family's allowable deductions are limited to the family's expenses in the following categories:

(1) childcare and respite;

(2) costs and fees associated with the adoption of a child;

(3) court-ordered child support payments paid by the parent in the home for financially dependent children who were not included in the family size calculation; and

(4) medical or dental expenses that are to primarily alleviate or prevent a physical or mental illness or defect. Allowable deductions for medical and dental expenses are limited to the cost of:

(A) diagnosis, cure, alleviation, treatment, or prevention of disease;

(B) treatment of any affected body part or function;

(C) medical services legally delivered by physicians, surgeons, dentists, and other medical practitioners;

(D) medications, medical supplies, and diagnostic devices;

(E) medical and dental health care premiums;

(F) transportation to receive medical or dental care; and

(G) medical or dental debt that the family is paying on an established payment plan.

(d) The contractor calculates the allowable deductions using the actual amounts the family paid over the previous 12 months and

are expected to continue during the IFSP period and projections for new expenses expected to occur during the IFSP period. If the parent does not attest to the family's allowable deductions, the contractor determines the maximum charge based on the family's gross income. The contractor may implement written local policies requiring verification of allowable deductions in addition to the family's required written attestation.

(e) The family's annual adjusted income equals the family's annual gross income minus the family's allowable deductions.

§108.1431. DARS ECI Sliding Fee Scale.

(a) The family's placement on the DARS ECI sliding fee scale is based on family size and annual adjusted income. Placement determines the family's maximum charge for services received in one calendar month. The contractor must provide the family with a copy of the sliding fee scale.

(b) For children and families enrolled in ECI services before January 1, 2014, the family's maximum charge shall be pursuant to the figure located in this subsection until the family's annual IFSP review. Thereafter, the family's maximum charge shall be pursuant to the figure located in subsection (c) of this section.
Figure: 40 TAC §108.1431(b)

(c) For children and families who enroll in ECI services on or after January 1, 2014, the family's maximum charge shall be pursuant to the figure located in this subsection.
Figure: 40 TAC §108.1431(c)

§108.1433. Billing Families for IFSP Services.

(a) The contractor must bill the family up to the family's maximum charge.

(1) The total collection of payments, including third-party payment and the family's out-of-pocket payment, cannot exceed the actual cost of services.

(2) The family's total out-of-pocket for the month cannot exceed the family's maximum charge.

(b) A balance remaining unpaid by the parent 30 days after the bill date is delinquent unless the delay in payment is due to a delay in:

(1) third-party reimbursement; or

(2) notice of denial of a claim from a private or public third-party payor.

§108.1435. Suspension of Services for Nonpayment.

(a) The contractor must suspend IFSP services subject to an out-of-pocket payment as identified in §108.1413 of this title (relating to IFSP Services Subject to Out-of-Pocket Payment from the Family) when the balance remains delinquent for 90 days. If the parent uses their public or private insurance, the 90-day time period begins the date the contractor receives notice that the claims are denied for reimbursement and all appeals are exhausted.

(b) Before suspending IFSP services, the contractor must inform the parent that:

(1) he or she has the option to request a:

(A) review of the family cost share agreement, as described in §108.1417 of this title (relating to Family Cost Share Agreement); or

(B) a reconsideration and adjustment of the family cost share obligation, as described in §108.1437 of this title (relating to Extraordinary Circumstances);

(2) IFSP services subject to an out-of-pocket payment will be suspended when a balance is delinquent for 90 days; and

(3) the contractor cannot guarantee the same schedule or the same individual service provider if IFSP services are later reinstated.

(c) Respite vouchers will be denied during a suspension period.

(d) A notation must be made on the family cost share agreement that IFSP services subject to an out-of-pocket payment have been suspended due to non-payment.

(e) The contractor must reinstate suspended IFSP services when the family's account is paid in full or the family negotiates an acceptable payment plan with the contractor. The IFSP team must reassess the appropriateness of the IFSP before reinstating IFSP services if IFSP services are suspended for more than six months. The contractor must document the reinstatement of IFSP services date on the IFSP and the family cost share agreement.

(f) The contractor must maintain written local policy for collecting delinquent family cost share accounts. Documentation must reflect all reasonable attempts to collect unpaid balances. Reasonable attempts include multiple attempts at written notification, phone notification, and e-mail.

§108.1437. Extraordinary Circumstances.

(a) The contractor must develop a local process to reconsider and adjust the current or overdue family cost share obligation based on extraordinary circumstances.

(b) Only the program director or designated administrator has authority to reconsider and adjust the family cost share obligation. The reconsideration may include an assessment of the parent's ability to pay the family cost share obligation in any particular month(s).

(c) Extraordinary circumstances that require a reconsideration of the family cost share obligation are:

(1) increase or decrease in income;

(2) unexpected short-term medical expenses;

(3) unanticipated childcare or respite expenses;

(4) change in family size;

(5) catastrophic loss such as fire, flood, or tornado;

(6) short-term financial hardship such as major repair to the family home or car; or

(7) other extenuating circumstances for which the family requests reconsideration.

(d) The parent must attest in writing that information regarding extraordinary circumstances is true and accurate. The contractor may implement written local policy requiring verification of extraordinary circumstances from families, or the contractor may rely solely on the family's required written attestation. The contractor must deny a request for reconsideration if the parent refuses to provide written attestation that the information related to extraordinary circumstances is true and accurate.

(e) The family's last signed IFSP and family cost share agreement remain in effect during the reconsideration process.

§108.1439. Program Fiscal and Recordkeeping Policies.

(a) The contractor must:

(1) use revenue received from the family cost share system only for early childhood intervention services within the DARS ECI system;

(2) not supplant any other local fund sources; and

(3) report fees collected to DARS ECI as program income.

(b) The family cost share agreement and any financial records related to income, deductions, and payment history shall be kept separate from the child's other educational records, and these records must not be forwarded to a school district or other non-ECI service provider(s) at any time unless requested by the family. All financial records must be maintained in a manner consistent with the Family Educational Rights and Privacy Act.

(c) If a family transfers between DARS ECI contractors, the family cost share agreement, other financial records, and the IFSP are transferred to the receiving DARS ECI contractor.

(d) The family cost share agreement and financial records are subject to subpoena.

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 February 10, 2014.

TRD-201400591
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 424-4050

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CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES
SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes to amend §109.205, concerning Definitions and §109.315, concerning Qualifications, and Requirements for Court Certificate.

Elsewhere in this issue of the *Texas Register,* DARS contemporaneously proposes an amendment to §101.1211, concerning Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate.

BACKGROUND AND PURPOSE

The 83rd Texas Legislature enacted House Bill 798, relating to certain actions taken by certain licensing authorities regarding a license holder or applicant who has been convicted of a Class C misdemeanor. In addition, Senate Bill 162 was enacted, relating to the occupational licensing of spouses of members of the military and the eligibility requirements for certain occupational licenses issued to applicants with military experience. Pursuant to these enactments and to comply with the law, DARS proposes amendments to §§101.1211, 109.205 and 109.315.

SECTION-BY-SECTION SUMMARY

DARS proposes to amend §109.205, Definitions, by including definitions for military services member, military spouse, and military veteran, and by renumbering paragraphs.

DARS proposes to amend §109.315, Qualifications and Requirements for Court Certificate by incorporating and clarifying the requirements for a military service member, military spouse, or military veteran who seek to become a BEI certificate holder, and by renumbering subsections.

FISCAL NOTE

William Briggs, DARS Chief Financial Officer, has determined that for each year of the first five years that the proposed amendments will be in effect, there are no foreseeable fiscal implications to either costs or revenues of state or local governments as a result of enforcing or administering the rules. The proposed amendments do not pose a fiscal impact. The amendments provide clarity and guidance for DARS certification program to accept and process applications from eligible test candidates who possess a Misdemeanor C conviction without delay, and to expand services to qualified or eligible military services members, veterans, and or spouses who seek to become a certified interpreter for the deaf.

PUBLIC BENEFIT

Mr. Briggs has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit anticipated as a result of administering and enforcing the amended rules will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the services provided by DHHS. Mr. Briggs has also determined that there is no probable economic cost to persons who are required to comply with the proposal. The proposed amendments establish authority for DARS to accept verified training from military service member or veteran to meet qualifications for certification, and allows acceptance of a military spouse's certification issued by another jurisdiction that has licensing requirements that are substantially equivalent to DARS.

SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code §2001.022, Mr. Briggs has determined that the proposed amendments will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Briggs has determined that the proposed amendments will not have adverse economic effect on small businesses or micro-businesses.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

DARS has determined that these proposed rule amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and,

therefore, do not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposed amendments may be submitted within 30 days of publication of this proposal in the *Texas Register* to the Texas Department of Assistive and Rehabilitative Services, 4900 N. Lamar Blvd., Brown-Heatly Bldg., Austin, Texas 78751 or electronically to DARSRules@dars.state.tx.us.

DIVISION 1. BEI INTERPRETER CERTIFICATION

40 TAC §109.205

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Human Resources Code Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§109.205. Definitions.

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

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

(4) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(5) Military spouse--A person who is married to a military service member who is currently on active duty.

(6) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(7) [~~(4)~~] Trilingual interpreter services--Interpreting services provided by an otherwise qualified interpreter who is proficient in Spanish, in addition to English and sign.

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 February 10, 2014.

TRD-201400593
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 23, 2014
For further information, please call: (512) 424-4050

♦ ♦ ♦

DIVISION 2. BEI COURT INTERPRETER CERTIFICATION

40 TAC §109.315

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Human Resources Code Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§109.315. Qualifications and Requirements for Court Certificate.

(a) An applicant to become a court interpreter must:

(1) hold at least one BEI certificate at Level III, IV, V, IIIi, IVi, Vi, Advanced, Master, or Oral: Comprehensive; or hold certification from Registry of Interpreters for the Deaf (RID) with a Comprehensive Skills Certificate, Certificate of Interpretation/Certificate of Transliteration, Reverse Skills Certificate, Certified Deaf Interpreter, or Master Comprehensive Skills Certificate, or National Interpreter Certification Advanced or National Interpreter Certification Master; and

(2) pass an examination on legal and court procedure skills and knowledge.

(b) An applicant must have the following training and qualifications to take an examination:

(1) Before taking the court interpreter examination, an applicant must provide to DHHS proof that the applicant has completed instruction in court interpretation in one of the following methods:

(A) completion of DHHS-approved courses of instruction in courtroom interpretation knowledge and skills with not less than 12 Continuing Education Units (CEUs);

(B) mentoring by a certified court interpreter who has been approved by DHHS to act as a mentor for not less than 120 hours of actual practice; or

(C) a combination of instruction and mentoring totaling 120 hours.

(2) The current list of DHHS-approved courses of instruction in courtroom interpretation skills and training programs for interpreters applying for court interpreter certification or for certified court interpreters needing continuing education unit credits may be obtained from DHHS or the DARS Inquiries Unit.

(c) A military service member or military veteran applicant may satisfy the training and qualification requirements in subsection (b) of this section with verified military service, training, or education. This subsection does not apply to a military service member or military veteran applicant who holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to the laws applicable to DARS.

(d) A military spouse applicant will be issued an expedited BEI court interpreter certificate if the spouse holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements in subsections (a) and (b) of this section.

(e) [~~(c)~~] A person with an expired certification must not perform work for which a certification is required under Government Code, Chapter 57.

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 February 10, 2014.

♦ ♦ ♦

TRD-201400594
Sylvia F. Hardman
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Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 23, 2014
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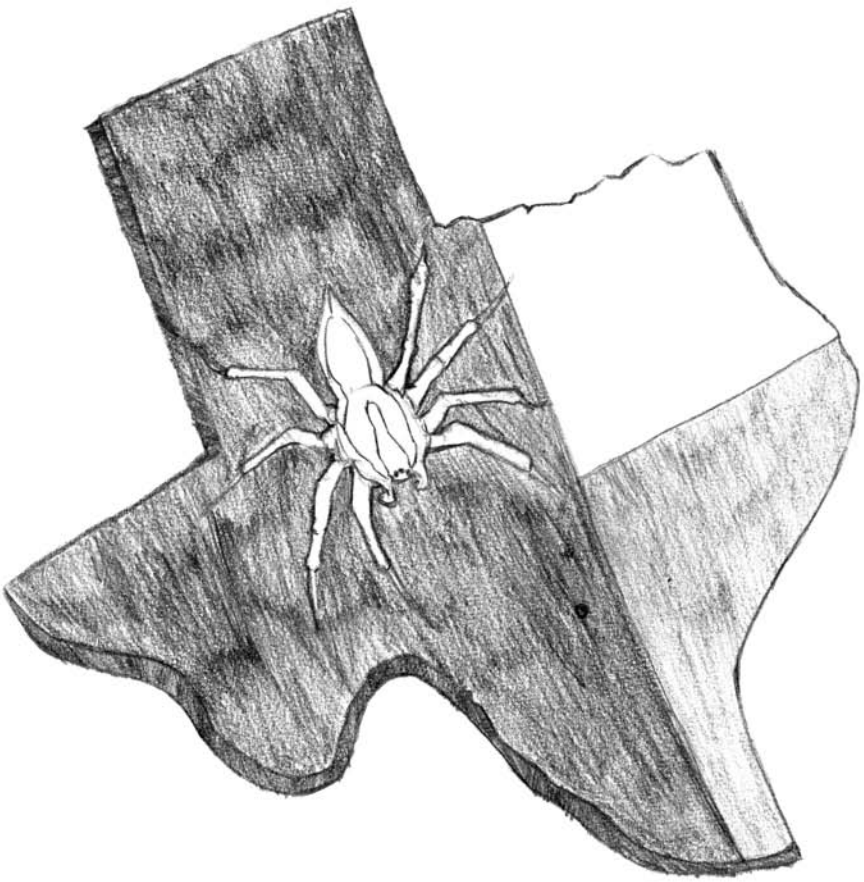
Riki Splawn
12th Grade



TEXAS

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 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 805. ADULT EDUCATION AND LITERACY

SUBCHAPTER B. STAFF QUALIFICATIONS

40 TAC §805.22

The Texas Workforce Commission withdraws proposed new §805.22 which appeared in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8622).

Filed with the Office of the Secretary of State on February 4, 2014.

TRD-201400463
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: February 4, 2014
For further information, please call: (512) 475-0829

♦ ♦ ♦


Amber Keith
12th 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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER D. REGULATION OF VOLUNTEER AND OTHER NONCOMMERCIAL COTTON; HOSTABLE COTTON FEE

4 TAC §20.30

The Texas Department of Agriculture (the department) adopts amendments to §20.30, concerning hostable cotton fees for commercial cotton, without changes to the proposed text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9166). The amendments are adopted to implement changes recommended by the Cotton Producer Advisory Committee (CPAC) for the department's Pest Management Zone 1 (Zone 1).

The amendments to §20.30 change weekly rates for the hostable commercial cotton fee for boll weevil quarantined areas, as established by §20.11 in conjunction with §§20.12, 20.13 and 20.14 of Subchapter B (relating to Quarantine Requirements). Currently only the Lower Rio Grande Valley (LRGV) pest management zone (Zone 1) is classified as quarantined. All areas growing cotton in the LRGV are in Zone 1.

The department previously proposed amendments to §20.30 concerning the hostable cotton fees based upon a request from stakeholders. The proposal was published in the June 21, 2013, issue of the *Texas Register* (38 TexReg 3877) and withdrawn on August 7, 2013, due to comments received from stakeholders regarding adoption of the proposed fee rates. The proposal which is the basis for this adoption also resulted from a request from stakeholders, including cotton producers, for the department to submit a new proposal, with rates recommended by cotton producers in affected areas.

The adopted hostable commercial cotton fee rates are based on recommendations made at a November 12, 2013, meeting of the CPAC for Zone 1. The department believes that the proposed changes for boll weevil quarantined zones are scientifically based, supported by the affected producers, and will accelerate boll weevil eradication. In addition, the adopted changes will serve to protect the state's and cotton producers' investment in boll weevil eradication in Texas. The amendments to §20.30 change the weekly rate for the hostable commercial cotton fee for unharvested or undestroyed cotton in quarantined areas from $5.00 per acre per week or partial week to $8.00 per acre for each week or partial week for each of the first 5 weeks of fee accumulation. The amendments also change the hostable commercial cotton fee for unharvested or undestroyed cotton in quarantined areas for each week or partial week after week 5 of the fee from $7.50 for each week or partial week to $12.00 for each week or partial week. The weekly rate for the hostable commercial cotton fee for fields that contain only hostable volunteer or hostable regrowth cotton will be unaffected.

No comments were received on the proposal.

The amendments to §20.30 are adopted under the Texas Agriculture Code, §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; the Code, §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; the Code, §74.032, which provides the department with the authority to establish and collect a hostable cotton fee on hostable volunteer or other noncommercial cotton that remains past the stalk destruction deadline set for the applicable pest management zone, and to adopt rules to implement §74.032; and the Code, §74.119 as amended by HB 1580, which provides the department with the authority to adopt rules providing for the regulation and control of volunteer and other noncommercial cotton in pest management zones, including the establishment of a fee to be paid to the department for hostable or volunteer cotton that has not been destroyed after notice by the department.

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 February 5, 2014.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: February 25, 2014
Proposal publication date: December 20, 2013
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES

SUBCHAPTER B. LP-GAS INSTALLATIONS, CONTAINERS, APPURTENANCES, AND EQUIPMENT REQUIREMENTS

16 TAC §9.116

The Railroad Commission of Texas (Commission) adopts new §9.116, relating to Container Corrosion Protection System, with certain minor, nonsubstantive changes to the proposed text published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8502). The Commission adopts the new rule to address these types of installations which the Commission finds are becoming more common. The Commission also adopts the new rule to incorporate nationally recognized corrosion protection provisions that reduce the risk of corrosion damage, and subsequent leakage, in LP-gas storage tanks which are installed wholly or partially underground.

The adopted effective date of this new rule is March 1, 2014. Steel containers installed underground, partially undergound, or as mounded installations on or after this date must include a corrosion protection system.

The Commission received a comment from Marketer Compliance Services, LLC. The commenter states: "I have approximately 35+ years of experience in the LP-Gas industry both in the regulatory and industry sides. From my regulatory experience I only know of one incidence somewhere in the Tyler area that resulted in the death of one individual and I am not aware of any on the industry side since I left the RRC. There are many under ground containers in Texas and history has proven that by in large corrosion is not a real big issue if the tanks are properly coated. Even in the Beaumont area where local rules require all underground tanks to be buried at least 2 feet and the water table is 2 feet underground. That city does not want propane tanks in the city limits period and that has nothing to do with safety. I feel that this rule by and large is created by the NFPA and NPGA groups and I hope that they are not for 'sales issues and not for safety'. Because history does not conclude that this is a real issue in Texas. Creating another rule for the industry to follow will only create additional liability being placed on the Propane Dealer. From an insurance stand point, proving compliance with this rule may be very difficult and almost impossible to defend. No dealer wants to have a claim like this on their record as some type of settlement will be in order and that will go down as a chargeable accident against the dealer. Sometimes less is better than more plus the cost of insurance is already getting expensive and in some instances impossible to get. I do not think that this rule will increase safety and if it is to be adopted, a tank size should be considered say 4,000 water gallons or greater as this will then be required only at commercial, industrial, and bulk storage sites location where a dealer has more control on the operation of the system."

The Commission agrees there have been few reported LP-gas accidents directly attributed to leaking underground containers. A corrosion-damaged, leaking, underground container may not always result in a reportable accident. However, every corrosion-damaged, leaking, underground container nonetheless poses a safety hazard and must be removed from service. Providing a corrosion protection system to underground, mounded, or partially buried LP-gas containers reduces the risk of fires and explosions resulting from corrosion-damaged, leaking containers, which is in the best interest of the consumer, propane marketer, and insurer. Currently, a licensee is prohibited from filling any aboveground or underground container with LP-gas if it is unsafe or doesn't comply with the Commission's safety rules. This applies whether the container is installed at a commercial, industrial, bulk storage or residential site. Installing underground, mounded, or partially buried LP-gas containers is optional, but if these types of containers are installed, they must include a corrosion protection system. Adoption of this rule aligns the Commission's LP-Gas Safety Rules with the National Fire Protection Association's Liquefied Petroleum Gas Code (NFPA 58), which is a national recognized standard for LP-gas safety. The Commission adopts the rule as proposed with certain minor, nonsubstantive changes. In subsections (a) and (i), wording is added to clarify that the adopted effective date of this new rule is March 1, 2014. In subsection (c), wording is added to clarify that every licensee who services the container shall monitor the cathodic protection system and document the test results in accordance with the provisions of this rule.

The Commission adopts the new rule under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Texas Natural Resources Code, §113.051, is affected by the adopted new rule.

Statutory authority: Texas Natural Resources Code, §113.051.

Cross-reference to statute: Texas Natural Resources Code, §113.051.

Issued in Austin, Texas, on February 4, 2014.

§9.116. Container Corrosion Protection System.

(a) In addition to NFPA 58 §§6.6.6.1(H), 6.6.6.2(1), and 6.6.6.3(4), steel containers installed underground, partially underground, or as mounded installations on or after March 1, 2014, shall include a corrosion protection system.

(b) A corrosion protection system shall include the following:

(1) a container coated with a material recommended for the service that is applied in accordance with the manufacturer's instructions;

(2) a cathodic protection system that consists of one or more sacrificial anodes or an impressed current anode; and

(3) a means to test the performance of the cathodic protection system.

(c) Cathodic protection systems installed in accordance with this section shall be monitored by every licensee servicing the container. Such licensees shall document the test results. A successful test shall be confirmed by one of the following results:

(1) producing a voltage of -0.85 volts or more negative, with reference to a saturated copper-copper sulfate half cell;

(2) producing a voltage of -0.78 volts or more negative, with reference to a saturated potassium chloride calomel half cell;

(3) producing a voltage of -0.80 volts or more negative, with reference to a silver-silver chloride half cell; or

(4) results obtained through any other method described in Appendix D of Title 49 of the Code of Federal Regulations, Part 192.

(d) Sacrificial anodes installed in accordance with subsection (b) of this section shall be tested in accordance with the following schedule:

(1) upon installation of the cathodic protection system, unless prohibited by climatic conditions, in which case testing shall be completed within 180 days after the installation of the system;

(2) for continued verification of the effectiveness of the system, 12 to 18 months after the initial test;

(3) upon successful verification of test results for the tests required in paragraphs (1) and (2) of this subsection, periodic follow-up testing shall be performed at intervals not to exceed 36 months;

(4) Systems which fail a test prescribed in paragraphs (1) and (2) of this subsection shall be repaired as soon as practical unless climatic conditions prevent such repair, in which case the repair shall be made not more than 180 days thereafter. Systems which fail a test and for which repairs have been made shall comply with the initial and follow-up testing requirements in paragraphs (1) and (2) of this subsection, and the results shall comply with subsection (c) of this section.

(e) Where an impressed current cathodic protection system is installed in accordance with subsection (b) of this section, the licensee shall inspect and test the system in accordance with the following schedule:

(1) all sources of impressed current at intervals not exceeding two months; and

(2) all impressed current cathodic protection installations annually.

(f) The licensee shall retain documentation of test results in accordance with §9.4 of this title (relating to Records and Enforcement).

(g) The licensee shall visually examine a container prior to its burial for damage to the coating. Damaged areas shall be repaired with a coating recommended for underground service and compatible with the existing coating.

(h) Partially underground, unmounded containers shall be installed so the aboveground portion of the container complies with NFPA 58 §6.6.1.4.

(i) Steel containers installed underground, partially underground, or as mounded installations on or after March 1, 2014, shall not be filled unless a cathodic protection system is installed in accordance with this section.

(j) Metallic piping and tubing that convey LP-gas from an underground, partially buried, or mounded storage container shall be installed with dielectric fittings to electrically isolate the container from the aboveground portion of the fixed piping system that enters a building.

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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Cristina Martinez Self
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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Proposal publication date: November 29, 2013
For further information, please call: (512) 475-1295

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CHAPTER 12. COAL MINING REGULATIONS

The Railroad Commission of Texas (Commission) adopts amendments to §§12.3, 12.100, and 12.116, relating to Definitions; Responsibilities; Identification of Interests and Compliance Information; the repeal of §12.155, relating to Identification of Interests; amendments to §12.156, relating to Identification of Interests and Compliance Information; new §12.206, relating to Mining in Previously Mined Areas; amendments to §§12.215, 12.216, 12.221, 12.225, 12.226, 12.228, 12.232, and 12.233, relating to Review of Permit Applications; Criteria for Permit Approval or Denial; Conditions of Permits: Environment, Public Health, and Safety; Commission Review of Outstanding Permits; Permit Revisions; Permit Renewals: Completed Applications; Transfer, Assignment or Sale of Permit Rights: Obtaining Approval; Requirements for New Permits for Persons Succeeding to Rights Granted under a Permit; the repeal of §12.234, relating to Responsibilities: General; and new §12.234 and §12.235, relating to Challenge of Ownership or Control, Information on Ownership and Control, and Violations, and Applicant/Violator System Procedures; and Responsibilities: General; and amendments to §§12.239, 12.395, and 12.560, relating to Application Approval and Notice; Revegetation: Standards for Success; and Revegetation: Standards for Success; new §12.676, relating to Alternative Enforcement; and amendments to §12.677, relating to Cessation Orders. The Commission adopts §§12.215, 12.221, 12.232, 12.234, 12.395, and 12.560 with minor, nonsubstantive changes and adopts the remaining sections without changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8504).

The Commission received no comments on the proposal. The adopted changes in §§12.215, 12.221, 12.232, 12.234, 12.395, and 12.560 correct certain citations and formatting to comply with *Texas Register* requirements.

The Commission adopts these amendments, repeals, and new sections to update provisions of the Texas Coal Mining Regulatory and Abandoned Mine Land Programs as set forth in the notification letter dated September 30, 2009, from the federal Office of Surface Mining Reclamation and Enforcement (OSM), requiring that, pursuant to 30 CFR §732.17(d), Texas revise its regulations to be as effective as the federal regulations. OSM approved the proposed amendments in the February 19, 2013, issue of the *Federal Register* (78 Fed. Reg. 11579).

The Commission adopts new definitions, which substantively match OSM regulations, for "Applicant/Violator System or AVS," "control or controller," "lands eligible for remining," "own, owner, or ownership," "remining," and "violation," and amends definitions to match Federal regulations for "knowing or knowingly," "violation notice" and "willful or willfully." The Commission also removes the obsolete definition "owned or controlled or owns or controls."

The Commission amends §12.100(c) to remove the word "renewal" from the requirement regarding the burden of proof for certain applications; the amendment matches the OSM regulation at 30 CFR §773.7(b).

The Commission amends §12.116, repeals §12.155, and amends §12.156, all of which pertain to permittee business interests and compliance information requirements for surface mining and underground mining. New wording in §12.116 and §12.156 is substantively equivalent to 30 CFR §§778.9 - 778.14 and updates permittee business interests and compliance infor-

mation requirements, including requirements for an applicant to certify and update existing ownership or control information in a permit application for AVS entry and provides information on permitting history, property interests, and past and current issued violations.

The Commission adopts new §12.206 to address permitting requirements for conducting surface coal mining operations on lands eligible for remining, particularly with respect to the need to identify potential environmental and safety issues. The rule substantively matches OSM's rules at 30 CFR §785.25.

The Commission adopts new wording in §12.215(a)(3) and (4), requiring the Commission to enter certain information into OSM's applicant/violator system database. The wording substantively matches OSM's regulation at 30 CFR §773.8.

The Commission also adopts new §12.215(h) - (l) to match the requirements under the OSM regulations at 30 CFR §§773.9 - 773.14 regarding Commission permit eligibility determinations, unintended events at remining sites, and circumstances for provisional issuance of permits.

In §12.216, the Commission adopts new paragraph (16) regarding additional written findings for permit application approval for mining of lands eligible for remining, equivalent to the federal rules at 30 CFR §773.15(m).

The Commission adopts several amendments with regard to improvidently issued permits. The Commission adopts amendments to §12.225(e) to incorporate the requirements of OSM regulations at 30 CFR §773.21(c) regarding the establishment of a prima facie case of improvident permit issuance. The Commission also adopts amendments in subsections (d), (e), (g) and (h) to mirror OSM regulations at 30 CFR §773.22(b) and (c) and §773.23(a) - (d) regarding notice and various other requirements relating to suspension or rescission of improvidently issued permits.

The Commission adopts new §12.234 to establish procedures for challenges to ownership or control information, burden of proof for such challenges, Commission requirements regarding challenges, and Commission and permittee AVS requirements following permit issuance. Current §12.234 is repealed and renumbered as new §12.235, with no changes to the current text.

The Commission adopts amendments to §12.395(c)(2) and (3) and §12.560(c)(2) and (3), regarding the length of time for extended responsibility periods for previously mined areas that have been remined; the amendments substantively match OSM regulations at §816.116(c)(2) and (3) and §817.116(c)(2) and (3), respectively.

The Commission adopts new §12.676 to match OSM regulations at 30 CFR §§847.2, 847.11, and 847.16 regarding alternative enforcement procedures that may be implemented by the Commission.

The Commission adopts amendments to §12.677(g) to match OSM's regulations at §843.11. This rule requires the Commission to notify, within a specified time period, the identified owners or controllers of an operation to which a cessation order is issued.

The Commission adopts other nonsubstantive amendments in §§12.221, 12.226, 12.228, 12.232, 12.233 and 12.239 to correct internal citations or cross-references.

SUBCHAPTER A. GENERAL

DIVISION 1. GENERAL

16 TAC §12.3

The Commission adopts the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted amendments.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

Issued in Austin, Texas, on February 4, 2014.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

DIVISION 1. GENERAL REQUIREMENTS FOR PERMIT AND EXPLORATION PROCEDURE SYSTEMS UNDER REGULATORY PROGRAMS

16 TAC §12.100

The Commission adopts the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted amendments.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

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DIVISION 4. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION, PART I

16 TAC §12.116

The Commission adopts the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted amendments.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

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DIVISION 7. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION, PART II

16 TAC §12.155

The Commission adopts the repeal under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted repeal.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

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For further information, please call: (512) 475-1295

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16 TAC §12.156

The Commission adopts the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted amendments.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

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The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-1295

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DIVISION 10. REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

16 TAC §12.206

The Commission adopts the new rule under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted new rule.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

Issued in Austin, Texas, on February 4, 2014.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 11. REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

16 TAC §§12.215, 12.216, 12.221

The Commission adopts the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted amendments.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

Issued in Austin, Texas, on February 4, 2014.

§12.215. Review of Permit Applications.

(a) The Commission shall:

(1) review the complete application and written comments, written objections submitted, and the record of any public hearing held under §§12.208 - 12.214 of this title (relating to Opportunity for Submission of Written Comments on Permit Applications; Right to File Written Objections; Public Availability of Information in Permit Applications on File with the Commission; Public Hearing on Application; Notice of Public Hearing on Application; Continuance; and Transcript);

(2) determine the adequacy of the fish and wildlife plan submitted pursuant to §12.144 or §12.195 of this title (relating to Fish and Wildlife Plan), in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations;

(3) based on an administratively complete application, enter into AVS:

(A) the information required to be submitted under §12.116(b) and (c) or §12.156(b) and (c) of this title (relating to Identification of Interests and Compliance Information); and

(B) the information submitted under §12.116(e) or §12.156(e) of this title pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired; and

(4) update the information referred to in paragraph (3) of this subsection in AVS upon verification of any additional information submitted or discovered during the permit application review.

(b) Within the time frame provided by the APA if the public hearing provided for occurs, or within 45 days of the last publication of notice of application if no public hearing is held, the Commission shall notify the applicant and any objectors whether the application has been approved or denied.

(c) All provisions of the APA apply to each permit application and notices, other than specifically provided for above, of hearings and appeals are governed thereby.

(d) If the Commission decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subchapter J of this chapter (relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations).

(e) The following criteria shall apply with regard to denial or conditional issuance of an application for permit:

(1) if the Commission determines from either the schedule submitted as part of an application submitted after the adoption of these rules under §12.116(e) or §12.156(e) of this title, or from other available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to the Act or Federal Act or federally-approved coal regulatory program, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of federal and any state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the Commission shall deny the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the Act or any other law, rule or regulation referred to in this subsection. In the absence of a failure-to-abate cessation order, the Commission may presume that a notice of violation issued pursuant to §12.678 of this title (relating to Notices of Violation) or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the Commission shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:

(A) submit to the Commission proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(B) establish for the Commission that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review affirms the violation, the applicant shall within 30 days of the judicial action submit the proof required under subparagraph (A) of this paragraph; and

(2) any permit that is issued on the basis of proof submitted under paragraph (1)(A) of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (1)(B) of this subsection, shall be conditionally issued.

(f) Before any final determination by the Commission that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of the Act or Federal Act and its implementing Federal Regulations and all federal and state programs approved under the Federal Act or federal or state laws as used in 30 CFR 773.15(b) of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the Act or Federal Act and its implementing Federal Regulations and all federal and state programs approved under the Federal Act or federal or state laws as used in 30 CFR 773.15(b), no permit shall be issued and a hearing shall be held. The applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in the regulatory program. Such hearing shall be conducted pursuant to §12.222 of this title (relating to Administrative Review). The Commission shall deny an application after a determination has been made that a pattern of willful violations exists.

(g) After an application is approved, but before the permit is issued, the Commission shall review and consider any new compliance information submitted pursuant to §12.116(a)(3) of this title under the criteria of subsection (e)(1) of this section. If the applicant fails or refuses to respond as required by the Commission to provide new compliance information, or the new compliance information shows that the applicant, anyone who owns or controls the applicant, or the operator is in violation, the Commission shall deny the permit.

(h) The Commission shall rely upon the permit history information submitted in the application under §12.116(c) or §12.156(c) of this title, information from AVS, and any other available information to review the permit histories of the applicant and its operator. The Commission shall:

(1) conduct a review of the permit history information before making a permit eligibility determination under subsection (j) of this section;

(2) determine whether the applicant or its operator have previous mining experience; and

(3) conduct an additional review under §12.234(c)(6) of this title (relating to Challenge of Ownership or Control, Information on Ownership and Control, and Violations, and Applicant/Violator System Procedures) if the applicant or operator do not have any previous mining experience to determine if a person with mining experience controls the mining operation.

(i) The Commission, relying upon the violation information supplied by the applicant under §12.116(e) or §12.156(e) of this title, a report from AVS, and any other available information to review histories of compliance with the Act or the applicable State regulatory program, and any other applicable air or water quality laws, for the permittee, operator, and for operations owned or controlled by the permittee or by the operator, shall conduct the review before making a permit eligibility determination required under subsection (j) of this section.

(j) Based on reviews of the applicant's and any operator's organizational structure and ownership or control relationships provided in the application as required under subsections (h) and (i) of this section, the Commission shall determine whether an applicant is eligible for a permit under §134.068 and §134.069 of the Act (relating to Schedule of Notices of Violations, and to Effect of Past or Present Violation).

(1) Except as provided in subsections (k) and (l) of this section, an applicant is not eligible for a permit if the Commission finds that any surface coal mining operation that:

(A) the applicant directly owns or controls has an unabated or uncorrected violation; or

(B) the applicant or the operator indirectly controls has an unabated or uncorrected violation and the control was established or the violation was cited after November 2, 1988.

(2) The Commission shall not issue the permit if the applicant or operator are permanently ineligible to receive a permit under §12.234(c)(3) of this title.

(3) After approval of the permit under §12.216 of this title (relating to Criteria for Permit Approval or Denial), the Commission shall not issue the permit until the information updates and certification requirements of §12.116(a)(3) or §12.156(a)(3) of this title are met. After the applicant completes this requirement, the Commission shall again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect permit eligibility under paragraphs (1) and (2) of this subsection. The Commission shall request this report no more than five business days before permit issuance under §12.218 and §12.219 of this title (relating to Permit Approval or Denial Actions, and Permit Terms).

(4) If the applicant is determined to be ineligible for a permit under this section, the Commission shall send written notification to the applicant of its decision. The notice will contain an explanation as to why the applicant is ineligible and include notice of the rights of appeal under §12.222 and §12.223 of this title (relating to Administrative Review, and Judicial Review).

(k) An applicant is eligible for a permit:

(1) under subsection (j) of this section if an unabated violation:

(A) occurred after October 24, 1992; and

(B) resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit; or

(2) under §12.206 of this title (relating to Mining in Previously Mined Areas), an event or condition is presumed to be unanticipated for the purpose of this section if it:

(A) arose after permit issuance;

(B) was related to prior mining; and

(C) was not identified in the permit application.

(l) For provisionally issued permits:

(1) This subsection applies to an applicant who owns or controls a surface coal mining and reclamation operation with:

(A) a notice of violation for which the abatement period has not yet expired; or

(B) a violation that is unabated or uncorrected beyond the abatement or correction period.

(2) The Commission shall find an applicant eligible for a provisionally issued permit under this section if the applicant demonstrates that one or more of the following circumstances exists with respect to all violations listed in paragraph (1) of this subsection:

(A) for violations meeting the criteria of paragraph (1)(A) of this subsection, the applicant certifies that the violation is being abated to the satisfaction of the regulatory authority with jurisdiction over the violation, and the Commission has no evidence to the contrary;

(B) the applicant, operator, and operations owned or controlled by the applicant or operator, as applicable, are in compliance with the terms of any abatement plan, or a payment schedule for delinquent fees or penalties, approved by the Commission;

(C) the applicant is pursuing a good faith:

(i) challenge to all pertinent ownership or control listings or findings under §12.234(a)(1) - (3) of this title; or

(ii) administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force; or

(D) the violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial judicial decision affirming the violation and that decision remains in force.

(3) A provisionally issued permit will be considered to be improvidently issued, and the Commission will immediately initiate procedures under §12.225(g) of this title (relating to Commission Review of Outstanding Permits) to suspend or rescind that permit, if:

(A) violations included in paragraph (2)(A) of this subsection are not abated within the specified abatement period;

(B) the permittee, operator, or operations that the permittee or operator own or control do not comply with the terms of an abatement plan or payment schedule mentioned in paragraph (2)(B) of this subsection;

(C) in the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in paragraph (2)(C) or (D) of this subsection affirms the validity of the violation or the ownership or control listing or finding; or

(D) the initial judicial review decision referenced in paragraph (2)(C)(ii) or (D) of this subsection affirms the validity of the violation or the ownership or control listing or finding.

§12.221. Conditions of Permits: Environment, Public Health, and Safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit; including, but not limited to:

(1) any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) immediate implementation of measures necessary to comply; and

(3) warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Subchapter K of this chapter (relating to Permanent Program Performance Standards), and which prevents violation of any other applicable state or federal law.

(c) The permittee shall conduct its operations:

(1) in accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

(2) utilizing any methods specified in the permit by the Commission in approving alternative methods of compliance with the performance standards of the Act and these Regulations, in accordance with the provisions of the Act, of §12.216(12) of this title (relating to Criteria for Permit Approval or Denial) and Subchapter K of this chapter.

(d) Within 30 days after a cessation order is issued under §§12.677 - 12.684 of this title (relating to Enforcement) for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the Commission the following information, current to the date the cessation order was issued, or notify the Commission in writing that there has been no change since the immediately preceding submittal of such information:

(1) any new information needed to correct or update the information previously submitted to the Commission by the permittee under §12.116(a) or §12.156(a) of this title (relating to Identification of Interests and Compliance Information); or

(2) If not previously submitted, the information required from a permit applicant by §12.116(a) or §12.156(a) of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 13. PERMIT REVIEWS, REVISIONS, AND RENEWALS, AND

TRANSFERS, SALE, AND ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS

16 TAC §§12.225, 12.226, 12.228, 12.232, 12.233

The Commission adopts the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted amendments.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

Issued in Austin, Texas, on February 4, 2014.

§12.232. Transfer, Assignment or Sale of Permit Rights: Obtaining Approval.

(a) Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit issued under a regulatory program shall, prior to the date of such transfer, assignment or sale:

(1) obtain the performance bond coverage of the original permittee by:

(A) obtaining transfer of the original bond;

(B) obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the Commission. If such an agreement is reached, the Commission may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement;

(C) providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or

(D) such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee;

(2) provide the Commission with an application for approval of such proposed transfer, assignment, or sale, including:

(A) the name and address of the existing permittee;

(B) the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent;

(C) for surface mining activities, the same information as is required by §§12.116, 12.117, 12.118(c), 12.120 and 12.121 of this title (relating to Identification of Interests and Compliance Information; Right of Entry and Operation Information; Relationship to Areas Designated Unsuitable for Mining; Personal Injury and Property Damage Insurance Information; and Identification of Other Licenses and Permits) for applications for new permits for those activities; or

(D) for underground mining activities, the same information as is required by §§12.156 12.157, 12.158(c), 12.160 and 12.161 of this title (relating to Identification of Interests and Compliance Information; Right of Entry and Operation Information; Relationship to Areas Designated Unsuitable for Mining; Personal Injury and Property Damage Insurance Information; and Identification of Other Licenses and Permits) for applications for new permits for those activities; and

(3) Obtain the written approval of the Commission for transfer, assignment, or sale of rights, according to subsection (c) of this section.

(b) Public notice and comment shall apply as follows:

(1) the person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent under this subsection; and

(2) any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state or federal government agency may submit written comments on the application for approval to the Commission, within the time required by the regulations.

(c) The Commission may, upon the basis of the applicant's compliance with the requirements of subsections (a) and (b) of this section, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:

(1) the applicant is eligible to receive a permit in accordance with this chapter;

(2) the applicant will conduct the operations covered by the permit in accordance with the criteria specified in §§12.200 - 12.205, 12.216 and 12.217 of this title (relating to Requirements for Permits for Special Categories of Mining; Criteria for Permit Approval or Denial; and Criteria for Permit Approval or Denial: Existing Structures) and the requirements of the Act and this chapter;

(3) the applicant has, in accordance with §12.232(a)(1) of this title (relating to Transfer, Assignment, or Sale of Permit Rights: Obtaining Approval), submitted a performance bond or other guarantee as required by Subchapter J of this chapter (relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations), and at least equivalent to the bond or other guarantee of the original permittee; and

(4) the applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new permit in accordance with this subchapter as required in §12.233 of this title (relating to Requirements for New Permits for Persons Succeeding to Rights Granted under a Permit).

(d) The Commission shall notify the permittee, the successor, commentors, and OSM of its findings.

(e) The successor shall immediately notify the Commission of the consummation of the transfer, assignment, or sale of permit rights.

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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DIVISION 14. SMALL OPERATOR ASSISTANCE

16 TAC §12.234

The Commission adopts the repeal under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted repeal.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

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16 TAC §§12.234, 12.235, 12.239

The Commission adopts the new rules and amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted new rules and amendments.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

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§12.234. Challenge of Ownership or Control, Information on Ownership and Control, and Violations, and Applicant/Violator System Procedures.

(a) Challenges to ownership and control information.

(1) Applicability. An applicant or operator may challenge a listing or finding of ownership or control using the provisions under paragraphs (2) and (3) of this subsection if the challenger is:

(A) listed in a permit application or AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;

(B) found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under §12.225(e) of this title (relating to Commission Review of Outstanding Permits) or subsection (c)(7) of this section; or

(C) an applicant or permittee affected by an ownership or control listing or finding.

(2) Procedure.

(A) To challenge an ownership or control listing or finding, the challenger shall submit to the Commission a written explanation of the basis for the challenge, along with any evidence or explanatory materials that the challenger wishes to provide under paragraph (3)(B) of this subsection.

(B) The provisions of paragraph (3) of this subsection and of subsection (b) of this section apply only to challenges to ownership or control listings or findings. A challenger may not use these provisions to challenge its liability or responsibility under any other provision of the Act or the implementing regulations.

(C) When the challenge concerns a violation under the jurisdiction of a regulatory authority other than the Commission, the Commission must consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

(D) The Commission may request an investigation by the AVS Office.

(E) At any time, a person listed in AVS as an owner or controller of a surface coal mining operation, may request an informal explanation from the AVS Office as to the reason that person is shown in AVS in an ownership or control capacity. Pursuant to 30 CFR 773.26(e), within 14 days of the request, the AVS Office will provide a response describing why that person is listed in AVS.

(3) Burden of proof.

(A) In a challenge to a listing of ownership or control in AVS or a finding of ownership or control made under subsection (c)(7) of this section, the challenger must prove by a preponderance of the evidence that it either:

(i) does not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(ii) did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

(B) In meeting this burden of proof, the challenger must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority identified in paragraph (2) of this subsection and to the Commission. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or another public file. If requested by the challenger, the Commission will hold as confidential any information submitted under this paragraph which is not required to be made available to the public under §12.672 of this title (relating to Availability of Records).

(C) Materials that may be submitted in response to the requirements of subparagraph (B) of this paragraph include, but are not limited to:

(i) notarized affidavits containing specific facts concerning the duties that the challenger performed for the relevant operation, the beginning and ending dates of the challenger's ownership or control of the operation, and the nature and details of any transaction creating or severing the challenger's ownership or control of the operation;

(ii) certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(iii) certified copies of documents filed with or issued by any State, municipal, or Federal governmental agency;

(iv) an opinion of counsel, when supported by:

(I) evidentiary materials;

(II) a statement by counsel that he or she is qualified to render the opinion; and

(III) a statement that counsel has personally and diligently investigated the facts of the matter.

(b) Written agency decision.

(1) Within 60 days of receipt of a challenge under subsection (a)(2)(A) of this section, the Commission will review and investigate the evidence and explanatory materials submitted and any other reasonably available information bearing on the challenge and issue a written decision. The decision document must include a statement of whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.

(2) The Commission will promptly provide the challenger with a copy of its decision by either:

(A) certified mail, return receipt requested; or

(B) any means consistent with the rules governing service of a summons and complaint under Rule 176 of the Texas Rules of Civil Procedure.

(3) Service of the decision on the challenger is complete upon delivery and is not incomplete if the challenger refuses to accept delivery.

(4) The Commission will post all decisions made under this section on AVS.

(5) Any person who receives a written decision under this section and who wishes to appeal that decision must exhaust administrative remedies under the procedures at §12.222 of this title (relating to Administrative Review), before seeking review under §12.223 of this title (relating to Judicial Review).

(6) Following service of the written decision or any decision by a reviewing administrative or judicial tribunal, the Commission shall review the information in AVS to determine if it is consistent with the decision. If it is not, the Commission shall promptly revise the information in AVS to reflect the decision.

(c) Post-permit issuance information requirements for the Commission.

(1) For the purposes of future permit eligibility determinations and enforcement actions, the Commission shall enter into AVS all permit records, unabated or uncorrected violations, changes to information initially required to be provided by an applicant under §12.116(b) or §12.156(b) of this title (relating to Identification of Interests and Compliance Information), and any changes in violation status within 30 days after:

(A) the permit is issued or subsequent changes made;

(B) the abatement or correction period for a violation expires;

(C) the receipt of notice of a change; or

(D) abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

(2) If, at any time, the Commission discovers that any person owns or controls an operation with an unabated or uncorrected violation, the Commission shall determine whether enforcement action is appropriate under Subchapter L of this title (relating to Permanent Program Inspection and Enforcement Procedures), and will enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

(3) The Commission shall serve a preliminary finding of permanent permit ineligibility under §134.068 and §134.069 of the Act on a permittee or operator, if the criteria in subparagraphs (A) and (B) of this paragraph are met. In making a finding under this paragraph, the Commission will only consider control relationships and violations that would make, or would have made, a permittee ineligible for a permit under §12.215(j) of this title (relating to Review of Permit Applications). The Commission shall make a preliminary finding of permanent permit ineligibility if it finds that:

(A) the permittee controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under §134.068 and §134.069 of the Act; and

(B) the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate the permittee's intent not to comply with the Act, its implementing regulations, the regulatory program, or the permit.

(4) The permittee may request a hearing on a preliminary finding of permanent permit ineligibility under §12.222 and §12.223 of this title.

(5) The Commission shall enter its findings into AVS:

(A) if a hearing is not requested and the time for seeking a hearing has expired; or

(B) if a hearing is requested, only if the Commission's findings are upheld on administrative appeal.

(6) At any time, the Commission may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If such person is identified, the Commission shall issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The Commission's written preliminary finding shall be based on evidence sufficient to establish a prima facie case of ownership or control.

(7) After the Commission issues a written preliminary finding under paragraph (6) of this subsection, the Commission shall allow the person subject to the preliminary finding 30 days in which to submit any information tending to demonstrate the person's lack of ownership or control. If, after reviewing any information the person submits, the Commission is persuaded that the person is not an owner or controller, the Commission shall serve the person a written notice to that effect. If, after reviewing any information submitted, the Commission still finds that the person is an owner or controller, or if the person does not submit any information within the 30-day period, the Commission shall issue a written finding and enter that finding into AVS.

(8) If the Commission identifies a person as an owner or controller under paragraph (7) of this subsection, the person may challenge the finding using the provisions of subsection (a) of this section.

(d) Post-permit issuance information requirements for permittees.

(1) Within 30 days after the issuance of a cessation order under §12.677 of this title (relating to Cessation Orders), the permittee must provide or update all the information required under §12.116(b) or §12.156(b) of this title.

(2) The permittee does not need to submit information under paragraph (1) of this subsection if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

(3) Within 60 days of any addition, departure, or change in position of any person identified in §12.116(b)(4) or §12.156(b)(4) of this title, the permittee must provide:

(A) the information required under §12.116(b)(4) or §12.156(b)(4) of this title; and

(B) the date of any departure.

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SUBCHAPTER K. PERMANENT PROGRAM PERFORMANCE STANDARDS
DIVISION 2. PERMANENT PROGRAM PERFORMANCE STANDARDS--SURFACE MINING ACTIVITIES

16 TAC §12.395

The Commission adopts the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted amendments.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

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§12.395. Revegetation: Standards for Success.

(a) Comparison to an established standard. Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of §12.390 and §12.391 of this title (relating to Revegetation: General Requirements; and Revegetation: Use of Introduced Species).

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the Commission, described in writing, and made available to the public.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

(b) Standard for revegetated success. Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) for areas developed as grazingland or pastureland, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the Commission;

(2) for areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the Commission;

(3) for areas to be developed for fish and wildlife habitat, recreation, undeveloped land, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) minimum stocking and planting arrangements shall be specified by the Commission on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or permit-specific basis;

(B) trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for 60% of the applicable minimum period of responsibility. The requirements of this section apply to trees and shrubs that have been seeded or transplanted and can be met when records of woody vegetation planted show that no woody plants were planted during the last two growing seasons of the responsibility period and, if any replanting of woody plants took place during the responsibility period, the total number planted during the last 60% of that period is less than 20% of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking. This final accounting may include volunteer trees and shrubs of approved species. Volunteer trees and shrubs of approved species shall be deemed equivalent to planted specimens two years of age or older and can be counted towards success. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding; and

(C) vegetative ground cover shall not be less than that required to achieve the approved postmining land use;

(4) for areas to be developed for industrial/commercial or residential land use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion; and

(5) for areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c) Extended responsibility period.

(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Commission in accordance with paragraph (4) of this subsection.

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than:

(A) five full years, except as provided in subparagraph (B) of this paragraph. The vegetation parameters identified in subsection (b) of this section for grazingland, pastureland, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period; or

(B) two full years for lands eligible for remining included in a permit for which a finding has been made under §12.216(16) of this title (relating to Criteria for Permit Approval or Denial). To the extent that the success standards are established by subsection (b)(5) of this section, the lands must equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) ten full years, except as provided in subparagraph (B) of this paragraph. The vegetation parameters identified in subsection (b) of this section for grazingland, pastureland, or cropland shall equal or exceed the approved success standard during the growing season of any two years after year six of the responsibility period. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period; or

(B) five full years for lands eligible for remining included in a permit for which a finding has been made under §12.216(16) of this title. To the extent that the success standards are established by subsection (b)(5) of this section, the lands must equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

(4) The Commission may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director, Office of Surface Mining Reclamation and Enforcement in accordance with 30 CFR 732.17 that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability if such practices can be expected to continue as part of the postmining land use or if the discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina Martinez Self
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Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 3. PERMANENT PROGRAM PERFORMANCE STANDARDS--UNDERGROUND MINING ACTIVITIES

16 TAC §12.560

The Commission adopts the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted amendments.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

Issued in Austin, Texas, on February 4, 2014.

§12.560. Revegetation: Standards for Success.

(a) Comparison to an established standard. Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of §12.555 and §12.556 of this title (relating to Revegetation: General Requirements; and Revegetation: Use of Introduced Species).

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the Commission.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

(b) Ground cover and productivity standards. Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) for areas developed for use as grazingland or pastureland, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the Commission;

(2) for areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the Commission;

(3) for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) minimum stocking and planting arrangements shall be specified by the Commission on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs;

(B) trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for 60% of the applicable minimum period of responsibility; and

(C) vegetative ground cover shall not be less than that required to achieve the approved postmining land use;

(4) for areas to be developed for industrial/commercial or residential land use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion; and

(5) for areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c) Maintenance and data collection.

(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Commission in accordance with paragraph (4) of this subsection.

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than:

(A) five full years, except as provided in subparagraph (B) of this paragraph. The vegetation parameters identified in subsection (b) of this section for grazingland, pastureland, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period; or

(B) two full years for lands eligible for remining included in a permit for which a finding has been made under §12.216(16) of this title (relating to Criteria for Permit Approval or Denial). To the extent that the success standards are established by subsection (b)(5) of this section, the lands must equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) ten full years, except as provided in subparagraph (B) of this paragraph. The vegetation parameters identified in subsection (b) of this section for grazingland, pastureland, or cropland shall equal or exceed the approved success standard during the growing season of any two years after year six of the responsibility period. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period; or

(B) five full years for lands eligible for remining included in a permit for which a finding has been made under §12.216(16) of this title. To the extent that the success standards are established by subsection (b)(5) of this section, the lands must equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

(4) The Commission may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director in accordance with 30 CFR 732.17 that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability if such practices can be expected to continue as part of the postmining land use or if the discontinuance of the practices will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting, specifically necessary by such actions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina Martinez Self
Rules Attorney, Office of General Counsel
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For further information, please call: (512) 475-1295

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SUBCHAPTER L. PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

DIVISION 1. COMMISSION INSPECTION AND ENFORCEMENT

16 TAC §12.676

The Commission adopts the new rule under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted new rule.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

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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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Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 2. ENFORCEMENT

16 TAC §12.677

The Commission adopts the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code §134.011 and §134.013 are affected by the adopted amendments.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

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Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS

16 TAC §59.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) §59.80, relating to Fees, with changes to the rule as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7034). The text will be republished.

The adoption implements Texas Occupations Code §51.202 which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs under the Texas Department of Licensing and Regulation's (Department) jurisdiction.

The General Appropriations Act (GAA), 83rd Legislature reduced the amount of revenue that the Department is required to collect above the amounts appropriated to the Department. Additionally, Article VIII, Section 2 of the GAA requires that the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. As a result, the fees currently in place are above the amounts that will be required for the Department to cover its costs. The decrease will not adversely affect the administration and enforcement of the program.

The amendments to §59.80 reduce the provider application and renewal application fees as part of the Department's annual fee review.

Additionally, the provider application and renewal fees will no longer be assessed per occupation. A provider will no longer pay more than one application or renewal fee if the provider offers continuing education courses for multiple occupations. Staff recommends a technical change from the proposed rule to make the reduction in the provider renewal fee take effect for registrations expiring on or after April 1, 2014. This delay is necessary because renewal notices will continue to be sent to providers with the current fee amounts.

Also, the wording for the revised or duplicate registration fee has been changed to "Revised/Duplicate License/Certificate/Permit/Registration" to be consistent with the same fee in other Department programs.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7034). The deadline for public comments was November 12, 2013. The Department did not receive any comments on the proposed rule during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§59.80. Fees.

(a) Provider application fee--$200.

(b) Provider renewal application fee--$250 per occupation for registrations expiring before April 1, 2014; $200 for registrations expiring on or after April 1, 2014.

(c) Course-approval fee per occupation--$100.

(d) Revised/Duplicate License/Certificate/Permit/Registration--$25.

(e) All fees paid to the department are non-refundable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2014
Proposal publication date: October 11, 2013
For further information, please call: (512) 463-8179

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER S. HIGHER EDUCATION STRATEGIC PLANNING COMMITTEE

19 TAC §§1.213 - 1.219

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§1.213 - 1.219, concerning Higher Education Strategic Planning Committee, without changes to the proposed text as published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8735).

The new sections are adopted to ensure that appropriate goals and strategies are considered in the development of the long-range statewide plan for higher education. The new sections clarify the member appointments and requirements for the advisory committee on a higher education strategic plan.

There were no comments received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.051, Coordination of Institutions of Public Higher Education; which provides the Coordinating Board with authority to develop and periodically revise a long-range statewide plan to provide information and guidance to policy makers to ensure that institutions of higher education meet the current and future needs of each region of this state for higher education services.

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

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS
SUBCHAPTER G. STRATEGIC PLANNING AND GRANT PROGRAMS RELATED TO EMERGING RESEARCH AND/OR RESEARCH UNIVERSITIES

19 TAC §5.121, §5.122

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §5.121 and §5.122, concerning Strategic Planning and Grant Programs Related to Emerging Research and/or Research Universities, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7564).

The amendments are adopted to incorporate into existing rules changes and provisions enacted by Senate Bill 215, 83rd Texas Legislature, Regular Session. The amendments change the deadline for submission of strategic research plans.

There were no comments received regarding the amendments.

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

The 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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES
SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

19 TAC §§9.182 - 9.184

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§9.182 - 9.184, concerning Academic Associate Degree and Certificate Programs, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7565).

The amendments are adopted to incorporate into existing rules changes and provisions enacted by Senate Bill 497, 83rd Texas Legislature, Regular Session that require public institutions of higher education to limit the number of semester credit hours required for students to complete in order to be awarded an associate's degree to the minimum number of semester credit hours required by the Southern Association of Colleges and Schools, unless the institution determines there is a compelling academic reason for requiring additional semester credit hours in order to award the degree. "Compelling academic reason" is defined in 19 TAC Chapter 9, Subchapter J, §9.1(9) as "A justification for an associate's degree program consisting of more than 60 semester credit hours. Acceptable justifications may include, but are not limited to, programmatic accreditation requirements, statutory requirements, and requirements for licensure/certification of graduates." Reference to Texas Education Code §61.051(e) - (f), which have been repealed, was eliminated from §9.182 in defining where in statute the Board is given authority to adopt policies, enact regulations, and establish rules for the coordination of postsecondary certificate and associate degree programs eligible for state appropriations. Section 9.183(c) has been added to require an institution of higher education to provide written documentation describing the compelling academic reason, such as programmatic accreditation requirements, statutory requirements, or licensure/certification for a proposed academic associate's program that exceeds 60 semester credit hours. Section 9.183(c) also requires the Coordinating Board to review the documentation provided by the public institutions of higher education submitted on academic associate degree programs exceeding the 60-hour limit for determination of approval or denial. Language in §9.184 stating that the approval of academic associate degree programs is automatic has been replaced with language stating that the programs shall be approved. Language in §9.184(2) describing the notification process which a public institution of higher education must follow when proposing a new academic associate degree program was amended to mirror the current Coordinating Board policy relating to the approval of bachelor and master degrees in 19 TAC §5.44. The amended sections will affect entering students enrolling in public institutions of higher education on or after the 2015 fall semester.

There were no comments received regarding the amendments.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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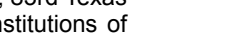

CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER C. BUDGETS

19 TAC §13.43

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §13.43, concerning Distribution of Budgets, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7566).

The amendments are adopted to reduce the number of budgets sent to the Coordinating Board and change the submission from bound paper copy to electronic copy.

There were no comments received concerning the amendments.

The amendments are adopted under the Texas Education Code, §51.0051, which provides the Coordinating Board with authority to adopt rules relating to collection of budget information.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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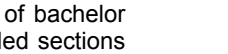

19 TAC §13.44

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §13.44, concerning Salaries and Emoluments, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7567).

The repeal is adopted to eliminate the requirement of community colleges submitting salary and emoluments with the budget.

There were no comments received regarding the repeal of this section.

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

The 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-201400552
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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

19 TAC §13.107

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §13.107, concerning Limitation on Formula Funding for Remedial and Developmental Courses and Interventions, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7567).

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

There were no comments received regarding the amendment.

The amendment is adopted under the Texas Education Code, §61.0595, which provides the Coordinating Board with authority to adopt rules relating to funding of excess undergraduate credit hours.

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

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

19 TAC §§21.500 - 21.511

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.500 - 21.511, concerning the Professional Nurses' Student Loan Repayment Program, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7568).

The repeal is adopted because no funds were appropriated for any of the nursing-related financial aid programs authorized in Chapter 61, Subchapter L, during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft fresh rules for the program at that time to replace these rules.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted under Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules concerning the Professional Nurses' Student Loan Repayment Program.

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

19 TAC §§21.530 - 21.540

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.530 - 21.540, concerning the Licensed Vocational Nurses' Student Loan Repayment Program, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7569).

The repeal is adopted because no funds were appropriated for any of the nursing-related financial aid programs authorized in Chapter 61, Subchapter L, during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft fresh rules for the program at that time to replace these rules.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted under Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules concerning the Licensed Vocational Nurses' Student Loan Repayment Program.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER R. DENTAL EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.560 - 21.566

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.560 - 21.566, concerning the Dental Education Loan Repayment Program, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7569).

The repeal is adopted because no funds were appropriated for this program for the 2012-2013 biennium or the 2014-2015 biennium. If funding is authorized in the future, it would be appropriate to draft new rules for the program.

No comments were received regarding the repeal of the sections.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

19 TAC §§21.730 - 21.737

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§21.730 - 21.737, concerning the Loan Repayment Program for Speech-Language Pathologists and Audiologists. Sections 21.733 - 21.735 and §21.737 are adopted with changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7570) and will be republished. Sections 21.730 - 21.732 and §21.736 are adopted without changes to the proposed text and will not be republished.

The new sections are adopted to codify new legislation resulting from the passage of Senate Bill 620, 83rd Texas Legislature, Regular Session. These provisions create a student loan repayment program for speech-language pathologists and audiologists who are employed by Texas public school districts, as well as faculty of communicative disorders programs at Texas institutions of higher education. Funds will be available for this program only if gifts, grants, or donations are received.

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

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

Section 21.732 provides definitions for the program.

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

Section 21.734 describes priorities for conditional approval of applications.

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

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

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

The following comments were received regarding the proposed new sections.

The Texas Speech/Language/Hearing Association (TSHA), the Texas Council of Administrators of Special Education (TCASE), and the TCASE/TSHA Joint Committee conveyed unified general support for the proposed new sections. Their comments expressed strong support for specific rules relating to initial eligibil-

ity criteria. Additionally, these organizations made the following comments regarding the sections:

Comment: The two rules referring to eligibility by doctoral faculty members of communicative disorders programs at institutions of higher education should explicitly state that these programs must be in Texas.

Response: Staff agrees with this recommendation. Although the proposed definition of institutions of higher education includes only institutions in Texas, adding the words "in Texas" to §21.733(2) and §21.735(2)(A) may make the point clearer.

Comment: The organizations support the eligibility requirements for initial loan repayment awards for participants working in school districts, including: (1) licensure by the Texas State Board of Examiners for Speech-Language Pathology and Audiology; and (2) the holding of a Certificate of Clinical Competence. However, for renewal awards based on a second year of service, there are concerns that the program participants may not have been successful in working with school children. The organizations suggested the appointment of an advisory committee that would review recommendations from school districts when applicants are being considered for continuation of loan repayment following the initial two years of employment. The organizations further offered to support service on such an advisory committee by members of the two associations, at no cost to the Coordinating Board.

Response: Staff does not agree with the suggestion that recommendations from school districts regarding a participant's job performance should be considered in determining eligibility for renewal loan repayment awards. All selection and ranking criteria must be objective and verifiable, to the extent possible. A primary principle underlying the State's financial aid programs for students and loan repayment programs for professionals providing critically needed services is that priority be given to renewal applicants if there are not sufficient funds for all eligible applicants. This represents a commitment to professionals who have made career choices based on the prospect of loan repayment. For this reason, the proposed rule gives priority to renewal applicants after the first year of operation of the program.

If a speech-language pathologist has not demonstrated satisfactory job performance, it is the role of the employing school district to address the performance issues.

We very much appreciate the willingness of TSHA and TCASE to serve in an advisory role, and we will continue to welcome input from these organizations, as well as other stakeholders, regarding any changes that will improve program integrity and effectiveness.

Comment: Section 21.734 specifies five criteria, in priority order, for ranking initial applications from speech-language pathologists working for public school districts. Bilingualism was specified as a fifth ranking criterion. In their comments, the organizations questioned how the Coordinating Board would determine if an applicant is bilingual to the degree necessary to provide speech and language therapy. The organizations further stated that an advisory committee of professionals could assist in determining the bilingual proficiency of applicants.

Response: Staff does not agree that an advisory committee is needed to determine the bilingual proficiency of applicants. The bilingual criterion was included as a result of a recommendation of a representative of TSHA. We will gladly consider using any recommended objective measurements of bilingual proficiency in assigning values to this criterion for applicants who certify that they are bilingual and whose employers concur when verifying employment information.

If we are unable to identify a measurement such a test score to validate the necessary degree of bilingual proficiency, we can either: (a) assign a very low value to this criterion for applicants self-certifying as fluent in a foreign language; or (b) eliminate bilingualism altogether as a ranking criterion. We recommend no change to this section of the rules at this time.

Comment: The Joint Committee objected to §21.737(4), which allows for loan repayment awards to be prorated on the basis of part-time employment. The comment explained that school districts prefer to hire full-time speech-language pathologists because there is a significant increase in the amount of supervision required when part-time speech-language pathologists are hired to fill full-time positions.

Response: Staff agrees that §21.737(4) should be removed. As a result of this change, the words "full time" should be added to §21.733(1) and (2) (Preliminary Eligibility Requirements) and to §21.735(1)(A) and (2)(A) (Eligibility for Loan Repayment Awards - End of Service Period). Additionally, §21.734(b)(1) (Priorities for Conditional Approval of Applications) relating to full-time employment for Texas public school districts should be deleted as a priority for conditional approval of applications, because this will be considered an eligibility requirement, rather than a priority.

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

§21.733. Preliminary Eligibility Requirements.

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

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

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

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

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

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

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

§21.734. Priorities for Conditional Approval of Applications.

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

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

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

(B) are working in rural school districts;

(C) are working in Title I schools;

(D) are bilingual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§21.737. Loan Repayment Awards.

Eligible education loans shall be repaid under the following conditions:

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER Y. STUDENT LOAN DEFAULT PREVENTION AND FINANCIAL AID LITERACY PILOT PROGRAM

19 TAC §§21.760 - 21.766

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§21.760 - 21.766, concerning the Student Loan Default Prevention and Financial Aid Literacy Pilot Program. Sections 21.761 - 21.763 are adopted with changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7572) and will be republished. Section 21.760 and §§21.764 - 21.766 are adopted without changes to the proposed text as published and will not be republished.

The new sections are adopted to codify new provisions resulting from the passage of Senate Bill 680, 83rd Texas Legislature, Regular Session. These provisions also passed in the Coordinating Board's Sunset Bill, Senate Bill 215. These bills authorized a pilot program at selected postsecondary institutions that are experiencing high default rates. The program is intended to ensure that students attending the participating institutions are informed consumers with regard to all aspects of student financial aid.

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

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

Section 21.762 provides definitions for the program.

Section 21.763 describes criteria for selection of participating institutions.

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

Section 21.765 describes reporting requirements.

Section 21.766 states the ending date for the pilot project.

The following comment was received regarding the new sections.

Comment: The Center for Public Policy Priorities (CPPP) expressed strong support for the pilot program and conveyed excellent suggestions for structuring the program. These suggestions included the following: (1) secondary criteria for determining selection of participating institutions; (2) institutional assessment and reporting requirements for intermediate monitoring and tracking of performance; (3) definition of eligible activities; (4) leveraging of existing default prevention strategies; and (5) identification of best practices from the pilot program, to build an effective statewide default prevention program. The communication from the CPPP did not state a recommendation that the suggestions be incorporated into the administrative rule, although it is possible that this was the unstated intention.

Response: Staff agrees that most of the suggestions should be incorporated into the contract that will describe all requirements for carrying out the program. If the intention underlying the comment was to include all of the details stated in the suggestions in the administrative rules, staff does not agree that the rules are the appropriate mechanism for this level of detail. The proposed rules provide the framework that will allow the Board to incorporate the CPPP's suggestions into the contract that will be executed for the pilot program.

The new sections are adopted under Texas Education Code, §61.0763, which provides the Coordinating Board with the authority to adopt rules for the administration of that section.

§21.761. Administration.

The Board shall administer the Student Loan Default Prevention and Financial Aid Literacy Pilot Program, and may contract with one or more entities to administer the program. The contractor(s) selected for this purpose must demonstrate the following:

(1) substantial experience with student borrowing for attendance at Texas postsecondary institutions;

(2) substantial experience with federal student loan cohort default rates;

(3) substantial experience with student loan default prevention initiatives;

(4) substantial familiarity with academic choices as they relate to career options for students attending Texas postsecondary institutions; and

(5) established working relationships with financial aid administrators in every sector of Texas postsecondary institutions.

§21.762. Definitions.

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

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

(2) Career schools or colleges--Texas career schools or colleges, as defined in Texas Education Code, Chapter 132, §132.001.

(3) General Academic Teaching Institutions--Texas institutions of higher education, as defined in Texas Education Code, §61.003(3).

(4) Postsecondary institutions--General academic teaching institutions, public junior colleges, private or independent institutions, or career schools or colleges, as defined in this section.

(5) Private or independent institutions of higher education--Texas institutions of higher education, as defined in Texas Education Code, §61.003(15).

(6) Program--Student Loan Default Prevention and Financial Aid Literacy Pilot Program.

(7) Public junior colleges--Texas institutions of higher education, as defined in Texas Education Code, §61.003(2).

(8) Three-year cohort federal student loan default rate--The default rate defined in 34 C.F.R. §668.202, the Code of Federal Regulations for certain federal student loans. The percentage of a postsecondary institution's student borrowers whose Federal Family Education Loans or William D. Ford Federal Direct Loans enter a repayment status during a particular federal fiscal year (October 1 to September 30), and default or meet other specified conditions before the end of the second following federal fiscal year.

§21.763. Criteria for Selection of Participating Institutions.

(a) In selecting postsecondary institutions to participate in the program, the Board shall give priority to institutions that have a three-year cohort federal student loan default rate, as reported by the United States Department of Education, that:

(1) is greater than 20%; or

(2) represents above average growth as compared to the federal student loan default rates of other postsecondary institutions in Texas.

(b) The Board shall select at least one institution from each of the following categories of postsecondary educational institutions to participate in the program:

(1) general academic teaching institutions;

(2) public junior colleges;

(3) private or independent institutions of higher education; and

(4) career schools or colleges.

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 Z. GRADUATE NURSES' EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.800 - 21.811

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.800 - 21.811, concerning the Graduate Nurses' Education Loan Repayment Program, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7573).

The repeal is adopted because no funds were appropriated for the program during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft new rules for the program at that time to replace these rules.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted under Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules concerning the Graduate Nurses' Education Loan Repayment Program.

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 FF. LAW EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.1010 - 21.1017

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.1010 - 21.1017, concerning the Law Education Loan Repayment Program, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7574).

The repeal is adopted because no funds have been appropriated for the program since its creation in 2001. If funding is authorized in the future, it would be appropriate to draft new rules for the program.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted under Texas Education Code, §61.958, which provides the Coordinating Board with the authority to adopt rules concerning the Law Education Loan Repayment Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER HH. EXEMPTION PROGRAM FOR TEXAS AIR AND ARMY NATIONAL GUARD/ROTC STUDENTS

19 TAC §§21.1052 - 21.1068

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.1052 - 21.1068, concerning the Exemption Program for Texas Air and Army National Guard/ROTC Students, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7575).

The repeal is adopted because Senate Bill 1227, 79th Texas Legislature, transferred administrative responsibilities for the program from the Coordinating Board to the State Military Forces Adjutant General beginning with the 2005 fall semester. Since this is no longer a functioning program, it is appropriate to repeal the rules from those under the purview of the Coordinating Board.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted under Texas Education Code, §54.2155 (now renumbered as §54.345), which provided the Coordinating Board with the authority to adopt rules concerning the Exemption Program for Texas Air and Army National Guard/ROTC Students.

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 JJ. THE KENNETH H. ASHWORTH FELLOWSHIP PROGRAM

19 TAC §21.2004, §21.2005

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.2004 and §21.2005, concerning the Kenneth H. Ashworth Fellowship Program, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7575).

The amendment to §21.2004 is adopted to emphasize the public service requirement for eligible students, both in their programs of study and in the careers they plan to pursue. The amendment to §21.2005 is adopted to set a new maximum amount for the annual scholarship award and provides the selection committee the authority to set the award amount subject to this maximum.

No comments were received regarding the amendments.

The amendments are adopted under Texas Education Code, §61.068, which allows the Coordinating Board to accept gifts and donations from individuals and groups in order to offer programs that encourage students to attend college.

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 KK. CLASSROOM TEACHER REPAYMENT ASSISTANT PROGRAM

19 TAC §§21.2020 - 21.2026

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.2020 - 21.2026, concerning the Classroom Teacher Repayment Assistance Program, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7576).

The repeal is adopted because no funds have been appropriated for this program since its creation in 1989. If funding is made available in the future, it would be appropriate to draft new rules for the program.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted under Texas Education Code, §61.7021, which provides the Coordinating Board with the authority to adopt rules concerning the Classroom Teacher Repayment Assistance Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER MM. DOCTORAL INCENTIVE LOAN REPAYMENT PROGRAM

19 TAC §§21.2080 - 21.2089

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.2080 - 21.2089, concerning the Doctoral Incentive Loan Repayment Program, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7576).

The repeal is adopted because no funds were appropriated for this program for the 2012-2013 biennium or the 2014-2015 biennium. If funding is authorized in the future, it would be appropriate to draft new rules for the program.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted under Texas Education Code, §56.091, which provides the Coordinating Board with the authority to adopt rules concerning the Doctoral Incentive Loan Repayment Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER OO. CHILDREN'S MEDICAID LOAN REPAYMENT PROGRAM

19 TAC §§21.2200 - 21.2207

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.2200 - 21.2207, concerning the Children's Medicaid Loan Repayment Program, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7577).

The repeal is adopted because no funds were appropriated for this program for the 2012-2013 biennium or the 2014-2015 biennium. If funding is authorized in the future, it would be appropriate to draft new rules for the program.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted pursuant to §19 and §20 of House Bill 15, 80th Legislature, Regular Session, 2007, for strategic initiatives in relation to the Frew v. Hawkins lawsuit.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER F. PROVISIONS FOR THE SCHOLARSHIP PROGRAMS FOR VOCATIONAL NURSING STUDENTS

19 TAC §§22.101 - 22.111

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§22.101 - 22.111, concerning the Provisions for the Scholarship Programs for Vocational Nursing Students, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7581).

The repeal is adopted because no funds were appropriated for any of the nursing-related financial aid programs authorized in Chapter 61, Subchapter L, during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft fresh rules for the program at that time to replace these rules.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted under Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules concerning provisions for the Scholarship Programs for Vocational Nursing Students.

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. PROVISIONS FOR THE SCHOLARSHIP PROGRAMS FOR PROFESSIONAL NURSING STUDENTS

19 TAC §§22.121 - 22.131

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§22.121 - 22.131, concerning the Provisions for the Scholarship Programs for Professional Nursing Students, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7582).

The repeal is adopted because no funds were appropriated for any of the nursing-related financial aid programs authorized in Chapter 61, Subchapter L, during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft fresh rules for the program at that time to replace these rules.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted under Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules concerning provisions for the Scholarship Programs for Professional Nursing Students.

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 L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.225 - 22.231, 22.234 - 22.236, 22.239, 22.241

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§22.225 - 22.231, 22.234 - 22.236, 22.239 and 22.241, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant Program. Section 22.228 is adopted with changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg

7582) and will be republished. Sections 22.225 - 22.227, 22.229 - 22.231, 22.234 - 22.236, 22.239 and 22.241 are adopted without changes to the proposed text as published and will not be republished.

The amendments to §22.225 and §22.226 are adopted to eliminate references to private institutions of higher education, which no longer participate in the program, and introduce the term "eligible institution" which is defined in §22.226.

Additional amendments to §22.226 are adopted to include six new definitions - "Continuation or renewal award," "Eligible institution," "Financial Aid Advisory Committee," "Foundation high school program," "Medical or dental unit," and "Public state college." All of these terms are relevant to the TEXAS Grant program as amended by Senate Bill 215 (SB 215) and House Bill 5 (HB 5), passed by the 83rd Legislature, Regular Session. These changes generated a renumbering of subsequent definitions in the section.

The definition of "Cost of attendance" in §22.226 is amended to reflect the fact that the Board no longer approves institutional cost estimates. The definition for "Enrolled on at least a three-quarter basis" is amended to indicate the given definition applies to undergraduate hours. The definition of "Priority model" is amended to reflect changes from SB 215 which cause the priority model to apply to initial award applicants attending general academic teaching institutions during the 2013-2014 academic year, but only to initial award applicants attending medical and dental units and general academic teaching institutions (GATIs) other than state colleges as of fall 2014. In addition, the definition for "Recommended or advanced high school program" was adjusted to cross reference Texas Education Code, §28.025 as it existed on January 1, 2013 (prior to the passage of HB 5).

Also, in §22.226 and throughout the rules, references to "approved institutions" were changed to "eligible institutions" to align rules with program terminology as amended by SB 215.

The amendments to §22.227(a) are adopted to reflect changes in the types of institutions eligible to participate in the TEXAS Grant program as a result of the passage of SB 215. At present, the program is open to students attending all public institutions of higher education. Beginning with fall 2014, medical and dental units and general academic teaching institutions other than Lamar State College-Orange and Lamar State College-Port Arthur will be eligible to make initial and continuation awards, but other institutions of higher education (including the two Lamar State Colleges) will only be able to make continuation awards, and the continuation awards they will be able to make can only be made to persons who entered the TEXAS Grant program prior to fall 2014.

An amendment to the lead-in sentence of §22.228(a), in compliance with SB 215, is adopted to indicate its provisions apply to public two-year institutions during the 2013-2014 academic year only. In addition, wording regarding the timeline for an associate degree recipient's eligibility to enter the TEXAS Grant program in §22.228(a)(6)(D) and (7)(B) is adopted to more closely track statutory language.

The amendments to the opening sentence of §22.228(b) are adopted to reflect the limited timeline for its provisions for GATIs (the 2013-2014 academic year only), in compliance with new parameters set for fall 2014 by SB 215.

The amendments to §22.228(b)(5) are adopted to reflect the fact that top consideration for initial grants at a GATI in the 2013-2014 academic year is to be given to students who meet the academic requirements outlined in §22.228(b)(5)(A), and who meet the priority application deadline set by the Board in compliance with Texas Education Code, §56.007. Funds remaining after such students receive awards may be awarded to other students meeting the provisions of §22.228(a) or (b)(5)(A), (B) or (C). The reference to availability of funds previously located in §22.228(b)(5)(C) was deleted as it is now redundant with language in §22.228(b)(5).

The lead-in sentence to §22.228(b)(6) was amended to indicate an exception can be made to the enrollment requirements outlined in this subsection if the institution determines the student meets hardship provisions listed in §22.231.

New §22.228(c) is adopted to address initial award provisions for fall 2014.

These requirements are identical to those in §22.228(b) except as listed below:

(1) Initial award recipients must be enrolled in medical or dental units or in GATIs other than public state colleges (§22.228(c)(1)). This change is from SB 215.

(2) Otherwise eligible initial award recipients will need to meet the same priority academic and application deadline requirements as recipients in the 2013-2014 academic year as listed in §22.228(b)(5) except for the changes listed below. These changes are in compliance with HB 5.

(a) Students graduating from high school prior to September 1, 2020 may qualify for TEXAS Grant awards under the Foundation, recommended or distinguished achievement high school program or by being on track to graduate under any of these programs.

(b) The first of the priority criteria for students graduating prior to September 1, 2020 will include the option of graduating under the recommended or distinguished curriculum.

(c) The fourth of the priority criteria will include the option of completing at least one technical applications course.

(3) Students must enroll in a baccalaureate degree plan (certificate programs are no longer an option). New provisions are established under which an incoming transfer student may qualify for an initial TEXAS Grant award. These changes are from SB 215.

The lead-in paragraph of §22.228(d) is amended to add the title, "Continuation Awards." Section 22.228(d)(4) and (7) are amended to indicate that to receive a continuation TEXAS grant, a person who receives his or her initial TEXAS Grant in fall 2014 or later must enroll in and make academic progress towards a baccalaureate degree at a medical or dental unit or general academic teaching institution other than Lamar State College-Orange and Lamar State College-Port Arthur. A person who receives his or her initial award prior to fall 2014 must enroll in and make academic progress towards an undergraduate degree or certificate program at any public institution of higher education.

The lead-in sentence to §22.228(d)(8) is amended to include students on track to complete the Foundation Program and update the citation for rule sections dealing with meeting academic requirements. Section 22.228(d)(8)(D) is amended to indicate the timeline required for persons trying to regain TEXAS grant eligibility based on the acquisition of an associate's degree.

The amendments to §22.229(a) and (b) are adopted to more clearly indicate the timing of program academic progress requirements, delete language that is redundant with §22.229(c), and bring rule continuation requirements into alignment with statutes. The 75 percent completion requirement is no longer a requirement, now that students are required to complete at least 24 semester credit hours per year. This causes the other paragraphs of this subsection to be renumbered and the cross reference in §22.229(b)(2)(D) (old numbering) to be amended.

Amendments to §22.230(b)(1) indicate the year limits for TEXAS Grant eligibility will also apply to Foundation Program high school graduates. The lead-in sentence to §22.230(b)(2) is amended to correct a grammatical error. New §22.230(b) is adopted to indicate Board staff, working with the Board's Financial Aid Advisory Committee, will devise a formula for determining the years of grant eligibility for individuals who enter the program as transfer students.

Amendments to §22.230(c) extend the provisions dealing with a grant recipient's period of eligibility to all students awarded grants based on the expectation of meeting the initial awards requirements of §22.228. The final sentence of that subsection is amended to indicate a person who entered the TEXAS Grant program as an associate's degree holder may receive grants for up to three years if pursuing a four-year degree; for up to four years if pursuing a degree of more than four years.

The amendments to §22.230(d) are adopted to indicate the 150-hour limit applies to all students who enter the program based on completing a given high school curriculum.

New §22.230(f) is adopted to indicate Board staff, working with the Board's Financial Aid Advisory Committee, will devise a formula for determining the number of hours of eligibility for a person who enters the program as a transfer student.

The amendments to §22.231 are adopted to change references to "directors of financial aid" to "Program Officers," the persons responsible for the administration of the program at the school level.

The amendments to §22.234(b)(1) and (3) are adopted to remove language regarding awards to students attending private or independent institutions. The TEXAS Grant program is now limited to persons attending public institutions. These changes require subsequent paragraphs of subsection (b) to be renumbered. Section 22.234(b)(4) and (5) are amended to include students graduating under the Foundation program and to provide updates to cross-references. Subsequent paragraphs of §22.234(b) are renumbered appropriately.

The amendment to §22.235 is adopted to clarify that although a student may be granted an award after his/her period of enrollment has ended, the funds may not be disbursed to the student. They must be used to meet any outstanding balance at the institution for the period of enrollment or to make a payment against an outstanding loan for that period.

The amendments to §22.236(a)(1) are adopted to remove references to allocations to private or independent institutions and update the cross-reference to §22.228 regarding the priority model requirements.

The changes to §22.239 update language regarding institutions' authority to transfer funds between programs as provided in Rider 22, page III-49 of the General Appropriations Act for the 2014-2015 Biennium.

The amendments to §22.241 are adopted to update cross-references to sections of §22.228 that have been amended based on SB 215 and HB 5.

The following comments were received regarding the amendments:

Comment: Staff at the University of Texas at Austin commented that they believe references to the statutory language for the priority deadline should refer to Texas Education Code, §56.007, not §56.008 as indicated in draft rules.

Response: Staff does not concur. Senate Bill 1093, passed by the 83rd Texas Legislature, Regular Session, renumbers this section as §56.008.

Comment: Staff at the University of Texas at Austin commented that amendments to §22.228(b)(5) would "give top consideration for initial TEXAS Grant awards to students meeting the priority criteria described in proposed §22.228(b)(5)(A) whether or not such students also meet the priority deadline for applying for state financial assistance as prescribed in §56.007(b) of the Texas Education Code which says, in relevant part:

. . . otherwise eligible applicants who apply on or before the deadline shall be given priority consideration for state financial assistance before other applicants."

Response: Staff concurs in part. The language in §22.228(b)(5) should make clear that once awards have been made to persons who meet the requirements for the TEXAS Grant priority model (§22.228(b)(5)) and the priority deadline (Texas Education Code, §56.008), available funds should first go to other eligible persons who met the deadline. If funds remain after all who met the deadline receive awards, they may be awarded to other eligible persons who did not meet the deadline. The rule has been amended accordingly.

Comment: Staff of the University of Texas at Austin also proposed amendments to §22.228(c)(6) of TEXAS Grant rules, which deals with initial awards to students enrolling in fall 2014 or later. In this regard, they indicated, "this amendment is similar to proposed §22.228(b)(5) in that it would give top consideration for initial TEXAS Grant awards to students meeting the priority criteria. We therefore recommend the Coordinating Board revise proposed §22.228(c)(6) to include the same language we recommended above for proposed §22.228(b)(5).

Response: Staff concurs only to the extent that it agreed with the proposal for changes to §22.228(b)(5), for the same reasons as stated above.

The amendments are adopted under Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt rules to implement the TEXAS Grant Program.

§22.228. Eligible Students.

(a) All persons who receive an initial award through the TEXAS Grant Program while attending public community colleges, technical colleges or the Lamar Institute of Technology in the 2013-2014 academic year must:

(1) be a resident of Texas;

(2) show financial need;

(3) have applied for any available financial aid assistance;

(4) not have been granted a baccalaureate degree;

(5) be a graduate of an accredited high school in this state not earlier than the 1998-1999 school year;

(6) have completed the Recommended or Advanced High School Program, or if a graduate of a private high school, its equivalent, unless the student:

(A) graduated from a public high school that has been certified by its district not to offer all the courses necessary to complete all parts of the Recommended or Advanced High School Program, and the student has completed all courses that the high school offered toward the completion of such a curriculum; or

(B) was anticipated to graduate under the Recommended or Advanced High School Program or meet the academic requirements as outlined by subsection (b)(5) of this section when the award was made; or

(C) has received an associate degree from an eligible institution no earlier than May 1, 2001; or

(D) was anticipated to receive an associate degree from an eligible institution no earlier than the twelfth month prior to the month in which the student enrolled for fall 2013;

(7) enroll in an undergraduate degree or certificate program at an eligible institution on at least a three-quarter time basis:

(A) not later than the end of the 16th month after high school graduation, if an entering undergraduate student; or

(B) not later than the 12th month after the month the student has received an associate degree;

(8) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law; and

(9) if awarded the grant on or after September 1, 2005, be enrolled in an institution of higher education.

(b) To receive an initial TEXAS Grant award for the 2013-2014 academic year, a person graduating from high school on or after May 1, 2013 and enrolling in a general academic teaching institution must:

(1) be a resident of Texas;

(2) show financial need;

(3) have applied for any available financial aid assistance;

(4) not have been granted a baccalaureate degree; and

(5) to receive top consideration for an award, meet the academic requirements prescribed by subparagraph (A) of this paragraph and meet the priority deadline set by the Board in compliance with Texas Education Code, §56.008. If funds remain after awards are made to all students meeting the criteria in subparagraph (A) of this paragraph and meet the priority deadline, remaining funds may be awarded to persons who meet the priority deadline and are otherwise eligible for awards. Once these awards are made, remaining funds may be awarded to otherwise eligible persons who did not meet the deadline:

(A) graduate or be on track to graduate from a public or accredited private high school in Texas and complete or be on track to complete the Recommended High School Curriculum or its equivalent and on track to have accomplished any two or more of the following at the time the award was made:

(i) graduation under the advanced high school program established under Texas Education Code, §28.025 or its equivalent, successful completion of the course requirements of the international baccalaureate diploma program, or earning of the equivalent of at least 12 semester credit hours of college credit in high school through courses described in Texas Education Code, §28.009(a)(1), (2), and (3);

(ii) satisfaction of the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Coordinating Board under Texas Education Code, §51.3062(f) on any assessment instrument designated by the Coordinating Board under Texas Education Code, §51.3062(c) or (e) or qualification for an exemption as described by Texas Education Code, §51.3062(p), (q), or (q-1);

(iii) graduation in the top one-third of the person's high school graduating class or graduation from high school with a grade point average of at least 3.0 on a four-point scale or the equivalent; or

(iv) completion for high school credit of at least one advanced mathematics course following the successful completion of an Algebra II course, as permitted by Texas Education Code, §28.025(b-3), or at least one advanced career and technical course, as permitted by Texas Education Code, §28.025(b-2);

(B) have received an associate degree or be on track to receive an associate's degree from a public or private institution of higher education at the time the award was made; or

(C) if sufficient money remains, meet the eligibility criteria described by subsection (a) of this section.

(6) Except as provided under §22.231 of this title (relating to Hardship Provisions), a person must also enroll in an undergraduate degree or certificate program at a general academic teaching institution on at least a three-quarter time basis as:

(A) an entering undergraduate student not later than the end of the 16th month after high school graduation; or

(B) an entering undergraduate student who entered military service not later than the first anniversary of the date of high school graduation and enrolled in a general academic teaching institution no later than 12 months after being honorably discharged from military service; or

(C) a continuing undergraduate not later than the end of the 12th month after the calendar month in which the student received an associate degree; and

(7) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(c) To qualify for an initial award for fall 2014 or later, a person who graduates from high school on or after May 1, 2013 must:

(1) be enrolled in a medical or dental unit or general academic teaching institution other than state colleges;

(2) be a resident of Texas;

(3) meet financial need requirements established by the Board;

(4) have applied for any available financial aid assistance;

(5) not have been granted a baccalaureate degree; and

(6) to receive top consideration for an award, meet the academic requirements prescribed by subparagraph (A) of this paragraph and meet the priority deadline set by the Board in compliance with Texas Education Code, §56.008. If funds remain after awards are made to all students meeting the criteria in subparagraph (A) of this paragraph and meet the priority deadline, remaining funds may be awarded to persons who meet the priority deadline and are otherwise eligible for

awards. Once these awards are made, remaining funds may be awarded to otherwise eligible persons who did not meet the priority deadline:

(A) graduate or be on track to graduate from a public or accredited private high school in Texas on or after May 1, 2013, and complete or be on track to complete the Foundation High School program or its equivalent as amended in keeping with Texas Education Code, §56.009. An otherwise eligible student graduating before September 1, 2020, must complete or be on track to complete the Foundation, recommended, or advanced High School program. The person must also be on track to have accomplished any two or more of the following at the time the award was made:

(i) successful completion of the course requirements of the recommended or advanced high school program established under Texas Education Code, §28.025 or its equivalent or the international baccalaureate diploma program, or earning of the equivalent of at least 12 semester credit hours of college credit in high school through courses described in Texas Education Code, §28.009(a)(1), (2), and (3), or if graduating prior to September 1, 2020, graduate under the Recommended or Advanced high school program;

(ii) satisfaction of the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Board under Texas Education Code, §51.3062(f) on any assessment instrument designated by the Board under Texas Education Code, §51.3062(c) or qualification for an exemption as described by Texas Education Code, §51.3062(p), (q), or (q-1);

(iii) graduation in the top one-third of the person's high school graduating class or graduation from high school with a grade point average of at least 3.0 on a four-point scale or the equivalent; or

(iv) completion for high school credit of at least one advanced mathematics course following the successful completion of an Algebra II course, or at least one advanced career and technical or technical applications course;

(B) have received an associate's degree or be on track to receive an associate's degree from a public or private institution of higher education at the time the award was made; or

(C) meet the eligibility criteria described in subsection (a) of this section.

(7) Except as provided under §22.231 of this title, to receive an initial award in fall 2014 or later, an otherwise eligible person must also enroll in a baccalaureate degree program at an eligible institution on at least a three-quarter time basis as:

(A) an entering undergraduate student not later than the end of the 16th month after high school graduation; or

(B) an entering undergraduate student who entered military service not later than the first anniversary of the date of high school graduation and enrolled in an eligible institution no later than 12 months after being honorably discharged from military service;

(C) a continuing undergraduate student not later than the end of the 12th month after the calendar month in which the student received an associate's degree; or

(D) an entering undergraduate student who has:

(i) previously attended an institution of higher education;

(ii) received an initial Texas Educational Opportunity Grant under Subchapter P for the 2014 fall semester or a subsequent academic term;

(iii) completed at least 24 semester credit hours at any Texas public or private institution or institutions of higher education;

(iv) earned an overall grade point average of at least 2.5 on a four-point scale or the equivalent on all course work previously attempted; and

(v) has never previously received a TEXAS Grant; and

(8) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(d) Continuation Awards. To receive a continuation award through the TEXAS Grant Program, a student must:

(1) have previously received an initial award through this program;

(2) show financial need;

(3) be enrolled at least three-quarter time unless granted a hardship waiver of this requirement under §22.231 of this title;

(4) if he or she received an initial TEXAS Grant award prior to fall 2014, be enrolled in an undergraduate degree or certificate program at an eligible institution; if he or she received an initial TEXAS Grant award in fall 2014 or later, be enrolled in a baccalaureate degree at a medical or dental unit or general academic teaching institution other than a state college;

(5) not have been granted a baccalaureate degree;

(6) have a statement on file with his or her institution that indicates the student is registered with the selective service system as required by federal law or is exempt from selective service registration under federal law; and

(7) if he or she received an initial TEXAS Grant award prior to fall 2014, make satisfactory academic progress towards an undergraduate degree or certificate, as defined in §22.229 of this title (relating to Satisfactory Academic Progress); if he or she received an initial TEXAS Grant award in fall 2014 or later, make satisfactory academic progress towards a baccalaureate degree at an eligible institution, as defined in §22.229 of this title.

(8) If a student's eligibility was based on the expectation that the student would complete the Recommended or Advanced or Foundation High School Program, meet the priority model academic requirements as outlined in subsection (b)(5) or (c)(6) of this section, or acquire an associate's degree and the student failed to do so, then in order to resume eligibility such a student must:

(A) receive an associate's degree;

(B) meet all other qualifications for a TEXAS Grant;

(C) if required to do so by the institution through which the TEXAS Grant was made, repay the amount of the TEXAS Grant that was previously received; and

(D) enroll in a higher-level undergraduate degree program in an eligible institution not later than the 12th month after the month the student received an associate's degree.

(e) In determining initial student eligibility for TEXAS Grant awards pursuant to subsections (a), (b) and (c) of this section, priority shall be given to those students who have an expected family contribution that does not exceed the lesser of the limit set by the Board for the relevant fiscal year or 60 percent of the average statewide amount of

tuition and fees for general academic teaching institutions for the relevant academic year.

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-201400568
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: November 1, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.254, 22.256, 22.260

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§22.254, 22.256, and 22.260, concerning the Texas Educational Opportunity Grant Program (TEOG), without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7589).

The amendment to §22.254 is adopted to change the definition for "Institution" to more clearly identify public state colleges.

The amendment to §22.256(a) is adopted to clarify that the recipient of an initial year award must be enrolled as an entering student, and that in selecting initial award recipients, priority is to be given to persons who have an expected family contribution that does not exceed the lesser of the limit set by the Board for the relevant fiscal year or 60 percent of the average statewide amount of tuition and fees for a general academic teaching institution for the relevant academic year.

The amendment to §22.256(b) is adopted to specify that a student, in order to receive a continuation award, must not have been granted an associate degree and must be making academic progress towards an associate degree or certificate.

The amendment to §22.260(b)(1) is adopted to clarify that a student's TEOG award cannot be reduced by other gift aid unless the combination would exceed the student's cost of attendance, but that no student's award may exceed his or her financial need. The amendment to §22.260(b)(2) is adopted to clarify that the deadline for the Board to determine the maximum annual award for the a given state fiscal year is January 31 of the prior fiscal year and to remove the statement regarding student need, since that statement is now a part of §22.260(b)(1). New subsection (b)(3) is adopted to indicate that, beginning with awards for fall 2014, the value of a given student's award is to be based on the share of a full-time student's course load in which the student is enrolled as of the census date of the term. The subsequent paragraph in subsection (b) is renumbered as subsection (b)(4); and (b)(4)(A) is revised to reflect current statute, that aid other than a loan or Pell grant may be used to make up the difference between a student's tuition and fee amount and his or her TEOG award.

The title of §22.260(e) is amended to distinguish the proration table provided in that subsection for person's limited hours of eligibility remaining from the award amount proration table included in subsection (b)(3). Language regarding limited need is removed because §22.260(b)(1) now explains that a student's award may not exceed his or her need, and this statement in §22.260(e) is no longer needed.

No comments were received regarding the amendments.

The amendments are adopted under Texas Education Code, §56.403, which provides the Coordinating Board with the authority to adopt rules consistent with Texas Education Code, Chapter 56, Subchapter P.

The 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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Bill Franz
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SUBCHAPTER O. EXEMPTION PROGRAM FOR CHILDREN OF PROFESSIONAL NURSING PROGRAM FACULTY AND STAFF

19 TAC §22.293, §22.295

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the amendments to §22.293 and §22.295, concerning the Exemption Program for Children of Professional Nursing Program Faculty and Staff, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7591).

The amendment to §22.293 is adopted to add definitions to introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014. The new provisions, which included a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding, were introduced by Senate Bill 1210, passed by the 83rd Legislature, Regular Session. The inclusion of new definitions for "continuation award" and "excess hours" caused subsequent definitions to be renumbered.

The amendment to §22.295 is adopted to add new subsection (a)(7) to reflect the Senate Bill 1210 requirements regarding grade point average and excess hours to the eligibility requirements for exemption recipients.

No comments were received regarding the amendments.

The amendments are adopted under Texas Education Code, §54.355(g), which provides the Coordinating Board with the authority to adopt rules consistent with that section and necessary to implement that section.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §22.298

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §22.298, concerning Hardship Provisions, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7592).

The new section is adopted to implement legislative changes mandated by the 83rd Legislature through the passage of Senate Bill 1210. It also outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program grade point average requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for special consideration. Such circumstances include illness, caring for another person, military deployment or other just causes acceptable to the institution. It also indicates an institution may, for good cause, allow a person to receive an exemption if he or she failed to meet the excess hour requirement.

No comments were received regarding the new section.

The new section is adopted under Texas Education Code, §54.355(g), which provides the Coordinating Board with the authority to adopt rules consistent with that section and necessary to implement that section.

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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Bill Franz
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SUBCHAPTER Q. ENGINEERING SCHOLARSHIP PROGRAM

19 TAC §§22.312 - 22.318

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§22.312 - 22.318, concerning the Engineering Scholarship Program, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7593).

The repeal is adopted because no funds were appropriated for the program during the 2012-2013 biennium or the 2014-2015 biennium. If funding is made available in the future, staff believes it would be best to draft new rules for the program at that time to replace these rules.

No comments were received regarding the repeal of the sections.

The sections adopted for repeal were originally adopted under Texas Education Code, §61.792, which provides the Coordinating Board with the authority to adopt rules concerning the Engineering Scholarship Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz
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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING GRADE ADVANCEMENT AND ACCELERATED INSTRUCTION

19 TAC §§101.2001, 101.2003, 101.2006, 101.2007, 101.2009, 101.2017

The Texas Education Agency (TEA) adopts amendments to §§101.2001, 101.2003, 101.2006, 101.2007, 101.2009, and 101.2017, concerning assessment. The amendments are adopted without changes to the proposed text as published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8340) and will not be republished. The sections address grade advancement and accelerated instruction. The adopted amendments align accelerated instruction requirements for students failing a State of Texas Assessments of Academic Readiness® end-of-course (EOC) assessment with changes made by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013. The adopted amendments also rename the Grade Placement Committee (GPC) manual and update cross references to repealed State Board of Education (SBOE) rules.

The Texas Education Code (TEC), §39.025(b-1), requires a school district to provide each student who fails to perform satisfactorily on an EOC assessment with accelerated instruction in the applicable subject area. HB 5, 83rd Texas Legislature,

Regular Session, 2013, added the TEC, §28.0217, which reiterates the accelerated instruction requirement, as well as the TEC, §29.081(b-1), which requires that accelerated instruction be provided before the next administration of the applicable assessment and at no cost to the student. The adopted amendment to §101.2006, Accelerated Instruction, aligns the rule with new TEC, §29.081(b-1), by specifying that accelerated instruction must be provided before the next administration of the applicable assessment. In addition, subsection (d) is amended to update the name of the GPC manual to the Student Success Initiative (SSI) manual.

The following changes to Subchapter BB are also made.

Section 101.2001, Policy, and §101.2007, Role of Grade Placement Committee, are amended to update the name of the GPC manual to the SSI manual.

Section 101.2003, Grade Advancement Testing Requirements, is amended to update the name of the GPC manual to the SSI manual and remove a reference to an SBOE rule that has been repealed.

Section 101.2009, Notice to Parents or Guardians, and §101.2017, Scoring and Reporting, are amended to update cross references, including removing references to SBOE rules that have been repealed.

The adopted amendment to §101.2006 has procedural and reporting implications. The adopted amendment establishes in rule that students failing to perform satisfactorily on an EOC assessment must be provided accelerated instruction before the next administration of the applicable assessment.

The adopted amendments have no new locally maintained paperwork requirements.

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

The public comment period on the proposal began November 22, 2013, and ended December 23, 2013. No public comments were received.

The amendments are adopted under Texas Education Code (TEC), §28.0217, as added by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013, which requires that each time a student fails to perform satisfactorily on an assessment instrument administered under the TEC, §39.023(c), a school district must provide accelerated instruction in the applicable subject area using funds appropriated for accelerated instruction under the TEC, §28.0211; TEC, §29.081(b-1), as added by HB 5, 83rd Texas Legislature, Regular Session, 2013, which requires schools districts to offer additional accelerated instruction before the next scheduled administration of the assessment instrument without cost to the student; and TEC, §39.025(b-1), which requires school districts to provide each student who fails to perform satisfactorily as determined by the commissioner under the TEC, §39.0241(a), on an end-of-course assessment instrument with accelerated instruction in the subject assessed by the assessment instrument.

The amendments implement the TEC, §28.0217 and §29.081(b-1), as added by HB 5, 83rd Texas Legislature, Regular Session, 2013; and TEC, §39.025(b-1).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Education Agency
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SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 1. IMPLEMENTATION OF ASSESSMENT INSTRUMENTS

19 TAC §101.3011, §101.3014

The Texas Education Agency (TEA) adopts amendments to §101.3011 and §101.3014, concerning assessment. The amendments are adopted without changes to the proposed text as published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8344) and will not be republished. The sections address implementation of assessment instruments. The adopted amendments reflect changes made to the state assessment program by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013.

HB 5, 83rd Texas Legislature, Regular Session, 2013, made changes to the state's assessment program relating to required assessments, the reporting of assessment results, and federal requirements. The adopted amendments to 19 TAC Chapter 101, Subchapter CC, Division 1, align the rules with the recent statutory changes as well as federal accountability requirements.

The adopted amendment to §101.3011, Implementation and Administration of Academic Content Area Assessment Instruments, specifies in subsection (a) that, except as required for federal accountability purposes, a Grade 3-8 student would not participate in a grade-level assessment if the student is enrolled in a course or subject intended for students in a higher grade or is taking a course for high school credit and would be administered an assessment for that course or subject. The adopted amendment allows a district to double-test certain students taking a State of Texas Assessments of Academic Readiness (STAAR®) end-of-course (EOC) assessment for federal accountability purposes.

Current federal accountability requirements specify that students have a mathematics score every year in Grades 3-8 as well as a mathematics score in high school. The U.S. Department of Education (USDE) requires states that offer only one mathematics assessment at the high school level--which can also be taken by middle school students--to ensure there is a mathematics result that can be attributed to a high school.

Based on this federal requirement and the related Texas Education Code (TEC), §39.023(a-2), as amended by HB 5, 83rd Texas Legislature, Regular Session, 2013, districts will need to administer multiple mathematics assessments to students taking Algebra I in middle school (or earlier) or accept the potential federal accountability consequences of testing these students only on Algebra I. By administering the Algebra I and grade-level assessments to students taking Algebra I prior to high school, assessment results for the current grade level (e.g., STAAR® Grade 8 mathematics score) can be used for federal accountability purposes at the current campus, while STAAR® Algebra I results can be applied in a subsequent year at the high school campus.

The adopted amendment to §101.3011(b) clarifies that, as allowed by 34 Code of Federal Regulations, §200.6, the TEA will administer modified assessments under TEC, §39.023(b). The USDE has filed rules that state that assessments based on modified standards for students served by special education cannot be used for accountability purposes after the 2013-2014 school year.

Other adopted revisions to §101.3011 include amending subsection (a) to specify that TEA will administer district-optional assessments for Algebra II and English III as allowed under the TEC, §39.0238(a); removing the 15% course grade requirement for EOC assessments; and removing references to assessments repealed by HB 5, 83rd Texas Legislature, Regular Session, 2013. The district-optional assessments for Algebra II and English III will first be administered in spring 2016.

Section 101.3014, Scoring and Reporting, is amended to align with the TEC, §39.023(h), as amended by HB 5, 83rd Texas Legislature, Regular Session, 2013. The amendment requires the agency's test contractor to report the machine-scorable assessment results, with appropriate interpretations, to school districts and charter schools within 21 days of receiving test materials from a district or charter school. Such reporting must be in compliance with the confidentiality requirements of the TEC, §39.030. Because essays and short answer responses on the state's assessments are hand-scored, the adopted amendment excludes assessments with constructed responses from the 21-day reporting requirement. The amendment also requires a school district or charter school to disclose a student's assessment results to a student's teacher in the same subject area as the assessment for that school year.

The adopted rule actions have no procedural and reporting implications beyond those that apply to all Texas students with respect to implementation of the state's assessment program.

The adopted rule actions have minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students, parent notification, and reporting of results.

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

The public comment period on the proposal began November 22, 2013, and ended December 23, 2013. Following is a summary of the public comments received and the corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 1, Implementation of Assessment Instruments.

Comment: Katy Independent School District (ISD) does not agree with requiring a student to take two separate STAAR® assessments when a student is only taking one course with a specific curriculum. Katy ISD stated that it supports the agency-filed federal waiver from the double-testing requirement for certain students taking Algebra I before high school.

Agency Response: The agency agrees.

Comment: The Texas School Alliance (TSA) requested clarification regarding whether the agency intends to bank Algebra I EOC results from students taking the assessment before high school and applying those scores to the students' high schools in subsequent years for federal accountability purposes.

Agency Response: In regard to students taking the Algebra I EOC assessment before high school and the related federal accountability issues, the agency is still exploring all options, including the application of a federal waiver from certain provisions of No Child Left Behind.

The amendments are adopted under Texas Education Code (TEC), §7.021, which authorizes the agency to administer and monitor compliance with education programs required by federal or state law; TEC, §39.023(a-2), as amended by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013, which specifies that, unless federally required, a student is not required to be administered a grade-level assessment if the student is enrolled in either: (1) a course in the subject for which the student receives high school academic credit and will be administered an end-of-course assessment adopted under the TEC, §39.023(c), for the subject; or (2) a course in the subject intended for students above the student's grade level and will be administered an assessment instrument adopted under the TEC, §39.023(a), that aligns with the curriculum for the course in which the student is enrolled; TEC, §39.023(c), as amended by HB 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the agency to adopt end-of-course assessment instruments for secondary-level courses identified in the TEC, §39.023(c); TEC, §39.023(h), as amended by HB 5, 83rd Texas Legislature, Regular Session, 2013, which requires the agency to notify school districts and campuses of machine-scored assessment results not later than the 21st day after the assessment is administered and specifies that a district must disclose assessment results to teachers of subjects for which an assessment has been administered; TEC, §39.0238, as added by HB 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the agency to adopt or develop appropriate postsecondary readiness assessment instruments for Algebra II and English III that a school district may administer at the district's option beginning in spring 2016; and 34 Code of Federal Regulations (CFR), §200.6, which authorizes the state to develop a new alternate assessment or adapt an assessment based on grade-level academic achievement standards to assess students with disabilities based on modified academic achievement standards.

The amendments implement the TEC, §7.021; TEC, §39.023(a-2), (c), and (h), as amended by HB 5, 83rd Texas Legislature, Regular Session, 2013; TEC, §39.0238, as added by HB 5, 83rd Texas Legislature, Regular Session, 2013; and 34 CFR, §200.6.

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 February 10, 2014.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING FEDERAL FISCAL COMPLIANCE AND REPORTING

19 TAC §109.3001, §109.3003

The Texas Education Agency (TEA) adopts new §109.3001 and §109.3003, concerning federal fiscal compliance and reporting. Section 109.3001 is adopted with changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7598). Section 109.3003 is adopted without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7598) and will not be republished. The adopted new rules provide guidance for local educational agencies (LEAs) that has been developed in conjunction with federal statutes and guidance from the United States Department of Education (USDE) regarding local maintenance of effort (MOE) and indirect cost rates.

The TEA currently provides guidance for financial accounting for school districts, charter schools, and education service centers through the Financial Accountability System Resource Guide (FASRG), which is adopted by reference as rule in 19 TAC §109.41. The FASRG is currently under review and will undergo significant revision. As a result, updated provisions relating to federal fiscal compliance and reporting will be adopted in 19 TAC Chapter 109, Subchapter CC, instead of the FASRG.

Adopted new 19 TAC Chapter 109, Subchapter CC, aligns TEA guidance for federal fiscal compliance and reporting with current federal statutory authority and USDE guidance for local MOE and indirect cost rates. The adopted new subchapter consists of adopted new 19 TAC §109.3001, Local Maintenance of Effort, and 19 TAC §109.3003, Indirect Cost Rates.

Adopted new 19 TAC §109.3001 adopts in rule Figure: 19 TAC §109.3001(c)(1), which establishes the MOE requirements for a grant under the Individuals with Disabilities Education Act, Part B, and Figure: 19 TAC §109.3001(c)(2), which establishes the MOE requirements for a grant under the No Child Left Behind Act. In response to public comments, the following changes were made at adoption to the handbook adopted as Figure: 19 TAC §109.3001(c)(1).

In the Termination of Obligation section, the definition of an exceptionally costly program was revised to read, "an amount greater than the average per pupil expenditure (as defined in section 9101 of the ESEA) in Texas."

The section concerning School Health and Related Services (SHARS) was removed from Appendix 3: IDEA-B MOE Calculation Methodology. Instructions and examples in Appendix 3 regarding the use of SHARS Medicaid cost share in the MOE calculation were revised to reflect federal guidance.

In addition, the following technical corrections were made at adoption to the handbook adopted as Figure: 19 TAC §109.3001(c)(1).

The LEA MOE Determination Calculation Tool was renamed the LEA MOE Calculation Tool throughout the document for clarity.

The Additional Resources Related to Other IDEA-B Fiscal Compliance Requirements section was modified to include an active link to the *CEIS Guidance Handbook*.

A description of the amount that an LEA is required to refund if the refund amount exceeds the LEA's IDEA-B maximum entitlement for the fiscal year under determination was clarified in the Consequences of Noncompliance section.

The last paragraph in the Federal Exceptions to the MOE Requirement section was modified to correctly identify where assertion forms will be posted.

The first bullet in the Assumption of Cost by High Cost Fund section was modified for consistency by removing the phrase "net asset code."

Adopted new 19 TAC §109.3003 would adopt in rule Figure: 19 TAC §109.3003(d), which establishes definitions, standards, and procedures used to govern indirect cost rates.

The TEA intends to update 19 TAC §109.3001 and 19 TAC §109.3003 annually as needed to align with subsequent updates, modifications, and amendments to the federal statutory authority and USDE guidance.

The adopted new rules have no procedural or reporting implications beyond those already in place. Entities required to meet MOE requirements must provide certain fiscal and compliance information in order for the TEA to determine compliance with the MOE requirement and subsequent reporting to the USDE. Additionally, entities requesting an indirect cost rate must provide all documentation required by the USDE to support the entity's request and subsequent approval by the TEA of the indirect cost rate. The adopted new rules have no locally maintained paperwork requirements beyond those already in place. Participating LEAs are required to retain all financial and programmatic records specific to the local MOE and indirect cost rate requirements.

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

The public comment period on the proposal began November 1, 2013, and ended December 2, 2013. Following is a summary of the public comments received and corresponding agency responses regarding proposed new 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter CC, Commissioner's Rules Concerning Federal Fiscal Compliance and Reporting.

Comment: An individual, a representative from the Haskell-Knox Shared Service Arrangement (SSA), a representative from Region 13 Education Service Center (ESC), and the Texas Coun-

cil of Administrators of Special Education, Inc. (TCASE) questioned the proposed threshold of $35,000 or greater per student in the termination-of-obligation exception as this could serve as a penalty to small districts who already use that amount in the exception for assumption of cost by high cost fund. The TCASE suggested removal or reduction of the threshold. The representative from Haskell-Knox SSA requested clarification regarding the exceptionally costly program calculation.

Agency Response: The agency agrees and provides the following clarification. Federal exception (c) termination of an exceptionally costly program/obligation to a particular student (34 CFR §300.204(c)) is applicable to students who leave the local educational agency (LEA), while the federal exception (e) assumption of cost by a high cost fund (34 CFR §300.204(e)) is applicable to students who remain with the LEA. Maintenance of effort (MOE) is based solely upon state and local expenditures and does not include federal funding.

The agency agrees that the proposed $35,000 threshold is high and has revised the definition of an exceptionally costly program found on page 5 of the handbook adopted as Figure: 19 TAC §109.3001(c)(1) at adoption to read, "an amount greater than the average per pupil expenditure (as defined in section 9101 of the ESEA) in Texas."

Comment: A representative from Lockhart Independent School District (ISD) suggested that the removal of program intent code (PIC) 99 formula-allocation should apply to all compliance requirements and not solely to special education.

Agency Response: The agency disagrees. Regarding federal compliance requirements, PIC 99 formula-allocation is specifically relevant only to an LEA's MOE for a grant under the Individuals with Disabilities Education Act, Part B (IDEA-B) as this requirement is focused on special education and related services. Other federal compliance requirements apply more broadly and include all program intent codes. Regarding state compliance requirements, the proposed change would be outside the scope of the proposed rule action.

Comment: The TCASE stated that the threshold calculation tool and calendar currently in use does not allow districts to take full advantage of opportunities in calculating exceptional costs and does not allow for a full year of service. The TCASE recommended modifications to the calculation tool.

Agency Response: This comment is outside the scope of the proposed rule action. Adopted new 19 TAC Chapter 109, Subchapter CC, does not include a tool for calculating federal exception (c) termination of an exceptionally costly program/obligation to a particular student (34 CFR §300.204(c)).

Comment: The TCASE recommended that the exceptionally costly program calculation be modified for shared service arrangements.

Agency Response: The agency disagrees. Federal regulations do not provide for modification of the requirements of federal exception (c) termination of an exceptionally costly program/obligation to a particular student (34 CFR §300.204(c)).

Comment: The TCASE expressed appreciation of the agency's efforts to provide flow charts and examples in guidance documents.

Agency Response: The agency appreciates this comment.

Comment: The United States Department of Education (USDE) provided clarification regarding the use of School Health and Related Services (SHARS) Medicaid cost share in the MOE calculation. LEAs must include the local (or state and local) funds expended for the education for children with disabilities in their calculation of LEA MOE even if those funds also meet a Medicaid cost share requirement.

Agency Response: The agency has made revisions to the handbook adopted as Figure: 19 TAC §109.3001(c)(1) at adoption to conform to this federal guidance.

The new sections are adopted under the Texas Education Code (TEC), §7.021(b)(1), which authorizes the agency to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; and TEC, §7.031(a), which allows the agency to seek, accept, and distribute grants awarded by the federal government or any other public or private entity for the benefit of public education, subject to the limitations or conditions imposed by the terms of the grants or by other law.

The new sections implement the TEC, §7.021(b)(1) and §7.031(a).

§109.3001. Local Maintenance of Effort.

(a) In accordance with the Texas Education Code, §7.021, the Texas Education Agency (TEA) shall administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs.

(b) The following terms have the following meanings when used in this subchapter.

(1) Maintenance of Effort (MOE) for a grant under the Individuals with Disabilities Education Act, Part B (IDEA-B)--This term has the meaning assigned by 34 Code of Federal Regulations (CFR), §300.203(a).

(2) MOE for a grant under the No Child Left Behind Act (NCLB)--This term is generally defined by Public Law 107-110, Title IX, Part E, Subpart 2, §9521.

(c) Each local education agency (LEA) that expends federal IDEA-B or NCLB funds must comply with established MOE requirements developed in conjunction with federal statutes, regulations, and guidance from the United States Department of Education (USDE). The methods of determining compliance, the consequences of noncompliance, and allowable exceptions to the MOE requirements are described in the figures provided in paragraphs (1) and (2) of this subsection.

(1) The specific MOE requirements for a grant under the IDEA-B are described in the *IDEA-B LEA MOE Guidance Handbook* provided in this paragraph.
Figure: 19 TAC §109.3001(c)(1)

(2) The specific MOE requirements for a grant under the NCLB are described in the *NCLB LEA MOE Guidance Handbook* provided in this paragraph.
Figure: 19 TAC §109.3001(c)(2)

(d) Guidance provided in the handbooks described in subsection (c)(1) and (2) of this section will be updated annually as necessary by the commissioner of education to align with subsequent updates, modifications, and amendments to the statutory authority and USDE guidance.

(e) For determining compliance with MOE requirements, the TEA will use the handbooks provided in subsection (c)(1) and (2) of this section instead of:

(1) the software in PEIMS EDIT+ containing a formula to allocate costs recorded in Program Intent Code 99, Undistributed, according to instructional FTEs (as reported in PEIMS) assigned to Basic and Enhanced Program Intent Codes; or

(2) the software in EDIT+ containing a formula to allocate costs recorded in Organization Code 999, Undistributed.

(f) If the LEA receives School Health and Related Services (SHARS) reimbursements, funds received represent reimbursements to the LEA for school-based health services, which are provided to special education students enrolled in the Medicaid Program. Additional guidance concerning the treatment of SHARS direct and indirect cost reimbursements is documented in the *IDEA-B LEA MOE Guidance Handbook* provided in subsection (c)(1) of this section.

(g) To the extent that this section conflicts with any other commissioner or State Board of Education rule, including the Financial Accountability System Resource Guide, the provisions of this section control.

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 February 6, 2014.

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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 225. RN DELEGATION TO UNLICENSED PERSONNEL AND TASKS NOT REQUIRING DELEGATION IN INDEPENDENT LIVING ENVIRONMENTS FOR CLIENTS WITH STABLE AND PREDICTABLE CONDITIONS

22 TAC §§225.1 - 225.6, 225.8 - 225.15

Introduction. The Texas Board of Nursing (Board) adopts amendments to Chapter 225, §§225.1 - 225.6 and §§225.8 - 225.11 and new §§225.12 - 225.15, concerning RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions. Sections 225.8, 225.10, and 225.15 are adopted with changes to the proposed text published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8352). Sections 225.1 - 225.6, 225.9, 225.11, and 225.12 - 225.14 are adopted without changes to the proposed text as published.

Reasoned Justification. The adopted amendments and new sections are necessary in order to renumber the chapter sections and result in adding new §225.15. Existing §§225.12 - 225.14 have been repealed so those sections can be replaced in the adopted rule. The revisions to Chapter 225 include: correction of outdated references to the Board of Nurse Examiners and legal citations; improved definitions of RN delegation; expansion to the lists of tasks that may be designated as Health Maintenance Activities (HMAs), including RN discretion to identify HMAs not specifically listed; clarification of minimum standards when delegating, including responsibility of nurse administrators; clarification of the duty to document proper assessment in support of decision making; specifying the duty to collaborate with the client when there is disagreement; and expanding the list of tasks that may be delegated, including reference to emergency delegation and RN discretion to identify delegable tasks not specifically listed or prohibited.

The 77th Texas Legislature (2001) passed House Bill 456, amending §531.051, Texas Government Code, which required the Board of Nursing to form a Task Force to review nurse delegation for those with functional disabilities in independent living environments. After the formation and consideration of the recommendations of the Task Force in 2001 and 2002, the Board adopted Chapter 225 in 2003. Chapter 225 has not been amended since its adoption on February 19, 2003 (February 14, 2003, issue of the *Texas Register* (28 TexReg 1386)). Since 2003, §531.051, Texas Government Code has been amended several times by the Legislature. Additionally, the 82nd Legislature (2011) passed Senate Bill 1857, which amended Chapter 161 of the Texas Health and Safety Code, by adding Subchapter D-1, additionally affecting nurse delegation and self-administered medications.

In October 2011, to address the dynamic nature of nurse delegation and statutory amendments, the Board of Nursing approved the formation of a new advisory Task Force to review 22 TAC Chapter 225 and develop new recommendations. The Task Force consisted of the following members: Texas School Nurse Organization, AARP Consumer, Hospice Austin, Texas Department of Aging and Disability Services, Developmental Disabilities, American Disabled for Attendant Programs Today of Texas, and Disability Rights Texas (Formerly Advocacy, Inc.).

After several meetings and deliberations, the Task Force made recommendations in September 2013 for Board consideration. The Board subsequently reviewed and approved those recommendations at its October 2013 Board meeting. The proposed amendments and new sections were published in the November 22, 2013, issue of the *Texas Register.* The Board received several written comments on the proposal, which were considered by the Board at its January 2014 meeting. In response to written comments on the published proposal, the Board has changed some of the proposed language in the text of the rule as adopted. These changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Further, the Board believes that the changes address some of the commenters' stated concerns.

Summary of Changes.

A commenter representing an organization requested clarification of proposed §225.8(b). Specifically, the commenter questioned whether the phrase "programs utilizing rotating shifts" refers to residential Medicaid programs with rotating shifts, such as residential services in Medicaid waiver group homes, rotating shifts within an individual's family home, or both. In response to this comment, the Board has eliminated proposed §225.8(b) from the rule text as adopted. The proposed subsection referred to Texas Department of Aging and Disability

Services Home and Community-Based Services and Texas Home Living waiver programs that do utilize rotating shifts of unlicensed staff. However, the Board's advisory Task Force had approved the elimination of subsection (b) previously from the proposed rule because these delegation issues concerning rotating shifts are specific to the HCS and TxHmL waiver programs and are currently addressed within those programs. As such, the Board has determined that it is appropriate to eliminate proposed §225.8(b) from the rule text as adopted.

An individual commenter requested clarification of proposed §225.10(7). The commenter pointed out that the proposed language in paragraph (7) seems to exclude tracheostomy care for people with tracheostomies who are not on ventilators. The commenter suggested language to clarify the Board's intent. The Board agrees with the commenter that the proposed rule text may be incorrectly read to exclude tracheostomy care for people on a ventilator, which was not the Board's intent. In response to this comment, the Board has modified §225.10(7) as adopted to read "ventilator care or tracheal care; including instilling normal saline and suctioning of a tracheostomy with routine supplemental oxygen administration."

The Board declines to make the commenters' remaining requested changes and the Board has specifically addressed those comments in the portion of this rule adoption entitled "Summary of Comments and Agency Response."

Summary of Comments and Agency Response.

General Comments

Comment: A commenter representing the Texas Association for Home Care and Hospice (TAHC&H) supports the proposed new rule and the additions and updates. Further, the commenter appreciates the collaboration during the stakeholder discussions and meetings where the rule went through many draft changes and robust discussions between stakeholders. The commenter states that, by the end of the arduous process, the proposed rule is improved with current updates and valuable changes. The commenter states that TAHC&H will continue to support and appreciate the opportunity to serve in stakeholder meetings and workgroups.

Agency Response: The Board appreciates the comment.

§225.5(b)

Comment: A commenter representing Disability Rights Texas suggests that the term "dispute resolution process" be clarified with examples, such as the "convening of a interdisciplinary team" or a "service planning team process", to allow the involvement of important members of the client's service planning team in the resolution process.

Agency Response: The Board declines to make the suggested change. The Board believes the term "dispute resolution process" is sufficiently definite regarding the level of collaboration that should occur when conflicting delegation decisions arise. Most critical disagreements between nurses and clients concerning nurse assessment and delegation occur while clients are receiving health services associated with publicly funded programs. These programs are not within the Board's jurisdiction to regulate and the Board cannot mandate dispute resolution procedures by those agencies who do regulate those programs. These programs may adopt a variety of processes including those being suggested by the commenter. To the extent there are dispute resolution processes outlined within a program, the rule makes clear it is the nurse's duty to collaborate.

§225.8(b)

Comment: A commenter representing Disability Rights Texas requests clarification of the proposed rule text. Specifically, the commenter asks if the phrase "programs utilizing rotating shifts" refers to residential Medicaid programs with rotating shifts, such as residential services in Medicaid waiver group homes, rotating shifts within an individual's family home, or both.

Agency Response: The Board has eliminated subsection (b) from the rule text as adopted. The subsection is referring to Texas Department of Aging and Disability Services Home and Community-Based Services and Texas Home Living waiver programs that do utilize rotating shifts of unlicensed staff. The advisory Task Force had approved the elimination of subsection (b) previously from the proposed rule because these delegation issues concerning rotating shifts are specific to the HCS and TxHmL waiver programs and are currently addressed within those programs.

§225.9(c)

Comment: A commenter representing Disability Rights Texas recommends more specific language in the rule text defining "the verification of competency" and/or a reference to where the specific information can be found, such as a handbook, fact sheet, or form.

Agency Response: The Board declines to make any change to the rule as adopted. The Board believes that to the extent that the term "the verification of competency" needs more clarification, such clarification can come in the form of a "Frequently Asked Question" or other manner as suggested by the commenter.

§225.10(7)

Comment: An individual commenter seeks clarification of the proposed language. Specifically, the commenter points out that the proposed language in paragraph (7) seems to exclude tracheostomy care for people with tracheostomies who are not on ventilators. If this was not the Board's intent, the commenter suggests language to clarify the Board's intent.

Agency Response: The Board agrees with the commenter that the rule text may be incorrectly read to exclude tracheostomy care for people on a ventilator. This was not the Board's intent and therefore, the Board will modify paragraph (7) to read "ventilator care or tracheal care; including instilling normal saline and suctioning of a tracheostomy with routine supplemental oxygen administration."

Names of Those Commenting For and Against the Proposal.

For: The Texas Association for Home Care and Hospice.

Against: None.

For, with changes: Disability Rights Texas.

Neither for nor against, with changes: An individual commenter.

Statutory Authority. The amendments and new sections are adopted under Texas Occupations Code §301.151 and §301.152, which authorize the Board of Nursing to adopt and enforce rules consistent with the Nursing Practice Act, including rules addressing professional nursing practice and minimum standards of professional nurse practice.

§225.8. Health Maintenance Activities Not Requiring Delegation.

(a) Health Maintenance Activities (HMAs), as defined in this chapter that do not fall within the practice of professional nursing, may be performed by an unlicensed person in accordance with this section without being delegated. The Board has determined that in situations governed by this chapter HMAs do not fall within the practice of professional nursing when:

(1) performed for a person with a functional disability;

(2) in addition to the client assessment under §225.6 of this title (relating to RN Assessment of the Client), a RN determines all of the following conditions exist:

(A) the client would perform the task(s) but for her/his functional disability;

(B) the task(s) can be directed by the client or client's responsible adult to be performed by an unlicensed person without RN supervision;

(C) the client or client's responsible adult is able, and has agreed in writing, to participate in directing the unlicensed person's actions in carrying out the HMA; and

(D) Either

(i) the client is willing and able to train the unlicensed person in the proper performance of the HMA, or

(ii) the client's responsible adult is capable of training the unlicensed person in the proper performance of the task and

(I) will be present when the task is performed, or

(II) if not present, will have observed the unlicensed person perform the task at least once to assure he/she can competently perform the task and will be immediately accessible in person or by telecommunications to the unlicensed person when the task is performed.

(b) If the above criteria cannot be met, an HMA may still be performed as a delegated task if it meets the criteria of §225.9 of this title (relating to Delegation Criteria).

§225.10. Tasks That May Be Delegated.

A RN may delegate the following tasks unless the RN's assessment under §225.6 of this title (relating to RN Assessment of the Client) and §225.9 of this title (relating to Delegation Criteria) determines that the task is not a task a reasonable and prudent nurse would delegate. Tasks include:

(1) an ADL the RN has determined requires delegation under §225.7 of this title (relating to Activities of Daily Living Not Requiring Delegation);

(2) a HMA the RN has determined requires delegation under §225.8 of this title (relating to Health Maintenance Activities Not Requiring Delegation);

(3) non-invasive and non-sterile treatments with low risk of infection;

(4) the collecting, reporting, and documentation of data including, but not limited to:

(A) vital signs, height, weight, intake and output, capillary blood and urine test;

(B) environmental situations/living conditions that affect the client's health status;

(C) client or significant other's comments relating to the client's care; and

(D) behaviors related to the plan of care;

(5) reinforcement of health teaching provided by the registered nurse;

(6) inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube limited to the following:

(A) insertion and/or irrigation of urinary catheters for purpose of intermittent catheterization; and

(B) irrigation of an indwelling tube such as a urinary catheter or permanently placed feeding tube;

(7) ventilator care or tracheal care; including instilling normal saline and suctioning of a tracheostomy with routine supplemental oxygen administration.

(8) care of broken skin with low risk of infection;

(9) sterile procedures those procedures involving a wound or an anatomical site that could potentially become infected;

(10) administration of medications that are administered:

(A) orally or via permanently placed feeding tube inserted in a surgically created orifice or stoma;

(B) sublingually;

(C) topically;

(D) eye and ear drops; nose drops and sprays;

(E) vaginal or rectal gels or suppositories;

(F) unit dose medication administration by way of inhalation for prophylaxis and/or maintenance; and

(G) oxygen administration for the purpose of non-acute respiratory maintenance.

(11) administration of oral unit dose medications from the client's daily pill reminder container in accordance with §225.11 of this title (relating to Delegation of Administration of Medications From Pill Reminder Container);

(12) administration of insulin or other injectable medications prescribed in the treatment of diabetes mellitus administered subcutaneously, nasally, or via an insulin pump in accordance with §225.12 of this title (relating to Delegation of Insulin or Other Injectable Medications Prescribed in the Treatment of Diabetes Mellitus);

(13) certain emergency measures as defined in §224.6(4) of this title (relating to General Criteria for Delegation);

(14) those tasks that an RN may reasonably conclude as safe to delegate based on an assessment consistent with §225.6 of this title; and

(15) other such tasks as the Board may designate.

§225.15. Application of Other Laws and Regulations.

BON §217.11(1) of this title (relating to Standards of Nursing Practice) requires RNs to know and conform to all laws and regulations affecting their area of practice. The RN authorizing an unlicensed person to perform tasks in independent living environments should be aware that, in addition to this chapter, various laws and regulations may apply including, but not limited to, laws and regulations governing home and community support service agencies and Medicare and Medicaid regulations. In situations where a RN's practice is governed by multiple laws and regulations that impose different requirements, the RN must comply with them all and if inconsistent, the most restrictive requirement(s) governs. For example, if one regulation requires a RN to make a supervisory visit every 14 days and another leaves it to the RN's pro-

fessional judgment, the RN would have to visit at least every 14 days or more frequently, if that is what the RN's professional judgment indicated.

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 February 4, 2014.

TRD-201400483
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: February 24, 2014
Proposal publication date: November 22, 2013
For further information, please call: (512) 305-6822

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22 TAC §§225.12 - 225.14

Introduction. The Texas Board of Nursing (Board) adopts the repeal of existing §§225.12 - 225.14, concerning RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions, without changes to the proposed text published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8357).

Reasoned Justification. This repeal is necessary because the Board is adopting amendments in Chapter 225 that will result in the addition of a new section to the chapter, as well as the reorganization of existing sections of the chapter. The adopted amendments to Chapter 225 are being published elsewhere in this edition of the *Texas Register,* in conjunction with this adopted repeal.

Summary of Comments and Agency Response. The agency did not receive any comments on the proposed repeal.

Statutory Authority. The repeal is adopted under Texas Occupations Code §301.151 and §301.152, which authorize the Board of Nursing to adopt and enforce rules consistent with the Nursing Practice Act, including rules addressing professional nursing practice and minimum standards of professional nurse practice.

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 February 4, 2014.

TRD-201400484
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: February 24, 2014
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.335

The Comptroller of Public Accounts adopts new §3.335, concerning property used in a qualifying data center; temporary state sales tax exemption, with changes to the proposed text as published in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9448). This section implements House Bill 1223, 83rd Legislature, 2013, which enacted Tax Code, §151.359 and amended Tax Code, §151.317. An emergency version of this rule was published in the *Texas Register* on September 13, 2013 (38 TexReg 5953).

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

Subsection (b) describes the tax exemption for tangible personal property purchased for installation, incorporation, or in the case of electricity, use in a qualifying data center. Paragraph (1) is changed from the proposed rule to clearly state that the tangible personal property must be purchased for installation at or incorporation into a qualifying data center except for electricity which is exempt if purchased for use in a qualifying data center. This change is made to conform to the statutory language. Paragraph (2) explains that the purchase price of exempt tangible personal property that is jointly procured by a qualifying owner, qualifying operator, or qualifying occupant is to be apportioned among the purchasers for record-keeping purposes.

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

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

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

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

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

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

Subsection (i) explains that, in accordance with Tax Code, §111.0041, all qualified occupants, qualified owners, and qualified operators of a qualified data center must keep complete records to document any and all tax-exempt purchases made under the qualifying data center exemption and to confirm payment of the local sales and use tax on such purchases.

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

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

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

Comments regarding employee turn-over relating to the definition of qualifying job in subsection (a)(7)(A)(vi) were received from James W. Grice and Michael McKinley of Lathrop & Gage, LLP on behalf of Digital Realty Trust. Commenters requested clarification regarding the single job requirement and employee turn-over. The comptroller has amended the definition of permanent job in subsection (a)(4) to clarify that the five-year requirement will be met provided any vacancies which occur are filled within 120 days of the date of vacancy.

Comments regarding the sole occupant requirement, subsection (a)(10)(B), were also received from Mr. Grice and Mr. McKinley. Commenters requested the rule be clarified to allow a partial exemption for the purchase of certain equipment used by both the data center and by portions of the same building that are not part of the qualifying data center. The comptroller declines to adopt the requested change. There is no statutory support for allowing partial exemptions under this provision.

Comments were received regarding subsection (d)(2)(B)(ii) from Mr. Grice and Mr. McKinley to allow controlled affiliates to qualify for the exemption. The comptroller declines to adopt the requested change. The proposed change would conflict with the comptroller's long-standing policy of recognizing related but legally separate entities as such.

Comments were received from Mr. Grice and Mr. McKinley requesting a time limit for comptroller action in subsection (e). The comptroller declines to adopt the requested change. The comptroller must ensure the requirements for exemption are met. Requiring action within a set period of time would inhibit the comptroller's ability to thoroughly review submitted applications and ensure compliance.

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

The new section implements Tax Code, §151.359 (Property Used in Certain Data Centers; Temporary Exemption) and §151.317 (Gas and Electricity).

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

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

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

(A) property purchased before September 1, 2013;

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

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

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

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

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

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

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

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

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

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

(4) Permanent job--An employment position for which an Internal Revenue Service Form W-2 must be issued, that will exist for at least five years after the date the job is created. A permanent job will be considered to exist for at least five years after the date the job is created if during the five-year period any vacancy which occurs is filled within 120 days of the date of vacancy.

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

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

(7) Qualifying job--

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

(i) is a permanent job;

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

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

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

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

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

(B) The term includes a new employment position staffed by a third-party employer if the employment position meets the requirements of subparagraph (A) of this paragraph and if there is a written contract between the third-party employer and a qualifying owner, qualifying operator, or qualifying occupant of the associated qualifying data center which:

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

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

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

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

(10) Qualifying occupant--A person who:

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

(B) is the sole occupant of the qualifying data center. A qualifying occupant may provide data storage and processing services, but may not sublease to a third party any real or tangible personal property located within the area of a building designated by the qualifying occupant, qualifying owner, or qualifying operator as part of the qualifying data center. For example, a qualifying occupant may not sell or lease excess servers or server space, including the provision of dedicated servers, at the qualifying data center to third parties. If a single occupant leases 150,000 square feet of space in a building for use as a qualifying data center, that occupant may not use 100,000 square feet for its own qualifying use and sublease the remaining 50,000 square feet to a third party, even if the third party will also use the space as a data center. An occupant may, however, lease 150,000 square feet of space in a building and, during the certification process, formally designate 100,000 square feet or more of the space as the area to be used as its qualifying data center. The occupant could then sublease the space not designated for use as the data center to a third party without causing the data center to lose its certification as a qualifying data center. Tangible personal property purchased for use in the space outside the area designated for use as a data center would not qualify for exemption under this section.

(b) Exemption.

(1) Tangible personal property purchased by a qualifying owner, qualifying operator, or qualifying occupant for installation at, incorporation into, or in the case of subparagraph (A) of this paragraph, use in a qualifying data center is exempted from the state sales and use tax imposed by Tax Code, Chapter 151 if the tangible personal property is necessary and essential to the operation of the qualifying data center and is:

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

(B) an electrical system;

(C) a cooling system;

(D) an emergency generator;

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

(F) a data storage device;

(G) network connectivity equipment;

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

(I) a peripheral component or system;

(J) software;

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

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

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

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

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

(1) office equipment or supplies;

(2) maintenance or janitorial supplies or equipment;

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

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

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

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

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

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

(2) The qualifying owner, qualifying operator, or qualifying occupant, jointly or independently, have agreed to, on or after September 1, 2013:

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

(B) make a capital investment of at least $200 million in that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center. For purposes of this subparagraph:

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

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

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

(e) Application process.

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

(A) the name, contact information, and authorized signature for the qualifying occupant and, if applicable, the name, contact information, and authorized signature for the qualifying owner and the qualifying operator who will claim the exemption authorized under this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the data center registration number;

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

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

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

(E) the signature of the purchaser; and

(F) the date of the purchase.

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

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

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

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

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

(3) If a formal waiver of the statute of limitations under Tax Code, §111.203 is deemed necessary to insure against a loss of revenue to the state in the event that a data center's certification is revoked, by allowing the comptroller to verify, prior to the expiration of the statute of limitations on assessment, that each of the requirements in subsection (d) of this section has been met, then the failure to execute a timely statutory waiver will also result in the termination of the data center's certification and the revocation of all related registration numbers.

(i) Documentation and record retention.

(1) In accordance with Tax Code, §111.0041 (relating to Records; Burden to Produce and Substantiate Claims) and §151.025 (relating to Records Required to be Kept), all qualifying occupants, qualifying owners, and qualifying operators of a qualifying data center must keep complete records to document any and all tax-exempt purchases made under the qualifying data center exemption, and to confirm payment of the local sales and use tax on such purchases. See §3.281 of this title (relating to Records Required; Information Required) for additional guidance.

(2) In addition, each qualifying owner, qualifying operator, and qualifying occupant of a qualifying data center must keep complete records to document the capital investment made in the qualifying data center, the creation of 20 qualifying jobs, and the retention of those jobs for a period of at least five years. These records must be retained until the data center's certification expires. For example, a qualifying owner, qualifying operator, or qualifying occupant should keep comprehensive records of capital investment expenditures, such as contracts, invoices, and sales receipts, and employment records regarding job creation, including associated third-party employer positions.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.442

The Comptroller of Public Accounts adopts an amendment to §3.442, concerning bad debts or accelerated credit for non-payment of taxes, with changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7627).

Subsection (a) previously stated this section applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a) as the 2004 date is no longer relevant and Subchapter L has been repealed. Subsequent subsections are re-lettered and corrections to subsections referenced are made throughout the section.

In addition, subsections are being amended to implement House Bill 2148, 83rd Legislature, 2013. Re-lettered subsections (a), (d), and (f) are amended to include compressed natural gas and liquefied natural gas dealers.

Re-lettered subsections (a), (b), and (c) are also amended to correct grammatical errors. Re-lettered subsection (d) is amended to clarify that an amended return must be filed to report and remit tax collected after a refund or credit was claimed on an account that was written off as a bad debt. Re-lettered subsection (g) is amended to add permissive supplier for clarification. No substantive change is intended.

No comments were received regarding adoption of the amendment.

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

This amendment implements Tax Code, §§162.113, 162.116, 162.126, 162.214, 162.217, 162.228, and 162.366.

§3.442. Bad Debts or Accelerated Credit for Non-payment of Taxes.

(a) Bad Debt Deductions. A licensed distributor, supplier, permissive supplier, or compressed natural gas and liquefied natural gas dealer may file a claim for refund on the monthly return of taxes paid on fuel that was sold on account that is later determined to be uncollectible, worthless, and previously written off as bad debt at the time that the distributor, supplier, permissive supplier, or compressed natural gas and liquefied natural gas dealer held an active license.

(1) The claim for refund must be in writing, state the fuel type (gasoline, diesel, compressed natural gas, or liquefied natural gas), state the beginning and ending date of sales on which the bad debt is claimed, the number of gallons, and the dollar amount of bad debts. The licensed distributor, supplier, permissive supplier, or compressed natural gas and liquefied natural gas dealer must establish the bad debt amount by providing information on the form required by the comptroller. Required information includes but is not limited to the following:

(A) the date of sale or invoice date;

(B) invoice fuel amount and invoice fuel tax amount;

(C) the name and address of the purchaser, and if applicable, the license number of the purchaser;

(D) all payments or credits applied to the account of the purchaser; and

(E) uncollected amounts in the purchaser's account that were written off as bad debt in the distributor's, supplier's, permissive supplier's, or compressed natural gas and liquefied natural gas dealer's, records, including the number of gallons of fuel represented by the motor fuel portion of the bad debt.

(2) All payments and credits made by the purchaser must be applied to the purchaser's account to determine the bad debt amount, and if the purchaser's account also contains purchases of goods other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods sold to the purchaser. The comptroller will only allow a claim for refund of tax on the number of gallons represented by the motor fuel portion of the bad debt. The maximum amount of refund claimed cannot exceed the tax paid on the fuel sold on account that has been written off as a bad debt.

(3) A claim for refund of taxes based on a bad debt must be filed within four years from the date the account is entered in the distributor's, supplier's, permissive supplier's, or compressed natural gas and liquefied natural gas dealer's books as a bad debt.

(b) Accelerated Credit. If a licensed supplier or permissive supplier reported and remitted taxes on a tax return for fuel sold on account to a purchaser who is licensed as a distributor or importer at the time of the transaction and who subsequently fails to pay the taxes to the seller, the licensed supplier or permissive supplier may take a credit against tax liability on a subsequent tax return if the licensed supplier or permissive supplier notifies the comptroller of the default.

(1) The notification to the comptroller for credits claimed before June 19, 2009, must be made no later than 60 days after the date of default. The notification to the comptroller for credits claimed on or after June 19, 2009, must be made no later than 15 days after the date of default.

(2) The notification to the comptroller may be made by taking a credit on an original or amended return or in writing. If the notification is in writing the credits may be taken beginning with the return for the reporting month in which the notification is made. When credits are taken on a return, the licensed supplier or permissive supplier must submit with that return information required by the comptroller.

(3) A licensed supplier or permissive supplier who fails to notify the comptroller of the default within the prescribed period in paragraph (1) of this subsection cannot take a credit on a return, but may seek a refund of taxes based on bad debts subject to the requirements provided by subsection (a) of this section.

(4) For credits claimed before June 19, 2009, all payments and credits made by the purchaser must be applied to the purchaser's account to determine that non-payment amount, and if the purchaser's account contains the purchase of goods or items other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods or items sold to the purchaser. The comptroller will only allow a credit of tax on the number of gallons represented by the motor fuel portion of the un-

paid amount. The maximum amount of credit taken cannot exceed the tax paid on the fuel sold on account that has been unpaid. For credits claimed on or after June 19, 2009, the supplier or permissive supplier may claim credit on the amount of the deferred tax payment defaulted by the distributor or importer.

(5) If the notification of default was timely made to the comptroller as prescribed by paragraph (1) of this subsection, credits for taxes that were not collected from the licensed purchaser must be taken within four years from the date of default.

(6) A distributor or importer whose right to defer payment of tax to a supplier or permissive supplier has been suspended before June 19, 2009, may seek reinstatement of the right to defer payment when all motor fuel tax liability has been satisfied and considered in good standing with the comptroller. The distributor or importer must request that the comptroller issue a notice of good standing for motor fuel taxes.

(7) A distributor or importer on which a supplier or permissive supplier has notified the comptroller of default of the deferred tax payment on or after June 19, 2009, loses the right to defer payment of tax to that supplier or permissive supplier for one year following the date that the supplier or permissive supplier notified the comptroller of default. The distributor or importer may seek reinstatement of the right to defer payment if the supplier or permissive supplier erroneously claimed a credit or the default was due to circumstances beyond the distributor's or importer's control, such as a bank error. Request for reinstatement of the right to defer taxes should be made to the comptroller in writing.

(c) Credit card sales. The refund for bad debts or credit for non-payment of taxes allowed under this section does not apply to sales of fuel that is delivered into the supply tank of a motor vehicle or motorboat when payment is made through the use and acceptance of a credit card. For purpose of this section, a credit card is defined as any card, plate, key, or like device by which credit is extended to and charged to the purchaser's account. Sales made through the use and acceptance of a fuel access card, where the only use of the access card is to record the quantity and type of fuel or other information acquired merely for the purpose of reconciling accounts and no credit is extended to the holder are eligible for the bad debt credit. Credit sales to commercial or agricultural customers at locations not open to the general public are eligible for the bad debt credit.

(d) A supplier, permissive supplier, distributor, or compressed natural gas and liquefied natural gas dealer who collects all or part of an account that was written off as a bad debt for which a refund was sought under subsection (a) of this section or who collects all or part of the unpaid tax after a credit was taken under subsection (b) of this section, must report and remit the collected amount on an amended return for the reporting period in which the bad debt was originally claimed. The comptroller may assess a deficiency, including 10% penalty at the rate provided by Tax Code, §111.060, if the amount recovered is not reported and tax is not paid to the state during the month in which the recovery is made. Interest will accrue from the date the credit was taken.

(e) If the comptroller determines that a taxpayer obtained a refund from the comptroller or took a credit on a return when he knew or should reasonably have known that the account or tax was collectible, the comptroller may issue a deficiency for the tax plus 10% penalty and interest imposed from the date the refund was granted or the credit taken. In addition, other penalties provided by this section or by Tax Code, Chapters 111 or 162, may be imposed.

(f) The comptroller may issue a deficiency assessment for tax, plus penalty and interest applicable under Tax Code, Chapter 111, against the purchaser whose account was the subject of a refund for bad debt obtained or a credit claimed by a distributor, supplier, permissive supplier, or compressed natural gas and liquefied natural gas dealer.

(g) Criminal and civil penalties for issuing bad checks.

(1) A person commits an offense if he issues a check to a licensed distributor, licensed supplier, or permissive supplier for the payment of fuel knowing that his account with the bank on which the check is drawn has insufficient funds and if the payment is for an obligation that includes tax imposed by Tax Code, Chapter 162, that is required to be collected by the licensed distributor, licensed supplier, or permissive supplier. The offense is a Class C misdemeanor.

(2) If a licensed distributor, licensed supplier, or permissive supplier receives an insufficient fund check causing a refund to be sought or a credit taken in accordance with the provisions in this section, the licensed distributor, licensed supplier, or permissive supplier may notify the comptroller of the receipt of the insufficient fund check. When making the notification, a photocopy of both sides of the returned check should be furnished.

(3) A person who issues an insufficient fund check to a licensed distributor, licensed supplier, or permissive supplier for payment of an obligation that includes tax imposed by Tax Code, Chapter 162, that is required to be collected by the licensed distributor, licensed supplier, or permissive supplier may be assessed a penalty equal to 100% of the total amount of tax not paid to the licensed distributor, licensed supplier, or permissive supplier. This penalty is in addition to any penalties, interest, and collection actions authorized by the Tax Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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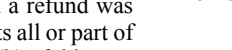

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 421, Standards for Certification, §421.5, concerning Definitions. The amendments are adopted with changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8585).

The amendments are adopted to clearly define what chapter of the Texas Government Code is being cited and also what a Fire Safety Inspection is when referenced in commission rules. The commission adopted a change to reverse the title of the definition from Fire Safety Inspection also called a fire code inspection to Fire Code Inspection also called Fire Safety Inspection and to delete the last sentence of the definition as originally proposed.

The adopted amendments will provide clear and concise rules regarding Fire Code Inspections and serve as a guide for anyone whose duties and responsibilities include conducting fire code or fire safety inspections.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

§421.5. Definitions.

The following words and terms, when used in the Standards Manual, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Admission to employment--An entry level full-time employee of a local government entity in one of the categories of fire protection personnel.

(2) Appointment--The designation or assignment of a person to a discipline regulated by the commission. The types of appointments are:

(A) permanent appointment--the designation or assignment of certified fire protection personnel or certified part time fire protection employees to a particular discipline (See Texas Government Code, Chapter 419, §419.032); and

(B) probationary or temporary appointment--the designation or assignment of an individual to a particular discipline, except for head of a fire department, for which the individual has passed the commission's certification and has met the medical requirement of §423.1(c) of this title (relating to Minimum Standards for Structure Fire Protection Personnel), if applicable, but has not yet been certified. (See Texas Government Code, Chapter 419, §419.032.)

(3) Approved training--Any training used for a higher level of certification must be approved by the commission and assigned to either the A-List or the B-List. The training submission must be in a manner specified by the commission and contain all information requested by the commission. The commission will not grant credit twice for the same subject content or course. Inclusion on the A-List or B-List does not preclude the course approval process as stated elsewhere in the Standards Manual.

(4) Assigned/work--A fire protection personnel or a part-time fire protection employee shall be considered "assigned/working" in a position, any time the individual is receiving compensation and performing the duties that are regulated by the commission and has been permanently appointed, as defined in this section, to the particular discipline.

(5) Assistant fire chief--The officer occupying the first position subordinate to the head of a fire department.

(6) Auxiliary fire fighter--A volunteer fire fighter.

(7) Benefits--Benefits shall include, but are not limited to, inclusion in group insurance plans (such as health, life, and disability) or pension plans, stipends, free water usage, and reimbursed travel expenses (such as meals, mileage, and lodging).

(8) Chief Training Officer--The individual, by whatever title he or she may be called, who coordinates the activities of a certified training facility.

(9) Class hour--Defined as not less than 50 minutes of instruction, also defined as a contact hour; a standard for certification of fire protection personnel.

(10) Code--The official legislation creating the commission.

(11) College credits--Credits earned for studies satisfactorily completed at an institution of higher education accredited by an agency recognized by the U.S. Secretary of Education and including National Fire Academy (NFA) open learning program colleges, or courses recommended for college credit by the American Council on Education (ACE) or delivered through the National Emergency Training Center (both EMI and NFA) programs. A course of study satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide that is primarily related to Fire Service, Emergency Medicine, Emergency Management, or Public Administration is defined as applicable for Fire Science college credit, and is acceptable for higher levels of certification. A criminal justice course related to fire and or arson investigation that is satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide may be used to qualify for Master Arson Investigator certification.

(12) Commission--Texas Commission on Fire Protection.

(13) Commission-recognized training--A curriculum or training program which carries written approval from the commission, or credit hours that appear on an official transcript from an accredited college or university, or any fire service training received from a nationally recognized source, i.e., the National Fire Academy.

(14) Compensation--Compensation is to include wages, salaries, and "per call" payments (for attending drills, meetings or answering emergencies).

(15) Expired--Any certification that has not been renewed on or before the end of the certification period.

(16) Federal fire fighter--A person as defined in Texas Government Code, Chapter 419, §419.084(h).

(17) Fire chief--The head of a fire department.

(18) Fire department--A department of a local government that is staffed by one or more fire protection personnel or part-time fire protection employees.

(19) Fire protection personnel--Any person who is a permanent full-time employee of a fire department or governmental entity and who is appointed duties in one of the following categories/disciplines: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto.

(20) Fire Code Inspection--Also called Fire Safety Inspection as referenced in Texas Government Code, Chapter 419, §419.909. An inspection performed for the purpose of determining and enforcing compliance with an adopted fire code.

(21) Fire suppression duties--Engaging in the controlling or extinguishment of a fire of any type or performing activities which are required for and directly related to the control and extinguishment of fires or standing by on the employer's premises or apparatus or nearby in a state of readiness to perform these duties.

(22) Full-time--An officer or employee is considered full-time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purposes of this definition paid leave will be considered time worked.

(23) Government entity--The local authority having jurisdiction as employer of full-time fire protection personnel in a state agency, incorporated city, village, town or county, education institution or political subdivision.

(24) High school--A school accredited as a high school by the Texas Education Agency or equivalent accreditation agency from another jurisdiction.

(25) Immediately dangerous to life or health (IDLH)--An atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

(26) Incipient stage fire--A fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

(27) Instructor:

(A) Lead Instructor--Oversees the presentation of an entire course and assures that course objectives are met in accordance with the applicable curriculum or course material. The lead instructor should have sufficient experience in presenting all units of the course so as to be capable of last-minute substitution for other instructors.

(B) Instructor (also Unit Instructor for wildland courses)--Responsible for the successful presentation of one or more areas of instruction within a course, and should be experienced in the lesson content they are presenting.

(C) Guest Instructor--An individual who may or may not hold Instructor certification but whose special knowledge, skill, and expertise in a particular subject area may enhance the effectiveness of the training in a course. Guest instructors shall teach under the endorsement of the lead instructor.

(28) Interior structural fire fighting--The physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. (See 29 CFR §1910.155.)

(29) Municipality--Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipal pertains to a municipality as defined in this section.

(30) National Fire Academy semester credit hours--The number of hours credited for attendance of National Fire Academy courses is determined as recommended in the most recent edition of the "National Guide to Educational Credit for Training Programs," American Council on Education (ACE).

(31) National Fire Protection Association (NFPA)--An organization established to provide and advocate consensus codes and standards, research, training, and education for fire protection.

(32) National Wildfire Coordinating Group (NWCG)--An Operational group designed to establish, implement, maintain, and communicate policy, standards, guidelines, and qualifications for wildland fire program management among participating agencies

(33) Non-self-serving affidavit--A sworn document executed by someone other than the individual seeking certification.

(34) Participating volunteer fire fighter--An individual who voluntarily seeks certification and regulation by the commission under the Texas Government Code, Chapter 419, Subchapter D.

(35) Participating volunteer fire service organization--A fire department that voluntarily seeks regulation by the commission under the Texas Government Code, Chapter 419, Subchapter D.

(36) Part-time fire protection employee--An individual who is appointed as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full-time as defined in this section.

(37) Personal alert safety system (PASS)--Devices that are certified as being compliant with NFPA 1982, and that automatically activates an alarm signal (which can also be manually activated) to alert and assist others in locating a fire fighter or emergency services person who is in danger.

(38) Political subdivision--A political subdivision of the State of Texas that includes, but is not limited to the following:

(A) city;

(B) county;

(C) school district;

(D) junior college district;

(E) levee improvement district;

(F) drainage district;

(G) irrigation district;

(H) water improvement district;

(I) water control and improvement district;

(J) water control and preservation district;

(K) freshwater supply district;

(L) navigation district;

(M) conservation and reclamation district;

(N) soil conservation district;

(O) communication district;

(P) public health district;

(Q) river authority;

(R) municipal utility district;

(S) transit authority;

(T) hospital district;

(U) emergency services district;

(V) rural fire prevention district; and

(W) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of the government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(39) Reciprocity for IFSAC seals--Valid documentation of accreditation from the International Fire Service Accreditation Congress used for commission certification may only be used for obtaining an initial certification.

(40) Recognition of training--A document issued by the commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(41) School--Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(42) Structural fire protection personnel--Any person who is a permanent full-time employee of a government entity who engages in fire fighting activities involving structures and may perform other emergency activities typically associated with fire fighting activities such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire fighting.

(43) Trainee--An individual who is participating in a commission approved training program.

(44) Volunteer fire protection personnel--Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(45) Volunteer fire service organization--A volunteer fire department or organization not under mandatory regulation by the commission.

(46) Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i) a commission certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have successfully completed, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or

(iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military, or while a member in a volunteer fire service organization from another jurisdiction, and have, as a minimum, the requirements for an ECA as specified by the DSHS, or its successor agency, or its equivalent; or

(iv) for fire service instructor eligibility only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification, received prior to June 1, 2008 or Instructor I received on or after June 1, 2008 or an equivalent instructor certification from the DSHS or the Texas Commission on Law Enforcement. Documentation of at least three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

(B) For fire service personnel certified as required in subparagraph (A) of this paragraph on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one year.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Tim Rutland
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3813

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CHAPTER 423. FIRE SUPPRESSION

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 423, Fire Suppression, Subchapter A, Minimum Standards for Structure Fire Protection Personnel Certification, §423.3, concerning Minimum Standards for Basic Structure Fire Protection Personnel Certification; and Subchapter B, Minimum Standards for Aircraft Rescue Fire Fighting Personnel, §423.203, concerning Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification. The amendments are adopted without changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8588) and will not be republished.

The amendments are adopted to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission.

The adopted amendments will allow an additional path for individuals to obtain certification from the commission as Basic Structure Fire Protection Personnel and Basic Aircraft Rescue Fire Fighting Personnel.

The Texas Commission on Fire Protection received two comments on the proposed amendments during the 30-day public comment period.

Public Comment: One public commenter stated support for the commission to accept and approve the certification credentials from the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service. The commenter stated that it would allow fire fighters in the State of Texas an additional means to secure certifications through an appropriate means.

Commission Response: The commission agreed with this sentiment.

Public Comment: One public commenter stated support for the acceptance of ProBoard examinations because they are given in much the same way as the Texas Commission on Fire Protection examinations are given. The commenter also stated there is no

reason an individual should have to take both the ProBoard and the Texas Commission on Fire Protection examinations in order to obtain a commission certification.

Commission Response: The commission agreed with this sentiment.

SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.3

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Tim Rutland
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SUBCHAPTER B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

37 TAC §423.203

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §§425.3, 425.5, 425.7

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 425, Fire Service Instructors, §425.3, concerning Minimum Standards for Fire Service Instructor I Certification; §425.5, concerning Minimum Standards for Fire Service Instructor II Certification; and §425.7, concerning Minimum Standards for Fire Service Instructor III Certification. The amendments are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7928) and will not be republished.

The amendments are adopted to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission.

The adopted amendments will allow an additional path for individuals to obtain certification from the commission as Fire Service Instructor I or Fire Service Instructor II.

The Texas Commission on Fire Protection received two comments on the proposed amendments during the 30-day public comment period.

Public Comment: One public commenter stated support for the commission to accept and approve the certification credentials from the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service. The commenter stated that it would allow fire fighters in the State of Texas an additional means to secure certifications through an appropriate means.

Commission Response: The commission agreed with this sentiment.

Public Comment: One public commenter stated support for the acceptance of ProBoard examinations because they are given in much the same way as the Texas Commission on Fire Protection examinations are given. The commenter also stated there is no reason an individual should have to take both the ProBoard and the Texas Commission on Fire Protection examinations in order to obtain a commission certification.

Commission Response: The commission agreed with this sentiment.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 427. TRAINING FACILITY CERTIFICATION
SUBCHAPTER C. TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

37 TAC §427.307

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 427, Training Facility Certification, Subchapter C, Training Programs for On-Site and Distance Training Providers, §427.307, concerning On-Site and Distance Training Provider Staff Requirements. The amendments are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7929) and will not be republished.

The amendments are adopted to delete the definition of a guest instructor in this chapter. The deleted language was added to Chapter 421, §421.5 of commission rules in a previous rule change.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.028, which provides the commission the authority to adopt rules regarding approval of certifying individuals as qualified fire protection personnel instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Tim Rutland
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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.203

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 429, Minimum Standards for Fire Inspector Certification, §429.203, concerning Minimum Standards for Basic Fire Inspector Certification. The amendments are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7930) and will not be republished.

The amendments are adopted to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission. The commission is also adopting a chapter name change. The commission adopts the new chapter name Minimum Standards For Fire Inspector Certification with the deletion of any reference to Subchapter B, Minimum Standards For Fire Inspector Certification.

The adopted amendments will allow an additional path for individuals seeking certification from the commission as a Fire Inspector I, Fire Inspector II and Plan Examiner I.

The Texas Commission on Fire Protection received two comments on the proposed amendments during the 30-day public comment period.

Public Comment: One public commenter stated support for the commission to accept and approve the certification credentials from the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service. The commenter stated that it would allow fire fighters in the State of Texas an additional means to secure certifications through an appropriate means.

Commission Response: The commission agreed with this sentiment.

Public Comment: One public commenter stated support for the acceptance of ProBoard examinations because they are given in much the same way as the Texas Commission on Fire Protection examinations are given. The commenter also stated there is no reason an individual should have to take both the ProBoard and the Texas Commission on Fire Protection examinations in order to obtain a commission certification.

Commission Response: The commission agreed with this sentiment.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 431. FIRE INVESTIGATION

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards for Arson Investigator Certification, §431.1, concerning Minimum Standards for Arson Investigation Personnel; §431.3, concerning Minimum Standards for Basic Arson Investigator Certification; §431.5, concerning Minimum Standards for Intermediate Arson Investigator Certification; and §431.7, concerning Minimum Standards for Advanced Arson Investigator Certification; and Subchapter B, Minimum Standards for Fire Investigator Certification, §431.209, concerning Minimum Standards for Master Fire Investigator Certification. The amendments are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7931) and will not be republished.

The amendments are adopted to refer to the Texas Commission on Law Enforcement Officer Standards and Education by its new name and to allow additional college courses in fire or arson investigation to be used in order to obtain the commission's Master Fire Investigator Certification.

The adopted amendments will allow additional college courses in fire or arson investigation to be used in order to obtain the commission's Master Fire Investigator Certification.

No comments were received from the public regarding the adoption of the amendments.

SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §§431.1, 431.3, 431.5, 431.7

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.209

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400612
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

37 TAC §433.3

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 433, Minimum Standards for Driver/Operator-Pumper, §433.3, concerning Minimum Standards for Driver/Operator-Pumper Certification. The amendments are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7933) and will not be republished.

The amendments are adopted to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission.

The adopted amendments will allow an additional path for individuals seeking certification from the commission as Driver/Operator-Pumper.

The Texas Commission on Fire Protection received two comments on the proposed amendments during the 30-day public comment period.

Public Comment: One public commenter stated support for the commission to accept and approve the certification credentials from the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service. The commenter stated that it would allow fire fighters in the State of Texas an additional means to secure certifications through an appropriate means.

Commission Response: The commission agreed with this sentiment.

Public Comment: One public commenter stated support for the acceptance of ProBoard examinations because they are given in much the same way as the Texas Commission on Fire Protection examinations are given. The commenter also stated there is no reason an individual should have to take both the ProBoard and the Texas Commission on Fire Protection examinations in order to obtain a commission certification.

Commission Response: The commission agreed with this sentiment.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400619
Tim Rutland
Executive Director
Texas Commission on Fire Protection
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Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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CHAPTER 437. FEES

37 TAC §§437.1, 437.3, 437.5, 437.7, 437.15, 437.17

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 437, Fees, §437.1, concerning Purpose and Scope; §437.3, concerning Certification Fees; §437.5, concerning Renewal Fees; §437.7, concerning Standards Manual and Certification Curriculum Manual Fees; §437.15, concerning International Fire Service Accreditation Congress (IFSAC) Seal Fees; and §437.17, concerning Records Review Fees. The agency also adopts a title change to §437.3 to reflect Certification Application Processing Fees. The amendments are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7934) and will not be republished.

The amendments are adopted to inform individuals who apply to take a commission examination for certification or conduct a criminal background check that additional charges (fees) may be charged by service providers other than the commission. The adoptions will also clearly identify which type of fee is being collected by the commission.

The adopted amendments will provide clear and concise rules regarding the identification of any additional fees collected and whom is collecting those fees.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; §419.026, which provides the commission with the authority to set and collect a fee for each certification issued as well as each examination given; and §419.025, which gives the commission the authority to set and collect a fee for a manual of its rules and minimum standards for fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400613
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.1

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 439, Examinations for Certification, Subchapter A, Examinations for On-Site Delivery Training, §439.1, concerning Requirements--General. The amendments are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7936) and will not be republished.

The amendments are adopted to provide clear and concise rules on the administration of examinations by the commission as well as the National Board on Fire Service Professional Qualifications (ProBoard) administered by the Texas A&M Engineering Extension Service. The amendments also define relevant information which must be included on the ProBoard certificate in order for the certificate to be acceptable for use by an individual to obtain commission certification.

The adopted amendments provide a clear and concise set of rules for administering an examination to obtain certification by the commission.

There were no comments received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.035 which provides the commission with the authority to administer certification examinations.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400620
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (the commission) adopts amendments to The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 451, Fire Officer, Subchapter A, Minimum Standards for Fire Officer I, §451.3, concerning Minimum Standards for Fire Officer I Certification; Subchapter B, Minimum Standards for Fire Officer II, §451.203, concerning Minimum Standards for Fire Officer II Certification; Subchapter C, Minimum Standards for Fire Officer III, §451.303, concerning Minimum Standards for Fire Officer III Certification; and Subchapter D, Minimum Standards for Fire Officer IV, §451.403, concerning Minimum Standards for Fire Officer IV Certification. The amendments to §451.403 are adopted with changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7937). The amendments to §§451.3, 451.203, and 451.303 are adopted without changes and will not be republished.

The amendments are adopted to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission. There is also special provision language added for individuals who have previously obtained a ProBoard certificate for Fire Officer III and Fire Officer IV under the National Fire Protection Association Standard identified to apply for the commission's certification in those disciplines.

The adopted amendments will allow an additional path for individuals seeking certification from the commission as Fire Officer I, Fire Officer II, Fire Officer III, and Fire Officer IV.

The Texas Commission on Fire Protection received two comments on the proposed amendments during the 30-day public comment period.

Public Comment: One public commenter stated support for the commission to accept and approve the certification credentials from the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service. The commenter stated that it would allow fire fighters in the State of Texas an additional means to secure certifications through an appropriate means.

Commission Response: The commission agreed with this sentiment.

Public Comment: One public commenter stated support for the acceptance of ProBoard examinations because they are given in much the same way as the Texas Commission on Fire Protection examinations are given. The commenter also stated there is no reason an individual should have to take both the ProBoard and the Texas Commission on Fire Protection examinations in order to obtain a commission certification.

Commission Response: The commission agreed with this sentiment.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.3

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400621
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.203

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400622
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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SUBCHAPTER C. MINIMUM STANDARDS FOR FIRE OFFICER III

37 TAC §451.303

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400623
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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SUBCHAPTER D. MINIMUM STANDARDS FOR FIRE OFFICER IV

37 TAC §451.403

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

§451.403. Minimum Standards for Fire Officer IV Certification.

(a) In order to be certified as a Fire Officer IV an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Officer III certification through the commission; and

(3) document completion of ICS-400: Advanced Incident Command System; and

(4) possess valid documentation as a Fire Officer IV from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(5) complete a commission approved Fire Officer IV program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer IV program must consist of one of the following:

(A) completion of a commission approved Fire Officer IV Curriculum as specified in Chapter 9 of the commission's Certification Curriculum Manual;

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer IV Curriculum; or

(C) successful attainment of a bachelor's degree or higher from a regionally accredited institution in any of the following:

(i) Fire Science/Administration/Management;

(ii) Emergency Management;

(iii) Public Administration;

(iv) Emergency Medicine;

(v) Business Management/Administration;

(vi) Political Science;

(vii) Human Resources Management;

(viii) Public Health;

(ix) Risk Management;

(x) Criminal Justice; or

(xi) a related management/administration/leadership degree.

(6) Special temporary provision: Through February 2014, an individual is eligible to take the commission examination for Fire Officer IV upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 1021, Chapter 7. The documentation of completed training must be a certificate of completion from a nationally recognized training provider. During the one year period, the commission examination shall consist of a written exam. The examination requirements in §451.405(b) of this subchapter (relating to Examination Requirements) must still be met.

(7) Special temporary provision: Through February 2015, an individual is eligible for Fire Officer IV certification upon documentation of the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 edition of the NFPA standard applicable to this discipline.

(8) The application processing fee for the initial examination is waived for individuals in paragraphs (5) and (6) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the commission's Certification Curriculum Manual are met.

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 February 10, 2014.

TRD-201400624
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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CHAPTER 453. HAZARDOUS MATERIALS

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 453, Hazardous Materials,

Subchapter A, Minimum Standards for Hazardous Materials Technician, §453.3, concerning Minimum Standards for Hazardous Materials Technician Certification; and Subchapter B, Minimum Standards for Hazardous Materials Incident Commander, §453.203, concerning Minimum Standards for Hazardous Materials Incident Commander. The amendments are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7941) and will not be republished.

The amendments are adopted to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission. There is also special provision language added for individuals who have previously obtained a ProBoard certificate for Hazardous Materials Incident Commander under the National Fire Protection Association Standard identified to apply for the commission's certification in that discipline.

The adopted amendments will allow an additional path for individuals seeking certification from the commission as Hazardous Materials Technicians and Hazardous Materials Incident Commanders.

The Texas Commission on Fire Protection received two comments on the proposed amendments during the 30-day public comment period.

Public Comment: One public commenter stated support for the commission to accept and approve the certification credentials from the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service. The commenter stated that it would allow fire fighters in the State of Texas an additional means to secure certifications through an appropriate means.

Commission Response: The commission agreed with this sentiment.

Public Comment: One public commenter stated support for the acceptance of ProBoard examinations because they are given in much the same way as the Texas Commission on Fire Protection examinations are given. The commenter also stated there is no reason an individual should have to take both the ProBoard and the Texas Commission on Fire Protection examinations in order to obtain a commission certification.

Commission Response: The commission agreed with this sentiment.

SUBCHAPTER A. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §453.3

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400625
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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SUBCHAPTER B. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS INCIDENT COMMANDER

37 TAC §453.203

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400626
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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CHAPTER 457. MINIMUM STANDARDS FOR INCIDENT SAFETY OFFICER CERTIFICATION

37 TAC §457.3

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 457, Minimum Standards for Incident Safety Officer Certification, §457.3, concerning Minimum Standards for Incident Safety Officer Certification. The amendments are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7942) and will not be republished.

The amendments are adopted to delete obsolete language and correct other minor grammatical errors.

The adopted amendments will provide clear and concise rules regarding Incident Safety Officer Certification.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission with the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission with the

authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2014.

TRD-201400614
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 936-3813

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD
SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING

40 TAC §175.2

The Veterans Land Board of the State of Texas (the "Board") adopts an amendment to §175.2, relating to Loan Eligibility Requirements, without changes to the proposed text published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8590). The section will not be republished.

Background

This amendment provides for Veterans Land Board determination of a service connected death and establishes residency for individuals assigned to a military installation in Texas, who are killed in Texas as the result of a terrorist attack as defined by the Veterans Land Board.

Comments

There were no comments received during the 30-day comment period.

Legal Authority

The amendment is adopted pursuant to the provisions of Texas Natural Resources Code, Chapter 161, §§161.001, 161.061, 161.063, and 161.319, which authorize the Board to adopt rules that it considers necessary and advisable for the Land Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2014.

TRD-201400459
Larry Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Texas Veterans Land Board
Effective date: February 24, 2014
Proposal publication date: November 29, 2013
For further information, please call: (512) 475-1859

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §700.332 and an amendment to §700.1013 without changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8136). The justification for the sections is to implement Senate Bill (SB) 430, which was passed in the 83rd Legislature, Regular Session, as well as to clarify the existing criteria for authorizing child-care services. SB 430 requires DFPS to implement a process to verify that each foster parent and kinship caregiver (also referred to as "relative or other designated caregiver") seeking monetary assistance for day care has attempted to find day care services through community services, such as Head Start or pre-K. SB 430 stemmed from a Legislative Budget Board (LBB) Government Effectiveness and Efficiency Report recommendation to contain DFPS day care costs. Specifically, the LBB recommended that the legislature amend statute and require DFPS to standardize the process of verifying that caregivers eligible for foster and kinship day care cannot be served through any other community resources. SB 430 further instructed that DFPS rules specify the documentation requirements in order for the foster parent and kinship caregiver to comply with the verification requirement. The bill prohibits DFPS from offering monetary assistance for day care unless the caregiver submits the required documentation or DFPS determines that a waiver of the requirement is necessary to make an emergency placement in the best interest of the child. The rules implement the required verification process and specify the criteria for granting a waiver of a verification requirement.

The adopted rules also place existing policy in rules with respect to (1) the eligibility requirements for offering day care services to foster parents, and (2) the ability of the Assistant Commissioner for Child Protective Services to grant a good-cause waiver to the current eligibility requirements that are unrelated to SB 430.

A summary of the changes follows:

New §700.332: (1) defines relevant terms; (2) provides that for a foster parent to be eligible for day care, the following criteria must be met: (a) each foster parent must work outside the home 40 hours per week or more; (b) the foster parent must be a resident of Texas; and (3) the foster parent must provide written verification of the foster parent's attempts to secure community resources; (4) requires the creation of a priority system in policy; (5) authorizes DFPS to waive the requirement of written verification of attempts to secure community resources if the requirement would interfere with an emergency placement in the child's best interest; and (6) provides for a good cause waiver

by the Assistant Commissioner for Child Protective Services of requirements other than the verification process.

The amendment to §700.1013: (1) defines relevant terms; (2) amends current eligibility criteria to add the requirement that the caregiver provide written verification of the caregiver's attempts to secure community resources; (3) authorizes DFPS to waive the requirement of written verification of attempts to secure community resources if the requirement would interfere with an emergency placement in the child's best interest; and (4) provides for a good cause waiver by the Assistant Commissioner for Child Protective Services of current requirements other than the verification process.

The sections will function by ensuring that more foster parents and kinship caregivers may avail themselves of community day care resources and DFPS day care costs could experience a concomitant reduction.

No comments were received regarding adoption of the sections.

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.332

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements Texas Family Code §264.124 and §264.755(d) and (e).

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 February 4, 2014.

TRD-201400503
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2014
Proposal publication date: November 15, 2013
For further information, please call: (512) 438-3437

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SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

40 TAC §700.1013

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code §264.124 and §264.755(d) and (e).

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 February 4, 2014.

TRD-201400505
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2014
Proposal publication date: November 15, 2013
For further information, please call: (512) 438-3437

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SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §700.507; and new §§700.507, 700.551, 700.553, 700.555, 700.557, 700.559, 700.561, 700.563, 700.565, and 700.567 without changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8138).

The justification for the sections is to implement Senate Bill (SB) 423, enacted in the 83rd Regular Session of the Texas legislature. SB 423 amended Texas Family Code (TFC) §261.3015 to authorize DFPS to conduct an alternative response to an investigation that otherwise meets the criteria for a CPS investigation. An alternative response is a protective intervention that involves an assessment of the family, including a safety assessment, and the provision of agreed-upon services and supports. The key differences from a traditional investigation are: (1) There will not be a formal finding about whether abuse/neglect occurred and, thus, no designation of a perpetrator because such administrative findings are not necessary to keep the child safe in these cases; (2) As there is no designated perpetrator, there will not be anyone added to the central registry as a result of the intervention; and (3) Family engagement will be undertaken in a less adversarial, more collaborative approach.

There are many anticipated benefits from implementing the alternative response initiative. Studies from states that have implemented an alternative response process have shown that a child's safety is not compromised and found that families on the alternative track felt more engaged and involved with decisions made about their children. Caseworkers have reported that families on the alternative track were more cooperative and willing to accept services.

Studies also indicate that having an alternative response system generally contains costs. Since there is no formal finding of abuse or neglect or designation of a perpetrator in a case following the alternative track, costly and time consuming administrative reviews and hearings are eliminated from these cases. Moreover, studies have shown that states with an alternative response system reduce costs over time because families following the alternative track are less likely to have a subsequent report or investigation.

Recognizing the benefits of alternative response, in 2011, Congress amended the Child Abuse Prevention and Treatment Act (CAPTA), mandating that all states receiving CAPTA funding have some type of alternative response process (referred to as "differential response" in CAPTA) in place by September 1, 2011.

DFPS currently meets the CAPTA requirements through its investigative screening process, which was originally implemented in 2006 pursuant to TFC §261.3015. Using the authority under the Texas Family Code to create a "flexible response system" for investigations, there are currently two different tracks a report can follow after it is referred to CPS from Statewide Intake. Reports involving serious abuse allegations or young alleged victims are immediately referred for a traditional investigation, while reports requiring a less immediate response are referred for a formal screening. With a formal screening, trained screeners do preliminary information gathering on a report. Based on the information they gather, if the report does not meet the criteria to warrant an investigation, the screener refers the family to any available and needed community resources and then closes the case without an investigation. Otherwise, the screener refers the case to be assigned for a traditional investigation.

The alternative response initiative implemented by these rules will work within the already established formal screening process. Serious abuse cases that do not meet the criteria for an initial formal screening will continue to be referred for a traditional investigation that follows all of the current policies and procedures.

For cases that are eligible to be screened, screeners will continue to follow the same standards and procedures in closing cases that do not need further action. But when a screener determines that further action is needed, they will now have two options. Cases meeting specified criteria will be referred to an alternative response, with all other cases referred to a traditional investigation.

Like cases on the investigative track, those referred to an alternative response will have a home visit, an assessment of the family including a safety assessment and, if appropriate, service planning and some form of ongoing CPS involvement for a limited period of time. However, the form of the assessment, service planning and CPS involvement may be different from a traditional investigation and there will not be any formal abuse or neglect finding or designation of a perpetrator.

Under the alternative response model, a case in the alternative response track may be reassigned to the investigation track if a caseworker determines that the case is more serious than originally identified, there is an imminent safety threat to the child, or the case no longer meets the alternative response criteria for some other reason. There will be a process to refer the case for an investigation after taking any protective actions that are immediately necessary. Under the currently contemplated model, however, once a case is assigned for an investigation it will stay on that track.

A summary of the changes follows:

Section 700.507 is repealed and adopted as new. The new section sets forth all the actions DFPS is authorized to take in response to a report that initially appears to meet the criteria for an investigation by CPS, which are: (1) Closure of the intake report without further action by CPS if staff determine after contacting a professional or other credible source that the child's safety can be assured without an investigation or alternative response; (2) A preliminary investigation and administrative closure of the case when CPS determines the allegations have already been investigated, that it lacks jurisdiction to investigate, or initial, credible contacts refute the allegations of abuse or neglect or risk thereof and the children in the family appear to be safe from abuse and neglect and risk thereof in the foreseeable future; (3) An abbreviated investigation with a disposition of "ruled out" if CPS staff determine that no abuse or neglect has occurred and that is unlikely any abuse or neglect will occur in the foreseeable future; (4) A thorough investigation resulting in a case disposition and role designation for each alleged perpetrator and alleged victim; or (5) An alternative response as provided in new Division 2 of Subchapter E of this chapter (relating to Alternative Response). The new section also clarifies the circumstances under which DFPS is not required to interview a person who is otherwise required to be interviewed to complete a thorough investigation.

New §700.551 provides a general overview and definition of an alternative response.

New §700.553: (1) Describes the types of cases that may be handled as an alternative response; (2) Permits DFPS to conduct an alternative response on certain cases that are within CPS's jurisdiction that do not involve any alleged victims under the age of 6; are not assigned a Priority I; and for which there is not an open investigation or conservatorship case; (3) Excludes cases from being conducted as an alternative response if any of the following factors are present: (a) current allegation or risk of sexual abuse; (b) current allegations of an abuse or neglect-related child fatality or a household member who is a designated perpetrator of physical abuse that led to a pervious child fatality; (c) a risk of serious physical injury or immediate serious harm to a child who is the subject of the alternative response; (d) the case is a facility investigation, including a school investigation; or (e) the alleged perpetrator is a foster parent or prospective adoptive parent; and (4) Authorizes DFPS to exclude an alternative response case on the basis of the identified factors at any point at which DFPS gains the information necessary to determine that the case is excluded.

New §700.555 grants DFPS the sole discretion to transfer a case initially assigned for an alternative response to be conducted as an investigation; and identifies factors DFPS considers in determining when to make such a transfer.

New §700.557 clarifies that unless otherwise provided or clearly indicated by context, an alternative response is governed exclusively by the provisions in TFC §261.3015 and Division 2 of Subchapter E of this chapter (relating to Alternative Response).

New §700.559 sets out the basic components of an alternative response, which are: (1) assessment of the family, including a safety assessment; and (2) the provision of services and supports in collaboration with the family.

New §700.561: (1) Clarifies that DFPS staff conducting an alternative response may take any necessary protective action and may gather information from any person in like manner and to the same extent authorized for a case that is handled as an investigation; (2) Provides that information gathering should generally be undertaken in collaboration with families; (3) Allows DFPS staff conducting an alternative response to take necessary protective actions prior to or after initiating a transfer to an investigation; and (4) Specifies that DFPS is not required to involve an absent parent when conducting an alternative response.

New §700.563 requires DFPS to maintain a written record of an alternative response.

New §700.565 specifies that DFPS maintains and withholds or releases confidential alternative response records as it does case records generated in an investigation, but that alternative response records will not be released in response to a request for information received pursuant to TFC §261.308(e).

New §700.567 specifies the actions taken by DFPS upon closure of an alternative response, which are: written notification of case completion and, if appropriate and in consultation with the family, referral for additional services from Family Based Safety Services necessary to ensure child safety.

The sections will function by ensuring that child safety will not be compromised; families will have a tailored response to less serious allegations of abuse and neglect; some caseworkers may have increased job satisfaction from a non-adversarial program to assess and assist families; and there may be an increase in receptivity of community partners to CPS because it can offer families a protective intervention that does not result in a case disposition and in which families may be more motivated to engage in services.

The rules were presented to the DFPS council at their meeting on October 18, 2013. At the time of the meeting, the Texas Council on Family Violence (TCFV), a statewide coalition of family violence providers, commented about the connection between domestic violence and child safety, which both TCFV and DFPS have recognized. TCFV voiced support for systems changes DFPS has made in its handling of domestic violence cases, including Alternative Response, and encouraged DFPS to continue its collaboration with TCFV and the greater domestic violence community.

During the public comment period, DFPS received comments from the Texas Council on Family Violence. The written comments echoed the public testimony from the Council meeting on October 18, 2013, and made further comments about individual rule provisions. DFPS agrees with the comments in part, disagrees with the comments in part, and is adopting the rules without change to the rules as proposed on November 15, 2013. A summary of the comments and DFPS's responses follows:

Comments concerning §700.507(b)(1):

(1) TCFV voiced concern that because DFPS's screening process for less serious cases excludes cases in which there is an alleged victim under six years old, and alternative response is available only to cases eligible for screening at this time, DFPS may be barring families that could benefit from an alternative response, especially families for whom the Department's main concern is the exposure of children to domestic violence. Further, TCFV noted that the National Resource Center for Child Protective Services confirmed that CAPTA does not limit alternative response to alleged victims over six years old.

Response: The screening process and criteria which were clarified in this subsection were put into place following Senate Bill 6, enacted in the 79th Regular Session of the Texas Legislature. DFPS does not dispute that alternative response may benefit families in which there is an alleged victim under the age of six. However, these are the screening criteria that have been in place for several years and they are merely being restated in this rule. As to the relationship between the availability of alternative response and DFPS's current screening criteria, see the discussion under §700.553.

(2) TCFV also noted that this rule may lead to confusion in practice because it is unclear whether this will exclude any family with children under the age of six years old or only if that child is the target of the alleged abuse.

Response: DFPS does not agree with TCFV that the screening criteria, which has been utilized by DFPS since 2006, is confusing. The exception is based on the age of the alleged victim(s), not other children in the home for whom there are no allegations of abuse or neglect. DFPS is adopting this paragraph without change.

Comment concerning §700.507(b)(3):

TCFV indicated it is concerned that the disproportionate presence of law enforcement and lack of services in some communities may result in families in those communities experiencing a greater incidence of involvement with law enforcement. TCFV recommended that the Department use caution in policy or procedure when operationalizing this method of screening out families and take care not to exclude across the board cases involving referrals/reports from law enforcement.

Response: DFPS appreciates the caution from TCFV and will give careful consideration to it in the development of policy and procedure. DFPS also welcomes collaboration with TCFV on this issue.

Comment concerning §700.507(d)(3) and §700.507(e)(2)(E):

Both subsections refer to a caseworker's assessment of a parent's protective capacity in relation to closing an abbreviated or thorough investigation. TCFV formally offered to provide feedback, support and technical assistance to DFPS in operationalizing and defining protective capacity in cases involving domestic violence.

Response: DFPS is committed to working with TCFV on this issue.

Comments concerning §700.553:

(1) TCFV reiterated its concern about excluding cases from alternative response that are not currently eligible for screening in DFPS's system because there is an alleged victim under the age of six.

Response: DFPS does not agree with the TCFV recommendation at this time. Based on the technical assistance DFPS received from other states as well as national experts, in addition to current funding and systems limitations, DFPS concluded that the initial rollout of alternative response should utilize the screening criteria that have been in place since 2006. This will allow the accompanying cultural shifts and process changes to occur on a modest scale initially. However, as DFPS gains more experience with implementation of Alternative Response, consideration will be given to expanding the age range for screening at a future date.

(2) TCFV also noted that cases involving a risk of serious physical injury or immediate serious harm to a child will be excluded from alternative response, and offered to provide support on consultation on defining risk when there is domestic violence in the home.

Response: DFPS is committed to working with TCFV on this issue.

(3) TCFV also echoed its earlier comment seeking clarity for whether cases with any child in the home under six are excluded from screening, or only those in which the alleged victim is under age six.

Response: As noted in the response to TCFV's comment on §700.507, the exclusion from eligibility for screening is based on the age of alleged victims, not other children in the home who are not alleged victims.

Comments concerning §700.561:

(1) TCFV requested clarification regarding whether an alternative response in which a caseworker must take protective action would be conducted as an investigation; TCFV further sought DFPS's legal authority for alternative response caseworkers to take any protective action authorized for investigative caseworkers.

Response: Whether a case will be transferred and conducted as an investigation will depend on the circumstances of the individual case. If a removal becomes necessary, for example, the case will be conducted as an investigation. If the protective action is part of safety plan and the risk to the child remains controlled, the protective action may take place as a part of the alternative response. However, to ensure child safety is not compromised in cases handled through alternative response, an alternative response caseworker may take any necessary action that an investigative caseworker may take for the protection of the child, including an emergency removal when circumstances warrant this action.

The legal authority for protective actions by alternative response caseworkers is found in Chapter 261 of the Texas Family Code (TFC), *obligating* DFPS to conduct a prompt and thorough investigation of an allegation of abuse or neglect of a child by a person responsible for the child's care, custody, or welfare and *permitting* DFPS to conduct an alternative response in an appropriate case. TFC §261.3015(d) explicitly provides that the classification of a case may be changed as warranted by the circumstances.

(2) TCFV also suggested that the portion of the rule exempting DFPS staff from the requirement of notifying a parent who does not reside in the home of a family involved in an alternative response should be modified. Specifically, TCFV proposed that in cases involving family violence against an adult non-offending parent by a parent no longer residing in the home, the Department should maintain the option of holding that parent outside the home accountable for any subsequent violence and transferring that parent to an investigation track while keeping the non-offending parent in an alternative response.

Response: DFPS cannot simultaneously conduct an investigation on one parent and an alternative response on the other with respect to the same children and allegations. While cases that involve domestic violence can be conducted as an alternative response in many instances, when child safety cannot be ensured without adversarial legal action against one parent, an investigation will be conducted in order to make a determination of abuse or neglect by that parent.

Comment concerning §700.565:

TCFV recommended that DFPS not use prior involvement in the alternative response program as an across the board risk factor if subsequent reports come in to the Department, in order to maintain the non-adversarial and supportive goals of the alternative response approach.

Response: DFPS agrees with this comment. Prior alternative response cases are not an automatic exclusion from future alternative response when the circumstances indicate that alternative response would still be appropriate. All determinations about handling of subsequent referrals will be based on the facts of the individual case and the relevant history.

Comment concerning §700.567:

TCFV requested clarification on how DFPS will determine that an alternative response has been completed and how success will be measured.

Response: An alternative response case will typically be closed when DFPS, in consultation with the family, has determined that all children in the home are safe and risk factors are controlled. In some cases, an alternative response will end when the case is transferred to either the traditional investigative track or the Family Based Safety Services track. As part of the implementation of alternative response, DFPS will develop measures to ensure that child safety is not compromised by alternative response and that families do not experience a greater rate of recidivism with the child welfare system.

DIVISION 1. INVESTIGATIONS

40 TAC §700.507

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Texas Family Code §261.3015 and 42 U.S.C. §5016a(b)(2)(B)(v).

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 February 6, 2014.

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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40 TAC §700.507

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements Texas Family Code §261.3015 and 42 U.S.C. §5016a(b)(2)(B)(v).

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DIVISION 2. ALTERNATIVE RESPONSE

40 TAC §§700.551, 700.553, 700.555, 700.557, 700.559, 700.561, 700.563, 700.565, 700.567

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Texas Family Code §261.3015 and 42 U.S.C. §5016a(b)(2)(B)(v).

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 J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS

DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

40 TAC §700.1005

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.1005 without changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8143). The justification for the amendment is to implement changes made to the Texas Family Code §264.755(b) by Senate Bill (SB) 502, 83rd Legislature, Regular Session, 2013. Since March 2006, the Relative and Other Designated Caregiver Assistance Program, established by the 79th Legislature, SB 6, has sought to ensure the availability of financial support for kinship placements that may not otherwise be sustained due to the financial strain of providing care for a kin child. Over the past 10 years, Texas has more than doubled the percentage of children and youth placed in kinship care and financial payments to kinship caregivers.

The Relative and Other Designated Caregiver Assistance Program provides two types of cash assistance to kinship caregivers: one-time integration payments and annual reimbursement payments. Both require the kinship caregiver's income to be at or below 300% of the federal poverty limit. This rule makes changes to the one-time integration payment. The annual reimbursement payment remains the same. Currently, unverified kinship caregivers may qualify for an integration payment of *up to* $1,000 per sibling group. The integration payment is provided to kinship caregivers who are caring for either a single child or a sibling group consisting of two or more children.

With the passage of SB 502, the integration payment for the initial placement of a sibling group will increase from a cap of $1,000 per sibling group to *at least* $1,000 for the sibling group, but may not exceed $1,000 for each child in the group. The amendment to §700.1005 will provide for a payment of $1,000 for the first child placed in an eligible kinship home, and an additional payment in an amount to be determined by DFPS for each additional child placed in the same kinship home during the same foster care episode. Based on appropriations and current projections for the fiscal biennium that began September 1, 2013, DFPS has determined that the amount of the additional payment for each additional child placed in the home will be $495 per child, effective September 1, 2013.

The amendment will function by improving financial assistance and placement stability by providing more equitable financial support proportionate to the size of the placement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code §264.755(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 732. CONTRACTED SERVICES

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§732.105, 732.111, and 732.202; and the repeal of §§732.107, 732.113, 732.115, 732.203 - 732.213, and 732.215 - 732.229 without changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8144). Effective September 1, 2013, DFPS Procurement functions transferred to the Procurement and Contracting Services (PCS) Division of HHSC. Since DFPS will no longer conduct purchases, DFPS is revising its Procurement and Contracting rules to reflect this change in function. All DFPS rules in this chapter focusing exclusively on purchasing and acquisitions are repealed and replaced by rules that reference the appropriate HHSC Procurement rules. In addition, technical changes are made to §732.111 to correct a legal reference in that rule.

The amendment to §732.105 deletes all language related to purchases conducted by DFPS.

The amendment to §732.111 corrects the reference to the General Services Commission HUB Rules, which no longer exist, and replaces it with the correct reference to the Texas Comptroller of Public Accounts HUB Rules.

The amendment to §732.202 deletes the portions of the rule that reference DFPS conducting procurements and adds language that clarifies that all DFPS purchases are conducted by HHSC.

Sections 732.107, 732.113, 732.115, 732.203 - 732.213, and 732.215 - 732.229 are repealed because the rules reference DFPS conducting procurements and emergency procurements.

The sections will function by ensuring that the rules reflect current procedures.

No comments were received regarding adoption of the sections.

SUBCHAPTER A. GENERAL PROCEDURES

40 TAC §732.105, §732.111

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Human Resources Code §40.058, which grants DFPS the authority to enter into contracts, and Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

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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40 TAC §§732.107, 732.113, 732.115

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

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 L. CONTRACT ADMINISTRATION

40 TAC §732.202

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

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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40 TAC §§732.203 - 732.213, 732.215 - 732.229

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS
SUBCHAPTER C. RECORD KEEPING
DIVISION 4. PERSONNEL RECORDS

40 TAC §744.901

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §744.901 with changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8146). Senate Bill (SB) 939, 83rd Legislature, Regular Session, added Human Resources Code (HRC) §42.0426 (a-1), which requires employees of school-age and before or after-school programs to sign a statement verifying their attendance at training during orientation in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the operation maintain the statement in the employee's personnel record. The amendment to §744.901 adds paragraph (10) requiring that an employee's personnel record include a statement signed and dated by the employee verifying the date the employee attended training that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these, as required in §744.1303 of this title (relating to What should orientation to my operation include?).

The amendment will function by ensuring that Child Care Licensing will be able to better monitor the requirement that employees at school-age programs and before or after-school programs have had the required training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation.

No comments were received regarding adoption of §744.901. However, DFPS is adopting the rule with a change. A comment was received on a similar rule proposal in Chapter 746, Minimum Standards for Child-Care Centers, which indicated that the commenter mistakenly believed that the signed statement is required for all annual trainings. In that chapter, DFPS is adding additional language specifying that the signed statement is only required for training required to be completed during orientation. That same clarification is being made to §744.901.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042(a) and §42.0426(a-1).

§744.901. What information must I maintain in my personnel records?

You must have the following records at the operation and available for review during your hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

(1) Documentation showing the dates of the first and last day on the job;

(2) Documentation showing how the employee meets the minimum age and education qualifications, if applicable;

(3) A copy of a health card or physician's statement verifying the employee is free of active tuberculosis, if required by the regional Department of State Health Services TB program or local health authority;

(4) A notarized Licensing *Affidavit for Applicants for Employment* form as specified in Human Resources Code, §42.059;

(5) A record of training hours;

(6) A statement signed and dated by the employee showing he has received a copy of the operation's:

(A) Operational policies; and

(B) Personnel policies;

(7) Proof of request for DFPS background checks;

(8) A copy of a photo identification;

(9) A copy of a current driver's license for each person who transports a child in care; and

(10) A statement signed and dated by the employee verifying the date the employee attended training during orientation that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these as outlined in §744.1303 of this title (relating to What should orientation to my operation include?).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 745. LICENSING

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §745.615 and §745.630; amendments to §§745.115, 745.129, 745.601, 745.625, 745.651, 745.686, 745.697, 745.8481, 745.8485, 745.8487, 745.8491, 745.8493, 745.8711, 745.8993, 745.9037, 745.9071, and 745.9093; and new §§745.603, 745.615, 745.616, 745.630, 745.8495, 745.8713, 745.8715, and 745.8934 without changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8147). The justification for the repeals, amendments, and new sections is to implement Senate Bill (SB) 330, SB 353, SB 427, House Bill (HB) 1648, and HB 2725, which were enacted by the 83rd Legislature, Regular Session.

SB 330 amended the Texas Family Code (TFC) by adding §107.05145, which enables a social study evaluator to obtain from DFPS a complete, unredacted copy of any investigative record regarding abuse or neglect that relates to any person residing in the residence subject to the social study.

SB 353 amended Human Resources Code (HRC) §42.041(b)(12) to create an exemption for certain emergency shelters that: (1) do not otherwise operate as a child-care facility that must have a license from DFPS; (2) provide shelter or care to a minor and the minor's children, if any, pursuant to TFC §32.201; and (3) either contract with a state or federal agency or are a family violence center that meets the requirements to obtain a contract with HHSC as specified in HRC §51.005(b)(3).

SB 427 amended the HRC by adding §42.041(b)(23), which creates an exemption for certain emergency shelters that: (1) do not otherwise operate as a child-care facility that must have a license from DFPS; (2) provide emergency shelter and care for up to 15 days to alleged victims of human trafficking (as defined under Penal Code §20A.02) who are between the ages of 13 and 17; (3) are operated by a nonprofit organization; and (4) are located in a municipality with a population of at least 600,000 that is in a county on an international border, and are either: (A) licensed by, or operate under an agreement with, a state or federal agency to provide shelter and care to children; or (B) a family violence shelter that meets the requirements to obtain a contract with HHSC as specified in HRC §51.005(b)(3).

SB 353 and SB 427 amended HRC §42.041(b)(13) to correct the name of a state agency from "Texas Youth Commission" to "Texas Juvenile Justice Department."

SB 427 amended HRC §42.056 by adding Federal Bureau of Investigation (FBI) fingerprint check requirements for the following persons affiliated with a child-placing agency, independent foster home, or general residential operation unless a valid FBI check was previously obtained: (1) any prospective foster or adoptive parent regardless of whether the child-placing agency accepts placement of children in the conservatorship of DFPS; (2) a current foster parent; (3) the director, owner, and operator; (4) an employee; (5) a prospective employee; and (6) any person, other than a client in care, who is aged 14 or older who: (A) is counted in the child/caregiver ratio; (B) has unsupervised access to children in care; or (C) resides in a residential operation, foster or adoptive home, or prospective foster or adoptive home.

SB 427 amended HRC §42.078(a) and (a-1) and added (a-2) to: (1) permit DFPS to impose a monetary penalty against any type of operation (other than a small employer-based child care operation or a temporary shelter program) or a controlling person; (2) clarify that a nonmonetary penalty must be imposed before a monetary penalty unless the violation is listed in subsection (a-2); and (3) permit DFPS to impose a monetary penalty before imposing a non-monetary penalty in accordance with subsection

(a-2) for the following violations: failing to timely submit background check requests on two or more occasions; failing to submit a background check request before the 30th day after being notified by DFPS that the background check request is overdue; allowing a person to be present at an operation when the results of the background check have not been received (except in certain cases where there is a staff shortage); knowingly allowing a person to be present at an operation when the background check results have been received and those results preclude the person's presence; and violating a condition or restriction that was placed on the person's presence at the operation as part of a pending or approved risk evaluation.

SB 427 amended HRC §43.004 and §43.009 by adding FBI fingerprint check requirements for licensed administrators and applicants for an administrator's license unless a valid FBI check was previously obtained.

SB 427 amended HRC §43.010 by adding that DFPS may deny, revoke, suspend, or refuse to renew a license for an applicant for an administrator's license or a currently licensed administrator who has engaged in conduct that makes the person ineligible for: (1) a permit under HRC §42.072; or (2) employment as a controlling person or services in that capacity under §42.062.

HB 1648 added HRC §42.004, which makes photographs, audio or video recordings, depictions, or documentations of a child made by Child Care Licensing in the course of an inspection or investigation confidential, and allows Child Care Licensing to release these items only as specified in rule or other state or federal law.

HB 2725 amended Government Code §522.138 to define a "victims of trafficking shelter center" and expand existing confidentiality requirements for family violence shelters and sexual assault programs to victims of trafficking shelter centers that are licensed as general residential operations, independent foster homes, or child-placing agencies.

DFPS is also adopting changes to comply with federal background check requirements, clarify existing background check requirements, provide more flexibility to operations requesting risk evaluations, and reduce risk to children by thoroughly vetting a person who is on parole before allowing him or her to be present at an operation.

A summary of the changes follows:

The amendment to §745.115 implements HRC §42.041(b)(13) by changing the title of Texas Youth Commission to Texas Juvenile Justice Department.

The amendment to §745.129 implements HRC §42.041(b)(12) and (b)(23) by amending paragraph (4) and adding paragraph (7) to specify the circumstances under which an emergency shelter is exempt from licensure when the shelter provides shelter and care to a minor and the minor's children, if any, or a victim of human trafficking as defined in Penal Code §20A.02.

The amendment to §745.601 adds definitions for the terms "initial background check" and "renewal background check", which are used in Subchapter F of this chapter, to clarify requirements relating to background checks.

New §745.603 clarifies existing background check requirements by defining who DFPS considers to be present at an operation while children are in care.

Section 745.615 is repealed and adopted as new. The new section implements HRC §42.042 and §42.056 and makes the following changes from the repealed version of §745.615: (1) deletes references to background checks for an administrator's license, which are addressed in rule amendments in Subchapter N of this chapter; (2) deletes a subsection that only required an FBI fingerprint check prior to the placement of a child in DFPS conservatorship in some cases; (3) requires child-placing agencies, independent foster homes, and general residential operations to request a FBI fingerprint check for all persons listed in subsection (a)(1)-(6); and (4) adds needed clarification to the background check requirements.

New §745.616 is a transitional rule that authorizes a phased-in timeframe for implementation of new fingerprint-based criminal history checks that must be submitted for certain persons by general residential operations, child-placing agencies, and independent foster homes as a result of changes to law enacted by the 83rd Legislature in SB 427. This rule establishes deadlines for the submission of the newly required fingerprint-based checks during Fiscal Year 2014, and provides that technical assistance will be offered to providers for a limited period of time to assist them with implementation of this rule, after which time providers will be cited for non-compliance for any violation of the new background check requirements. Licensing has already sent notification to providers of this phased-in implementation schedule so that they will have as much advance notice of the new fingerprint-based checks at possible.

The amendment to §745.625 changes the title and rule to clarify when an initial or renewal background check is due in accordance with HRC §42.056. In order to provide greater specificity regarding the deadline for submission of a renewal background check for a person, the language in the repealed version of the rule requiring that renewal background checks be resubmitted every 24 months has been modified to require that an operation submit a renewal background check for a person no later than two years from the date that same operation submitted their last background check for that person.

Section 745.630 is repealed and adopted as new. The new section changes the title and clarifies state law with respect to how long a previously conducted FBI fingerprint-based criminal history check remains valid, as well as the circumstances under which a new FBI fingerprint check may be waived if one was previously performed by DFPS or is accessible to DFPS through the DPS clearinghouse. Subsection (c) of this section provides a grandfathering provision for anyone whose fingerprint-based check was previously waived by DFPS in accordance with the repealed version of §745.630, unless and until certain circumstances occur that will require any person subject to FBI checks to submit new fingerprints and undergo a new check.

The amendment to §745.651 adds that a person must have an approved risk evaluation prior to being present at an operation if the person: (1) was convicted of a felony not enumerated in the criminal convictions charts of the DFPS website; and (2) is currently on parole for the offense. The purpose of the rule changes is to reduce risk to children by thoroughly vetting a person who is on parole before allowing him or her to be present at an operation.

The amendment to §745.686 gives operations additional time to submit a risk evaluation packet and requires providers to submit a completed packet within 21 days of being notified that a risk evaluation is required.

The amendment to §745.697: (1) states a person with an approved risk evaluation at an operation does not need a new risk

evaluation if the person's role as identified in the risk evaluation letter did not change at that operation, and the circumstances of that person's contact with children at that operation are the same as when the risk evaluation was approved; and (2) states that if any of the criteria for making an approved risk evaluation permanent is not met then: (A) the operation must request a new risk evaluation and all of the time frames and processes noted in Subchapter F of this chapter (relating to Background Checks) would apply; (B) the Centralized Background Check Unit (CBCU) will determine whether or not the person may work or be present at the operation; and (C) the conditions or restrictions noted on the previously approved risk evaluation will remain in effect unless or until the CBCU explicitly amends them.

The amendment to §745.8481: (1) clarifies that the rule is applicable to all information in the operation's monitoring file, not only inspection results; and (2) adds a cross-reference to §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) in order to more clearly specify what information from the operation's monitoring file is confidential and may not be released.

The amendment to §745.8485: (1) clarifies that completed investigations that do not involve abuse and neglect become part of the operation's monitoring file and the confidentiality limits of those records are specified in §745.8481 of this title (relating to Is information in my operation's monitoring file confidential?); and (2) deletes duplicative language in subsection (c) regarding what information may not be released to the public, as that information is also specified in §745.8493 of this title.

The amendment to §745.8487 states that DFPS: (1) must remove the information listed in the rule before releasing it to the public; and (2) may not release to the public information that is confidential under §745.8493 of this title.

The amendment to §745.8491: (1) changes the title and rule to clarify that the rule describes which persons can obtain information in the portions of the abuse or neglect investigation file that is both confidential and not releasable to the public, yet not prohibited from being released to anyone as described in §745.8493 of this title and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?); and (2) implements TFC §107.05145 by specifying that a social study evaluator has the authority to obtain from DFPS a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study.

The amendment to §745.8493: (1) changes the title and rule to expand the rule's applicability to include all Licensing records; (2) deletes subsection (a)(1), which covers the confidentiality of photographs, videotapes, and audiotapes of children taken during an abuse or neglect investigation, because the requirements related to the confidentiality of these items are being moved to new §745.8495 of this title as part of implementation of HRC §42.004; (3) implements Government Code §522.138, which expands existing confidentiality requirements for family violence shelters and sexual assault programs to victims of trafficking shelter centers that are licensed as General Residential Operations or Child-Placing Agencies by specifying that certain information regarding these shelter centers cannot be released; (4) implements TFC §107.05145, by authorizing the release to a social study evaluator of a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study; and (5) adds a statement to clarify that any other information made confidential under state or federal law also may not be released.

New §745.8495 implements HRC §42.004, which makes confidential photographs, audio or video recordings, depictions, or documentations of a child made by Child Care Licensing in the course of an inspection or investigation. The new rule specifies who may have access to these confidential records.

The amendment to §745.8711 implements HRC §42.078 by referencing an exception to imposing a nonmonetary penalty before a monetary one as specified in new §745.8713 of this title (relating to When may Licensing impose a monetary penalty before a corrective action?).

New §745.8713 implements HRC §42.078 and provides that a monetary penalty may be imposed before imposing corrective action against an operation or the controlling person of the operation (except small employer-based child care operations and temporary shelter programs) for: (1) failing to timely submit background check requests on two or more occasions; (2) failing to submit a background check request before the 30th day after being notified by DFPS that the background check request is overdue; (3) allowing a person to be present at an operation when the results of the background check have not been received (except in certain cases where there is a staff shortage); (4) knowingly allowing a person to be present at an operation when the background check results have been received and those results preclude the person's presence; or (5) violating a condition/restriction that was placed on the person's presence at the operation as part of a pending or approved risk evaluation.

New §745.8715 implements HRC §42.078 by listing circumstances under which an administrative penalty may be imposed against a controlling person.

New §745.8934 implements HRC §43.004 by requiring applicants for an administrator's license to undergo fingerprint-based criminal history checks.

The amendment to §745.8993 implements HRC §43.009 by requiring licensed administrators to undergo a fingerprint-based criminal history check each time their license is renewed, unless DFPS relies upon a previously conducted fingerprint-based criminal history check that remains valid as provided by §745.630 of this title.

The amendment to §745.9037 implements HRC §43.010 by: (1) changing "child-care facility" to "facility" to be consistent with statute; and (2) allowing DFPS to deny, revoke, suspend, or refuse to renew a license for an applicant for an administrator's license or a currently licensed administrator who is sustained as a controlling person and currently barred from obtaining a permit.

The amendment to §745.9071 implements TFC §107.05145, which enables a social study evaluator to obtain from DFPS a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the pre-adoptive social study. The title of the rule is changed and subsection (c) is added to specify how the social study evaluator may obtain an unredacted copy of an investigative report regarding abuse or neglect.

The amendment to §745.9093 implements TFC §107.05145, which enables a social study evaluator to obtain from DFPS a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the post-placement adoptive social study.

The title of the rule is changed and subsection (c) is added to specify how the social study evaluator will obtain an unredacted copy of an investigative report regarding abuse or neglect.

The sections will function by providing a reduced risk to children. Also, there will be increased flexibility for operations requesting risk evaluations. Additionally, DFPS will be in compliance with the HRC, TFC, the Government Code, and federal background check requirements.

During the public comment period, DFPS received comments from The Texas Alliance of Child and Family Services concerning §745.615. A summary of the comments follows:

(1) The commenter's first concern related to the financial costs of FBI fingerprint checks to residential operations. The commenter indicated the fiscal impact of completing FBI checks will be significant for all residential operations. The commenter indicated the fiscal impact in the first year will be between $14,000 and $20,000 per operation or approximately $4,000,000 statewide.

Response: DFPS agrees with the commenter that the new FBI fingerprint check requirements may have a significant financial impact on all types of residential operations. As stated in the DFPS fiscal impact analysis on the proposed rule it is assumed that many residential operations will absorb the cost of the fingerprint checks as part of their operating costs, although it is possible that an operation will pass the one-time cost to the person requiring the check. DFPS is not required to project the aggregate, industry impact of the new statutorily required fingerprint checks for residential child-care operations and DFPS expresses no opinion about the validity of the commenter's projections. As stated in the DFPS fiscal analysis, the costs associated with the new FBI check requirements will vary greatly from operation to operation, based on the size of the operation, the number of background checks requested by the operation, and the turnover rate of the operation's employees. DFPS provided the cost per check for the various checks required, and believes that each operation can utilize this information to estimate the cost to their own respective operation depending upon the operation's size, turnover, and whether the operation chooses to absorb this cost for some or all of the persons required to undergo the fingerprint check.

(2) The commenter indicated DFPS's fiscal impact analysis did not acknowledge costs to providers after the first year. The commenter indicated the costs would continue after the first year because "the average employee turnover for a child welfare organization is 30% and the average turnover for new verified foster homes is close to 40%". Also, according to the commenter, there would be an administrative cost to process, manage, and ensure compliance with the FBI fingerprint checks. The commenter indicated the 83rd Legislature provided DFPS with an additional employee and the funding to cover 75% of DFPS's cost to complete FBI fingerprint checks on current state employees who require the checks; however the Legislature did not recognize any expenses for providers.

Response: DFPS disagrees with the commenter that the fiscal analysis did not acknowledge costs to providers after the first year. As stated in the fiscal analysis, the cost to residential operations after the first year of implementation will be mitigated as the one-time cost of the FBI fingerprint check in each subsequent year of implementation will be limited to just those prospective employees and foster and adoptive parents who have not already had a fingerprint check. An FBI fingerprint check would remain valid as long as the subject of the check continues to have a name-based background check every 24 months. Again, DFPS noted in its fiscal impact analysis that the ongoing costs of compliance would vary depending upon an operation's turnover rate. DFPS also does not agree that there will be more than a *de minimis* administrative cost to an operation to ensure that persons required to undergo fingerprint checks have undergone them, because operations must already ensure that name-based background checks have been performed on these same individuals.

(3) The commenter suggested there be more fingerprinting options and competitive bidding among fingerprinting vendors to reduce the cost of fingerprinting.

Response: DFPS has no role in the selection of the vendors used by the Texas Department of Public Safety (DPS) for this purpose. DFPS suggests the commenter contact DPS to discuss this proposal.

Because the amendments to §745.615 are necessary to comply with the statutorily mandated background checks imposed by HRC §42.056, DFPS has made no changes to this rule in response to the comments summarized above.

SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION

DIVISION 2. EXEMPTIONS FROM REGULATION

40 TAC §745.115, §745.129

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042(a) and §42.041(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. BACKGROUND CHECKS

DIVISION 1. DEFINITIONS

40 TAC §745.601, §745.603

The amendment and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042(a) and §42.056.

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DIVISION 2. REQUESTING BACKGROUND CHECKS

40 TAC §745.615, §745.630

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implements HRC §42.042(a) and §42.056.

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40 TAC §§745.615, 745.616, 745.625, 745.630

The new sections and amendment are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections and amendment implement HRC §§42.042(a) and 42.056.

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DIVISION 3. CRIMINAL CONVICTIONS AND CENTRAL REGISTRY FINDINGS OF CHILD ABUSE OR NEGLECT

40 TAC §745.651

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042(a) and §42.056.

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DIVISION 4. EVALUATION OF RISK BECAUSE OF A CRIMINAL CONVICTION OR A CENTRAL REGISTRY FINDING OF CHILD ABUSE OR NEGLECT

40 TAC §745.686, §745.697

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042(a) and §42.056.

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SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS
DIVISION 3. CONFIDENTIALITY

40 TAC §§745.8481, 745.8485, 745.8487, 745.8491, 745.8493, 745.8495

The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042(a) and §42.004, Government Code §552.138, and Texas Family Code §107.05145.

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SUBCHAPTER L. REMEDIAL ACTIONS
DIVISION 5. MONETARY ACTIONS

40 TAC §§745.8711, 745.8713, 745.8715

The amendment and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new sections implement HRC §42.042 and §42.078.

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SUBCHAPTER N. ADMINISTRATOR LICENSING
DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

40 TAC §745.8934

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §43.005 and §43.004.

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DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

40 TAC §745.8993

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §43.005 and §43.010.

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DIVISION 5. REMEDIAL ACTIONS

40 TAC §745.9037

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §43.005 and §43.010.

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SUBCHAPTER O. INDEPENDENT COURT-ORDERED SOCIAL STUDIES
DIVISION 3. PRE-ADOPTIVE SOCIAL STUDIES

40 TAC §745.9071

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code §107.05145.

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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DIVISION 4. POST-PLACEMENT ADOPTIVE SOCIAL STUDY AND REPORT

40 TAC §745.9093

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code §107.05145.

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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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §746.801 and §746.901; and new §§746.5623, 746.5625, and 746.5627 in its Minimum Standards for Child-Care Centers chapter. The amendment to §746.901 is adopted with changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8159). The amendments to §746.801; and new §§746.5623, 746.5625, and 746.5627 are adopted without changes to the proposed text and will not be republished. The justification for the amendments and new sections is to implement Senate Bill (SB) 939 and House Bill (HB) 1741, which were enacted by the 83rd Legislature, Regular Session. SB 939 added Human Resources Code (HRC) §42.0426(a-1), which requires employees of child-care centers to sign a statement verifying their attendance at training during orientation in recognition of and the procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the child-care center maintain the statement in the employee's personnel record. HB 1741 added HRC §42.0424, which: (1) defines "electronic child safety alarm;" (2) requires licensed child-care centers to equip each vehicle used to transport children with an electronic child safety alarm system if the vehicle is designed to seat eight or more persons and is purchased or leased on or after December 31, 2013; and (3) requires licensed child-care centers to ensure that the alarm is properly maintained and used while transporting children in care. A summary of the changes is described below:

The amendment to §746.801 adds paragraph (26), which requires the child-care center to maintain documentation for a vehicle that is used to transport children in care unless it is equipped with an electronic child safety alarm or is not designed to seat eight or more persons.

The amendment to §746.901 adds paragraph (10) to require that an employee's personnel record include a statement signed and dated by the employee verifying the date the employee attended training that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these as required in §746.1303 of this title (relating to What should orientation to my child-care center include?).

New §746.5623 defines an electronic child safety alarm in accordance with HRC §42.0424.

New §746.5625 outlines the requirement for licensed child-care centers to install an electronic child safety alarm system in a vehicle used to transport children. This rule implements HRC §42.0424 by requiring licensed child-care centers to: (1) equip each vehicle used to transport children with an electronic child safety alarm system if the vehicle is designed to seat eight or more persons and is purchased or leased on or after December 31, 2013; and (2) ensure that the alarm is properly maintained and used while transporting children in care.

New §746.5627 supports enforcement of HRC §42.0424 by requiring licensed child-care centers to maintain documentation of a vehicle used to transport children in care unless the vehicle: (1) is equipped with an electronic child safety alarm; or (2) is not designed to seat eight or more persons.

The amendments and new sections will function by ensuring that Child Care Licensing will be able to better monitor the requirement that employees in child-care centers have had the required training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation; and child-care centers have an additional safeguard to help ensure that no child is left unattended in a parked vehicle operated by a child-care center - both resulting in improved care of children.

During the public comment period, DFPS one comment from a licensed child-care center related to §746.901. The commenter's concern related to the required signed statement verifying that staff has attended child abuse prevention training and that it must be kept in the personnel file. The commenter felt this was redundant because employees are required to get the training annually and must keep a copy of the certificate in staff's records. DFPS disagrees that the proposed amendment is redundant, because current minimum standards do not specify that the staff person who receives this training sign a statement verifying attendance at this training. However, in response to this comment DFPS is adding additional language to clarify that this requirement does not apply to annual training, but only to the training required to be completed during orientation. The commenter made two additional comments on topics that are unrelated to the rules cur-

rently being proposed; the commenter was encouraged to resubmit those comments in the future in the event that rules are proposed on those additional topics.

SUBCHAPTER C. RECORD KEEPING

DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE CENTER

40 TAC §746.801

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042(a) and §42.0424.

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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Department of Family and Protective Services
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DIVISION 4. PERSONNEL RECORDS

40 TAC §746.901

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042(a) and §42.0426(a-1).

§746.901. What information must I maintain in my personnel records?

You must have the following records at the child-care center and available for review during hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

(1) Documentation showing the dates of the first and last day on the job;

(2) Documentation showing how the employee meets the minimum age and education qualifications, if applicable;

(3) A copy of a health card or physician's statement verifying the employee is free of active tuberculosis, if required by the regional Texas Department of State Health Services TB program or local health authority;

(4) A notarized Licensing *Affidavit for Applicants for Employment* form as specified in Human Resources Code, §42.059;

(5) A record of training hours;

(6) A statement signed and dated by the employee showing he has received a copy of the child-care center's:

(A) Operational policies; and

(B) Personnel policies;

(7) Proof of request for DFPS background checks;

(8) A copy of a photo identification;

(9) A copy of a current driver's license for each person who transports a child in care; and

(10) A statement signed and dated by the employee verifying the date the employee attended training during orientation that includes an overview of your policy on preventing and responding to abuse and neglect of children as outlined in §746.1303 of this title (relating to What should orientation to my child-care center include?).

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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Cynthia O'Keeffe
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SUBCHAPTER X. TRANSPORTATION

40 TAC §§746.5623, 746.5625, 746.5627

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042(a) and §42.0424.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

SUBCHAPTER C. RECORD KEEPING

DIVISION 4. RECORDS ON CAREGIVERS AND HOUSEHOLD MEMBERS

40 TAC §747.901

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §747.901 with changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8162). Senate Bill (SB) 939, 83rd Legislature, Regular Session, added Human Resources Code (HRC) §42.0426(a-1), which requires employees of licensed child-care homes to sign a statement verifying their attendance at training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the home maintain the statement in the employee's personnel record. The amendment to §747.901 adds paragraph (9) requiring that an employee's personnel record include a statement signed and dated by the employee verifying the date the employee attended training during orientation that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these, as required in §747.1305 of this title (relating to What should orientation to my child-care home include?).

The amendment will function by ensuring that Child Care Licensing will be able to better monitor the requirement that employees at child-care homes have had the required training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation.

During the public comment period, DFPS received one comment from a registered child-care home. The commenter's concern was regarding who would provide the abuse/neglect training and how the training would protect children. The commenter also wanted to know what would happen if a child was abused. Neither of these comments relates directly to the issue of required documentation of training related to abuse or neglect, and therefore DFPS has made no changes as a result of this comment. DFPS will provide technical assistance to this provider regarding how to report child abuse or neglect and what occurs when suspected abuse or neglect is reported to DFPS.

DFPS is adopting §747.901 with a change. A comment was received on a similar rule proposal in Chapter 746, Minimum Standards for Child-Care Centers, which indicated that the commenter mistakenly believed that the signed statement is required for all annual trainings. In that chapter, DFPS is adding additional language specifying that the signed statement is only required for training required to be completed during orientation. That same clarification is being made to §747.901.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042(a) and §42.0426(a-1).

§747.901. What information must I maintain in my personnel records?

You must keep at least the following at the child-care home for each assistant caregiver and substitute, as specified in this chapter:

(1) Documentation showing the dates of the first and last day on the job;

(2) Documentation showing how the caregiver meets the minimum age and education qualifications, if applicable;

(3) A copy of a health card or physician's statement verifying the caregiver is free of active tuberculosis, if required by the regional Texas Department of State Health Services TB program or local health authority;

(4) A notarized Licensing *Affidavit for Applicants for Employment* form as specified in Human Resources Code, §42.059;

(5) A record of training hours;

(6) Proof of request for all Background Checks;

(7) A copy of a photo identification;

(8) A copy of a current driver's license for each person or caregiver that transports a child in care; and

(9) A statement signed and dated by the caregiver in a licensed child-care home verifying the date the caregiver attended training during orientation that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these as outlined in §747.1305 of this title (relating to What should orientation to my child-care home include?).

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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Cynthia O'Keeffe
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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.363, 748.1205, and 748.1211 in its Minimum Standards for General Residential Operations chapter. The amendment to §748.363 is adopted with changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8163). The amendments to §748.1205, and §748.1211 are adopted without changes to the proposed text and will not be republished. The justification for the amendments is to implement Senate Bill (SB) 717 and SB 939, which were enacted by the 83rd Legislature, Regular Session.

SB 717 amended the Texas Family Code (TFC) by adding §32.203, which allows a minor to consent to housing or care provided to the minor child and any children of the minor child, through a transitional living program at a general residential operation, child-placing agency, or independent foster home if the minor is: (1) 16 years of age or older and resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence, and manages their own financial affairs, regardless of the source of income; or (2) unmarried and pregnant or is the parent of a child. SB 717 further provides that when a minor consents to such housing or care, the operation must attempt to notify the minor's parent, managing conservator, or guardian regarding the child's location.

SB 939 amends the Human Resources Code (HRC) by adding §42.0426(a-1), to require employees of general residential operations to sign a statement verifying their attendance at training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the operation maintain the statement in the employee's personnel record.

A summary of the changes follows:

The amendment to §748.363 implements HRC §42.0426(a-1) by adding paragraph (8)(B) to require that an employee's personnel record include a statement signed and dated by the employee that he has attended pre-service training in preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect, and exploitation, as required in §748.881(2) of this title (relating to What curriculum components must be included in the general pre-service training?). An additional technical correction is made to this section to delete references to "caregivers", who are not always employees, as this rule is intended to apply solely to the personnel records maintained regarding employees.

The amendment to §748.1205 implements TFC §32.203 by adding subsection (a)(15) to require a general residential operation to document in the child's record at admission the attempts to notify a parent of a child when the child consents to housing or care at the operation's transitional living program.

The amendment to §748.1211 implements TFC §32.203 by adding subsection (c) to require that a general residential operation attempt to notify a parent of a child when the child consents to housing or care at the operation's transitional living program.

The amendments will function by ensuring (1) Child Care Licensing will be able to better monitor for the requirement that employees at general residential operations have attended the required training on preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect and exploitation; and (2) regulated residential child-care facilities will be able to provide homeless and runaway youths, including those with children, with residential living services through a transitional living program, without consent of the child's parents, and in such circumstances parents will be notified of the child's whereabouts unless the facility is unable to provide such notice after making a good faith effort to do so.

No comments were received regarding adoption of the amendments. However, DFPS is adopting §748.363 with a change. A comment was received on a similar rule in Chapter 749, Minimum Standards for Child-Placing Agencies, which indicated that there was some confusion regarding the additional signed documentation. In that chapter, DFPS is adding additional language to clarify that the signed acknowledgment of attendance at training related to abuse or neglect is required for pre-service training. That same clarification is being made to §748.363.

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 3. PERSONNEL RECORDS

40 TAC §748.363

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042(a) and §42.0426(a-1).

§748.363. What information must the personnel record of an employee include?

For each employee, the personnel record must include:

(1) Documentation showing the date of employment;

(2) Documentation showing how the person meets the minimum age and qualifications for the position;

(3) A current job description;

(4) Evidence of any valid professional licensures, certifications, or registrations the person must have to meet qualifications for the position, such as a current renewal card or a letter from the credentialing entity verifying that the person has met the required renewal criteria;

(5) A copy of the record of tuberculosis screening conducted prior to the person having contact with children in care showing that the employee is free of contagious tuberculosis as provided in §748.1583 of this title (relating to Who must have a tuberculosis (TB) examination?);

(6) A notarized Licensing *Affidavit for Applicants for Employment* form as specified in Human Resources Code, §42.059;

(7) A statement signed and dated by the employee documenting that the employee has read a copy of the:

(A) Operational policies; and

(B) Personnel policies;

(8) A statement signed and dated by the employee documenting:

(A) That the employee must immediately report any suspected incident of child abuse, neglect, or exploitation to the Child Abuse Hotline and to the operation's administrator or administrator's designee; and

(B) The date the employee attended pre-service training in measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation, as required by §748.881(2) of this title (relating to What curriculum components must be included in the general pre-service training?);

(9) Proof of request for background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);

(10) For each person who transports a child, a copy of:

(A) The person's valid driver's license; or

(B) A driver's license check conducted through the Texas Department of Public Safety within the last 12 months;

(11) A record of training and training hours;

(12) Any documentation of the person's tenure with the operation; and

(13) The date and reason for the person's separation, if applicable.

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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Cynthia O'Keeffe
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Department of Family and Protective Services
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SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE

DIVISION 1. ADMISSION

40 TAC §748.1205, §748.1211

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Texas Family Code §32.203.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.553, 749.1107, and 749.1113 in its Minimum Standards for Child-Placing Agencies chapter. The amendment to §749.553 is adopted with changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8164). The amendments to §749.1107 and §749.1113 are adopted without changes to the proposed text and will not be republished. The justification for the amendments is to implement Senate Bill (SB) 717 and SB 939, which were enacted by the 83rd Legislature, Regular Session. The amendments to this chapter will also affect Chapter 750, Minimum Standards for Independent Foster Homes, which contains minimum standards for independent foster homes. Many standards in Chapter 750 cross-reference standards in this chapter for the requirements.

SB 717 amended the Texas Family Code (TFC) by adding §32.203, which allows a minor to consent to housing or care provided to the minor child and any children of the minor child, through a transitional living program at a general residential operation, child-placing agency, or independent foster home if the child is: (1) 16 years of age or older and resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence, and manages their own financial affairs, regardless of the source of income; or (2) unmarried and pregnant or is the parent of a child. SB 717 further provides that when a child consents to such housing or care, the operation must attempt to notify the minor's parent, managing conservator, or guardian regarding the child's location.

SB 939 amends the Human Resources Code (HRC) by adding §42.0426(a-1), to require employees of child-placing agencies to sign a statement verifying their attendance at training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the operation maintain the statement in the employee's personnel record.

A summary of the changes follows:

The amendment to §749.553 implements HRC §42.0426(a-1) by adding paragraph (8)(B) to require that an employee's personnel record include a statement signed and dated by the employee that he has attended pre-service training in preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect, and exploitation, as required in §749.881(3) of this title (relating to What curriculum components must be included in the general pre-service training?). Because the independent foster home minimum standard in §750.201(3) of this title (relating to What are the requirements for reports and record keeping?) cross-references all rules in Subchapter D of this chapter (relating to Reports and Record Keeping), this rule also applies to personnel records for independent foster homes.

The amendment to §749.1107 implements TFC §32.203 by adding subsection (a)(15) to require a child-placing agency to document in the child's record at admission the attempts to notify a parent of a child when the child consents to housing or care at the operation's transitional living program. Because the independent foster home minimum standard in §750.501(1) of this title (relating to What are the requirements for admission?) cross-references all rules in Subchapter H of this chapter (relating to Foster Care Services: Admission and Placement), this rule also applies to what an independent foster home must document in the child's record at admission.

The amendment to §749.1113 implements TFC §32.203 by adding subsection (c) to require that a child-placing agency attempt to notify a parent of a child when the child consents to housing or care at the operation's transitional living program. Because the independent foster home minimum standard in §750.501(1) of this title (relating to What are the requirements for admission?) cross-references all rules in Subchapter H of this chapter, this rule also applies to what an independent foster home must share with the parent at the time of placement.

The amendments will function by ensuring that (1) Child Care Licensing will be able to better monitor for the requirement that employees at child-placing agencies have attended the required training on preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect and exploitation; and (2) regulated residential child-care facilities will be able to provide homeless and runaway youths, including those with children, with residential living services through a transitional living program, without consent of the child's parents, and in such circumstances parents will be notified of the child's whereabouts unless the facility is unable to provide such notice after making a good faith effort to do so.

During the public comment period, DFPS received one comment from a child-placing agency concerning §749.553. The commenter indicated there are existing requirements relating to training documentation, such as having sign-in sheets or the dates and times of training documented; therefore, that documentation does not need to be included on the training form that verifies the employee's understanding of reporting child abuse or neglect. DFPS disagrees that the proposed amendment is unnecessary, because current minimum standards do not specify that the staff person who receives this training sign a statement verifying attendance at this training. However, in response to this comment DFPS is adding additional language to clarify that this requirement relates to the child abuse prevention training during pre-service and is separate from another requirement in minimum standards that obliges employees and caregivers to sign and date a statement acknowledging the responsibility to report any suspected child abuse, neglect, or exploitation.

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 3. PERSONNEL RECORDS

40 TAC §749.553

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042(a) and §42.0426(a-1).

§749.553. What information must the personnel record of an employee include?

For each employee, excluding foster parents, the personnel record must include:

(1) Documentation showing the date of employment;

(2) Documentation showing how the person meets the minimum age and qualifications for the position;

(3) A current job description;

(4) Evidence of any valid professional licensures, certifications, or registrations the person must have to meet qualifications for the job position, such as a current renewal card or a letter from the credentialing entity verifying that the person has met the required renewal criteria;

(5) A copy of the record of tuberculosis screening conducted prior to the person having contact with children in care showing that the employee is free of contagious tuberculosis as provided in §749.1417 of this title (relating to Who must have a tuberculosis (TB) examination?);

(6) A notarized Licensing *Affidavit for Applicants for Employment* form as specified in Human Resources Code, §42.059;

(7) A statement signed and dated by the employee that he has read a copy of the:

(A) Operational policies; and

(B) Personnel policies;

(8) A statement signed and dated by the employee indicating that:

(A) The employee must immediately report any suspected incident of child abuse, neglect, or exploitation to the Child Abuse Hotline and the agency's administrator or administrator's designee; and

(B) The date the employee attended pre-service training in measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation, as required by §749.881(3) of this title (relating to What curriculum components must be included in the general pre-service training?);

(9) Proof of request for background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);

(10) For each person who transports a child, a copy of:

(A) The person's valid driver's license; or

(B) A driver's license check conducted through the Texas Department of Public Safety within the last 12 months;

(11) A record of training and training hours;

(12) Any documentation of the person's tenure with the agency; and

(13) The date and reason for the person's separation from the agency, if applicable.

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SUBCHAPTER H. FOSTER CARE SERVICES: ADMISSION AND PLACEMENT
DIVISION 1. ADMISSIONS

40 TAC §749.1107, §749.1113

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Texas Family Code §32.203.

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 February 4, 2014.

TRD-201400531
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2014
Proposal publication date: November 15, 2013
For further information, please call: (512) 438-3437

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SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS
DIVISION 3. VERIFICATION OF FOSTER HOMES

40 TAC §749.2473

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §749.2473 without changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8166). The justification for the amendment is to clarify background check requirements by requiring child-placing agencies to meet the requirements in Chapter 745, Subchapter F of this title (relating to Background Checks), rather than requiring the child-placing agency to request new background checks before approving a foster home that another child-placing agency has previously approved.

The amendment will function by ensuring that child-placing agency providers will be better able to understand background check requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.056.

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 February 4, 2014.

TRD-201400532
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2014
Proposal publication date: November 15, 2013
For further information, please call: (512) 438-3437

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) adopts the following new sections to Chapter 800, relating to General Administration, without changes, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8590):

Subchapter B. Allocations, §800.68 and §§800.78 - 800.80

The Commission adopts amendments to the following sections of Chapter 800, relating to General Administration, without changes, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8590):

Subchapter A. General Provisions, §800.2

Subchapter B. Allocations, §§800.51, 800.52, 800.71, and 800.72

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Senate Bill (SB) 307, enacted by the 83rd Texas Legislature, Regular Session (2013), added Texas Labor Code, Chapter 315, which transferred adult education and literacy (AEL) programs from the Texas Education Agency (TEA) to the Commission no later than January 1, 2014.

SB 307 mandates that the Commission:

--develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for the education and training of adults;

--develop the mechanism and guidelines for the coordination of comprehensive adult education and related skills training services for adults with other entities, including public agencies and private organizations, in planning, developing, and implementing related programs;

--administer adult education funding;

--prescribe rules and standards for teacher certification and accreditation; and

--develop a standardized assessment mechanism and monitor and evaluate educational and employment outcomes of students who participate in AEL programs.

In addition, SB 307 mandates that the Agency use a competitive procurement process to award contracts to service providers of local education programs. To complete a competitive procurement and have contracts in place by July 2014, a January 2014 target date has been set for the adoption of new Chapter 805, regarding AEL programs.

Further, to fully incorporate AEL programs into the Agency's administrative oversight framework, amendments are necessary in Chapter 802, regarding Integrity of the Texas Workforce System. To ensure a seamless transition of rules, the Chapter 802 amendments and new Chapter 805 are adopted concurrently with this rulemaking.

To better understand the major issues currently facing adult education, the Commission held a series of nine public meetings across the state to hear from stakeholders concerning the transfer of the AEL programs from TEA to the Agency, and to gather input about what is currently working well and where there is opportunity for improvement. AEL stakeholder communication has continued throughout the transition, and the Commission greatly values the thoughts, recommendations, and suggestions provided by the AEL stakeholder community.

The purpose of the adopted Chapter 800 amendments is to:

--set forth rules for the AEL program regarding:

--allocations;

--midyear deobligation of funds;

--voluntary deobligation of funds; and

--make necessary technical changes.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§800.2. Definitions

New §800.2(1) defines "Adult Education and Literacy (AEL)" as services designed to provide adults with sufficient basic education that enables them to effectively:

--(A) acquire the basic educational skills necessary for literate functioning;

--(B) participate in job training and retraining programs;

--(C) obtain and retain employment; and

--(D) continue their education to at least the level of completion of secondary school and preparation for postsecondary education.

New §800.2(15)(J) defines the AEL program year as July 1 - June 30.

Certain paragraphs in this section have been renumbered to accommodate additions.

SUBCHAPTER B. ALLOCATIONS

The Commission adopts the following amendments to Subchapter B:

§800.51. Scope and Purpose

Section 800.51(b) adds "AEL grant recipient with an approved contract with the Agency" as an entity subject to the provisions regarding scope and purpose of this subchapter.

Section 800.51(c) adds "an AEL grant recipient" as an entity with which the Commission will negotiate allocated amounts for contract periods of less than a complete year, based on the remaining months of the program year.

§800.52. Definitions

Section 800.52(4) adds "an AEL grant recipient" to the definition of "contract period."

Section 800.52(5) adds "an AEL grant recipient" to the definition of "deobligation."

Section 800.52(8) adds "an AEL grant recipient" to the definition of "monthly expenditure report."

New §800.68. Adult Education and Literacy

New §800.68 sets forth the allocation methodology for AEL funds. SB 307 provides that funds may be allocated pursuant to a need-based formula that ensures compliance with federal requirements and also achieves integrated education and training. In addition, stakeholders expressed support for the development of strategies to advance the linkage between adult education

and workforce training, as well as the use of innovation in the delivery, support, and expansion of AEL services in Texas.

Historically, TEA has only reserved federal funds to support state administration and leadership activities. Federal state leadership funds may be used to support or facilitate linkages between adult education and training, including professional development and technical assistance, program coordination and integration, and coordination with existing support services, such as transportation and child care. However, these funds specifically cannot be used for the delivery of technical skills training.

Each year, after funds had been set aside for state administration and leadership purposes, TEA allocated state and federal AEL funds to grantees largely based upon prior funding levels, proportionate share of need, and performance. Each grantee's total allocation comprised a base allocation and a performance allocation. Historically, base allocations remained constant from year to year while performance allocations varied based on individual program performance. Stakeholders expressed concerns that the allocation formulas did not truly determine proportionate share of need, were difficult to understand, and included overly complex performance methodology.

It is the Commission's intent to provide a clear, easily understood allocation methodology in rule to alleviate these concerns and to clarify any issues surrounding transparency of the methodology or the logic of the distribution of available funds.

Based on legislative authorization and stakeholder input, there is a clear need to fund the development and piloting of innovative methods for delivering services, including the identification of effective uses of technology. Coupled with ensuring that funding is available to meet SB 307's expectation that integrated adult education and skills training models be developed, the rules provide that in addition to the federal funds allowed for state leadership and administration--12.5 percent for state leadership activities and 5 percent for administration--a maximum amount of state adult education funds and federal Temporary Assistance for Needy Families (TANF) funds also may be used for those purposes. Consistent with other workforce funding sources, an amount not to exceed 20 percent of state and federal TANF funds can be reserved for state administration and leadership activities.

The Commission recognizes that local workforce development areas (workforce areas) will require a meaningful investment in capacity-building efforts to support the seamless alignment of adult education and literacy and technical training for industry certifications and degrees. Capacity-building efforts such as curriculum development, technical assistance, professional development, and demonstration projects using innovative concurrent training models will support local system change and alignment. The Commission's goals for investments in technology and other capacity-building efforts from a statewide perspective are increases in direct service delivery over time and improvements in the overall outcomes for students. Thus, the Commission believes that reserving an amount not to exceed 20 percent of state and federal TANF funds may be needed for state leadership purposes to adequately support these efforts.

For federal Adult Education and Family Literacy Act (AEFLA) state grant funds, administrative costs are limited to 5 percent of the amounts provided to AEL service providers, unless there is effective justification for the application of the Special Rule in AEFLA §233(b). For state AEL matching funds and federal TANF funds included in the AEL program, administrative costs will be limited to 15 percent of amounts provided to AEL service providers.

New §800.68 sets forth the allocation methodologies for both federal and state AEL funds, federal English Literacy/Civics (EL/Civics) funds, federal TANF funds, and state general revenue appropriated as TANF maintenance-of-effort, after setting aside funds for state administration and state leadership. The methodologies mirror the federal methodologies used to allocate funds to the states, as applicable. Texas Labor Code §302.062 provides that if the Commission block grants funds for workforce training, employment services, and support services--and if the funds are allocated to the state through the application of established formulas--then the Commission must allocate amounts available across the state to workforce areas (which are geographic constructs and are not synonymous with Local Workforce Development Boards (Boards)) using the same formula used to provide the funds to the state. This is the practice followed for most of the Commission's block-granted programs. The Commission is proposing the block granting of AEL funds to the workforce areas based precisely on the methodology and data the U.S. Department of Education's Office of Vocational and Adult Education (OVAE) uses to allocate the funds to Texas. A proportion of these allocations will become available through the achievement of performance benchmarks, which will reward the performance of AEL service providers.

OVAE provides federal AEFLA state grant funds to states using a 90 percent "hold-harmless" procedure (i.e., the proportion of the state grant to the total of all state grants is at least 90 percent of the prior year's proportion), and the Commission proposes allocating AEL funds using a hold-harmless procedure. (Additionally, Texas Labor Code §302.062 provides that the 90 percent hold-harmless provision applies to block grant allocations.)

New §800.68(a) states that AEL funds available to the Commission to provide services under AEFLA, Workforce Investment Act Title II, together with associated state general revenue matching funds and federal TANF funds--along with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission as set forth in subsections (b) - (f) of this section.

New §800.68(b) provides that at least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency under §243 for EL/Civics--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:

--(1) 100 percent will be based on:

--(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

--(B) an equal base amount; and

--(C) the application of a hold-harmless procedure (for any program year after Fiscal Year (FY) 2015).

--(2) No more than 5 percent of the funds expended as part of this workforce area allocation must be used for administrative costs,

as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) must apply with effective justification, as appropriate.

--(3) No more than 10 percent of this allocation must be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

New §800.68(c) stipulates that at least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c), will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:

--(1) 100 percent will be based on:

--(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

--(B) an equal base amount; and

--(C) the application of a hold-harmless procedure (for any program year after FY 2015).

--(2) No more than 15 percent of the funds expended as part of this workforce area allocation must be used for administrative costs, as defined by Commission policy.

--(3) No more than 10 percent of this allocation must be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

New §800.68(d) provides that at least 82.5 percent of the federal funds provided to the eligible agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission among the workforce areas according to the established federal formula, as follows:

--(1) The relative proportion based on:

--(A) 65 percent of the average number of legal permanent residents during the most recent 10-year period, available from U.S. Citizenship and Immigration Services data; and

--(B) 35 percent of the average number of legal permanent residents during the most recent three-year period, available from U.S. Citizenship and Immigration Services data;

--(2) a base amount of 1 percent for each workforce area; and

--(3) the application of a hold-harmless procedure (for any program year after FY 2015).

--(4) No more than 5 percent of the funds expended as part of this workforce area allocation must be used for administrative costs, as defined by AEFLA; and

--(5) No more than 10 percent of this allocation must be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

New §800.68(e) provides that at least 80 percent of federal TANF funds associated with the AEL program--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a need-based formula, as follows:

--(1) 100 percent will be based on:

--(A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;

--(B) an equal base amount; and

--(C) the application of a hold-harmless procedure (for any program year after FY 2015).

--(2) No more than 15 percent of the funds expended as part of this workforce area allocation must be used for administrative costs, as defined by federal regulations and Commission policy.

--(3) No more than 10 percent of this allocation must be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

New §800.68(f) states that AEL performance accountability benchmarks must be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance must, at a minimum, be expressed in an objective, quantifiable, and measurable form, and show continuous improvement.

Comment: Seventeen commenters expressed concern that a significant reduction in AEL funds available to their workforce areas, per the allocation methodology set forth in §800.68, would harm the quality and availability of needed adult education services in their respective workforce areas.

Response: The Commission believes funds should be allocated in the same manner as federal AEL funds are allocated to Texas and based on methodologies that are clearly outlined and commensurate with the need for AEL services in each part of the state. Using a different allocation method than used in prior years will result in initial shifts in funds distributed across the state, with some workforce areas experiencing an increase in funding and some experiencing a decrease. While this may result in some workforce areas having less capacity to serve the same number of individuals needing adult education services as in the past, possible capacity decreases are balanced by the ability gained by other workforce areas to increase their capacity to serve the historically unmet needs of their eligible population. Thus, the Commission does not foresee an impact on the number of individuals who may be served statewide.

The Commission is keenly focused on performance to ensure that funds are used effectively to serve customers and produce positive results. Including performance benchmarks and performance standards highlights the Commission's expectation that grantees will maintain or exceed performance standards through effective service delivery and innovation. Further, the rules allow funds to be deobligated, including voluntarily, if they are not being used effectively to serve individuals needing AEL services at expected levels; however, the Commission will work diligently with grantees to provide technical support and assistance in developing strategies to ensure individuals are receiving needed services, thereby mitigating risks.

Whether in the past or under current budget conditions, the need for AEL services exceeds the available resources in Texas and no workforce area is funded to fully meet these needs. The Commission expects that AEL grant recipients will identify and coordinate with all available organizations and programs in their work-

force areas to expand and leverage services delivered beyond those that may be provided solely with AEL funding.

Comment: Two commenters suggested that TWC consider applying the AEL allocation "hold harmless" provision to the PY'14 allocations, rather than the current rule proposal that such hold harmless provisions apply to allocations only after PY'14 (i.e., beyond FY'15).

Response: The Commission believes the allocation methodology is fair, complies with Texas Labor Code, and aligns with the methodology used to award federal AEL funds to Texas. While some workforce areas will experience a reduction in funding, others will receive additional funds commensurate with the population-based level of need for AEL services in the workforce area. The application of a hold harmless provision would result in workforce areas that are otherwise entitled to additional funding not receiving as much based on need.

In addition, hold harmless provisions cannot apply until after the PY'14 (period beginning July 1, 2014) allocations because allocations will be made to workforce areas; prior to PY'14, allocations were made in accordance with fiscal agent service delivery areas established based on past practices. The Commission's forthcoming competitive procurement makes funding available to workforce areas to allow improved integration of education and training of adults.

Comment: Eight commenters expressed concern with the proposed set-aside of "state leadership funds" from EL/Civics, state general revenue, and TANF MOE, stating that an increase in funding for state leadership activities will result in decreased funding for direct services. The commenters requested that funding formulas maximize the delivery of direct services and innovation in program delivery.

Response: The Commission has noted its intent to use funding reserved for administration and state leadership activities that will enhance service delivery and support provided to grantees. The Commission is committed to administering all AEL resources as efficiently as possible, with the goal of identifying innovation and processes that will expand AEL services and the outcomes for those receiving the services (e.g., distance learning investments and employer site-based literacy programs). Generally, the mock allocations generated based on the proposed methodologies show the projected amounts available for FY'15 are not significantly different than funding levels in FY'14 or FY'13, factoring in the effect of the FY'13 federal sequestration and the fact that carry-over funding is not included in the allocations. State leadership funds allow the Commission to support innovation and initiatives that reflect local integrated service delivery models consistent with the legislature's vision for the program.

Comment: Two commenters expressed concern with a lack of a volume correction for head count or contact hours in the funding formula, creating drastic funding decreases from workforce areas of high population density that currently carry the majority of the program enrollment--ultimately resulting in increased costs per student and an overall drop in enrollments. One commenter also stated that this could lead to some workforce areas being overfunded.

Response: The Commission is following the requirements of Texas Labor Code §302.062, which provides that in block granting funds for workforce training, employment services, and associated support services to workforce areas, the Commission must allocate amounts across the state using the same formula used to provide the funds to the state. The US Department of Education (ED) allocates AEL funds to Texas on the basis of the relative proportion of the population age 18 and over without a secondary degree and not enrolled in school. The AEL rules also include allocating federal AEL funds (excluding EL/Civics) and associated state matching funds to the workforce areas on this same basis. The allocation of federal EL/Civics funds is also proposed on the same basis that ED allocates the funds to Texas. The methodologies do not divert resources from workforce areas of high population density; rather, they allocate resources in concert with the relative proportion of the population age 18 and over without a secondary degree and not enrolled in school.

Using a different method for the allocation of AEL funds than used in prior years will result in initial shifts in how funds are distributed across the state--with some workforce areas experiencing an increase in funding and some experiencing a decrease. While some workforce areas may have decreased capacity to serve as many individuals needing AEL services as in the past, other workforce areas will have increased capacity to serve more of the population in need of services. Thus, the Commission does not foresee an impact on the number of individuals who may be served statewide.

Comment: One commenter stated that equalization in the distribution of funding across the state is important, but that performance funding provides incentives for programs small and large and should remain intact.

Response: The Commission clarifies that the rule contains provisions for performance funding, with a percentage of funding made available for expenditure within each workforce area on the basis of the achievement of performance benchmarks set forth in §800.68.

§800.71. General Deobligation and Reallocation Provisions

Section 800.71(b) adds "AEL grant recipient" as an entity subject to §§800.71 - 800.77 of this subchapter.

Section 800.71(b)(1) adds "Adult Education and Literacy" as a category of funding subject to §§800.71 - 800.77 of this subchapter.

Certain paragraphs in this section have been renumbered to accommodate additions.

§800.72. Reporting Requirements

Section 800.72 adds "an AEL grant recipient" as an entity subject to the provisions regarding reporting requirements.

New §800.78. Midyear Deobligation of AEL Funds

New §800.78 sets forth the following provisions for midyear deobligation of AEL funds, which are similar to those applicable to other workforce funding streams, except that priority must be given to AEL grant recipients providing AEL services in the same workforce area, upon receipt and approval by the Commission of an acceptable plan:

--(a) The Commission may deobligate funds from an AEL grant recipient during the program year if an AEL grant recipient is not meeting the expenditure thresholds set forth in subsection (b) of this section.

--(1) AEL grant recipients that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months five, six, seven, or eight of the program year (i.e., midyear) will be reviewed to determine the causes for the underexpenditure of funds, except as set forth in subsection (e) of this section.

--(2) The Commission must not deobligate more than the difference between an AEL grant recipient's actual expenditures and the amount corresponding to the relative proportion of the program year.

--(3) The Commission must not deobligate funds from an AEL grant recipient that failed to meet the expenditure thresholds set forth in subsection (b) of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

--(b) The Commission may deobligate funds midyear, as set forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the expenditure of an amount corresponding to 90 percent or more of the relative proportion of the program year.

--(c) An AEL grant recipient subject to deobligation for failure to meet the requirements set forth in this section must, upon request by the Commission, submit a written justification. For an AEL consortium, a copy must be provided to all consortium members. The written justification must provide sufficient detail regarding the actions an AEL grant recipient will take to address its deficiencies, including:

--(1) expansion of services proportionate to the available resources;

--(2) projected service levels and related performance;

--(3) reporting outstanding obligations; and

--(4) any other factors an AEL grant recipient would like the Commission to consider.

--(d) Any amounts deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area that meet the requirements of new §800.80(a), upon receipt and approval by the Commission of an acceptable plan.

--(e) To the extent this section may be found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

New §800.79. Voluntary Deobligation of AEL Funds

New §800.79 states that to request a voluntary deobligation of funds allocated to the workforce area, an AEL grant recipient's chief executive officer must submit a written request to the Commission. For an AEL consortium, a copy must be provided to all consortium members. Any amounts voluntarily deobligated from an AEL grant recipient must be available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area, upon receipt and approval by the Commission of an acceptable plan.

New §800.80. Reallocation of AEL Funds

New §800.80 sets forth the reallocation provisions for AEL funds, which are similar to those applicable to other workforce funding streams, with the exception that any AEL reallocation must apply to AEL grant recipients, as follows:

--(a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the Commission may consider whether the AEL grant recipient:

--(1) has met targeted expenditure levels as required by §800.78(a) of this subchapter, as applicable, for that period;

--(2) has not expended or obligated more than 100 percent of the grant recipient's allocation for the category of funding;

--(3) has demonstrated that expenditures conform to cost category limits for funding;

--(4) has demonstrated the need for and ability to use additional funds;

--(5) is current on expenditure reporting;

--(6) is current with all single audit requirements; and

--(7) is not under sanction.

--(b) Any amounts deobligated or voluntarily deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipients providing AEL services within the same workforce area that meet the requirements of new §800.80(a), upon receipt and approval by the Commission of an acceptable plan. Following the determination that any such plan has not been determined to be acceptable, the Commission may consider an AEL grant recipient satisfying the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan.

COMMENTS WERE RECEIVED FROM:

Vicki Angel, Retired Adult Education Instructor

Dr. Pamela Anglin, President of Paris Junior College

Carole Beal, Transition Specialist, Harris County Department of Education

Kay Brooks, Grant Project Manager for GED & ESL Program, Brazosport College

Beverly Bucsanyi, Adult ESL Instructor

Ann Coleman, Texarkana ISD

Lynda Detwiler, Adult ESL Instructor

Mark Guthrie, Chairman of the Texas Association of Workforce Boards and Chairman of the Gulf Coast Workforce Development Board

Natalia Guzman, Adult Basic Education Instructor, Harris County Department of Education

Joshua Hayes, Director of Adult Education, College of the Mainland

Leslie Helmcamp, Policy Analyst for the Center for Public Priorities

Ronda Jameson, Director of STEM Education, Texarkana ISD

Belinda Lee, Maud, Texas

Dr. Beth Lewis, President of the College of the Mainland

Otswen, Northeast Texas

Karen Ottinger, Adult Learning Center, Texarkana ISD

Shirly Pennypacker, Northeast Texas

Dean Ransdell, Director of Adult Education, Texarkana ISD

Debra Shelby, Adult Education Instructor, Texarkana ISD

Shannon Shipp, Federal Bureau of Prisons

Mike Temple, Executive Director of the Gulf Coast Workforce Development Board

Vanessa Wakefield, Counselor, Washington Academy Charter School

Barbara Yoder, Adult Education, Cleburne ISD

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 February 4, 2014.

TRD-201400465
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: February 24, 2014
Proposal publication date: November 29, 2013
For further information, please call: (512) 475-0829

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SUBCHAPTER B. ALLOCATIONS

40 TAC §§800.51, 800.52, 800.68, 800.71, 800.72, 800.78 - 800.80

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 February 4, 2014.

TRD-201400464
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: February 24, 2014
Proposal publication date: November 29, 2013
For further information, please call: (512) 475-0829

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CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

The Texas Workforce Commission (Commission) adopts the following new section to Chapter 802, relating to Integrity of the Texas Workforce System, without changes, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8599):

Subchapter I. Incentive Awards, §802.169

The Commission adopts amendments to the following sections of Chapter 802, relating to Integrity of the Texas Workforce System, without changes, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8599):

Subchapter A. Purpose and General Provisions, §802.1

Subchapter D. Agency Monitoring Activities, §§802.61 - 802.66

Subchapter E. Board and Workforce Service Provider Monitoring Activities, §§802.81 - 802.87

Subchapter F. Performance and Accountability, §§802.101 - 802.104

Subchapter G. Corrective Actions, §§802.121 - 802.125

Subchapter I. Incentive Awards, §§802.161, 802.162, and 802.164

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Senate Bill (SB) 307, enacted by the 83rd Texas Legislature, Regular Session (2013), added Texas Labor Code, Chapter 315, which transferred adult education and literacy (AEL) programs from the Texas Education Agency (TEA) to the Commission no later than January 1, 2014.

SB 307 mandates that the Commission:

--develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for the education and training of adults;

--develop the mechanism and guidelines for the coordination of comprehensive adult education and related skills training services for adults with other entities, including public agencies and private organizations, in planning, developing, and implementing related programs;

--administer adult education funding;

--prescribe rules and standards for teacher certification and accreditation; and

--develop a standardized assessment mechanism, and monitor and evaluate educational and employment outcomes of students who participate in AEL programs.

In addition, SB 307 mandates that the Agency use a competitive procurement process to award contracts to service providers of local education programs. To complete a competitive procurement and have contracts in place by July 2014, a January 2014 target date has been set for the adoption of new Chapter 805, regarding AEL programs.

SB 307 expressly requires the Commission to develop and establish a process for awarding performance incentive funds annually. In developing the process for awarding such funds, the Commission was directed to prescribe fiscal and programmatic performance criteria to be used to evaluate the performance of

entities delivering AEL services. Further, as part of this process, SB 307 requires procedures for taking corrective action. Chapter 802 sets out Agency standards for program and fiscal monitoring, performance and accountability, and corrective actions and incentive awards. The adopted amendments to Chapter 802 are intended to apply Agency standards to AEL programs, as appropriate, consistent with the Adult Education and Family Literacy Act, federal regulations, National Reporting System for Adult Education, and OMB Circulars.

Further, to fully incorporate AEL programs into the Agency's administrative oversight framework, amendments are necessary in Chapter 800, regarding General Administration. To ensure a seamless transition of rules, the Chapter 800 amendments and new Chapter 805 are adopted concurrently with this rulemaking.

To better understand the major issues currently facing adult education, the Commission held a series of nine public meetings across the state to hear from stakeholders concerning the transfer of the AEL programs from TEA to the Agency, and to gather input about what is currently working well and where there is opportunity for improvement. AEL stakeholder communication has continued throughout the transition, and the Commission greatly values the thoughts, recommendations, and suggestions provided by the AEL stakeholder community.

The purpose of the adopted Chapter 802 amendments is to:

--apply the following to AEL grant recipients and AEL service providers, as appropriate:

--Provisions governing monitoring responsibilities;

--Provisions ensuring accountability in meeting the needs of customers, ensuring that performance targets are met or exceeded, and describing Commission policies for noncompliance;

--Provisions for imposing corrective actions for failure to ensure compliance with contracted performance measures, contract provisions, and other Agency-determined standards; and

--Provisions regarding incentive awards, rewarding the meeting or exceeding of performance benchmarks, and accomplishing the Commission's goals to fulfill the workforce needs of employers and to put Texans to work; and

--make technical changes, as necessary.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§802.1. Purpose and General Provisions

Section 802.1(a) adds that the purpose of Subchapter A is "to implement Texas Labor Code, Chapter 315, regarding Adult Education and Literacy programs."

SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

The Commission adopts the following amendments to Subchapter D:

§802.61. Purpose

Section 802.61 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions of Subchapter D, regarding Agency monitoring activities.

§802.62. Program and Fiscal Monitoring

Section 802.62 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding program and fiscal monitoring.

Section 802.62(b)(2) adds "U.S. Department of Education, Office of Vocational and Adult Education guidance." AEL grant recipients' and AEL service providers' compliance with this guidance will be assessed by program and fiscal monitoring activities.

§802.63. Program Monitoring Activities

Section 802.63 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding program monitoring activities.

§802.64. Fiscal Monitoring Activities

Section 802.64(a) adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding fiscal monitoring activities.

§802.65. Agency Monitoring Reports and Resolution

Section 802.65 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding Agency monitoring reports and resolution.

§802.66. Access to Records

Section 802.66 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding access to records.

SUBCHAPTER E. BOARD, WORKFORCE SERVICE PROVIDER, AND AEL GRANT RECIPIENT MONITORING ACTIVITIES

The Commission adopts the following amendments to Subchapter E:

§802.81. Scope and Purpose

Section 802.81 adds "AEL grant recipients" as entities subject to the provisions of Subchapter E, regarding Board, workforce service provider, and AEL grant recipient monitoring activities.

§802.82. Board, Workforce Service Provider, and AEL Grant Recipient Monitoring

Section 802.82:

--replaces the title "Board and Workforce Service Provider Monitoring" with "Board, Workforce Service Provider, and AEL Grant Recipient Monitoring" to reflect the addition of "AEL grant recipients" as entities subject to the monitoring provisions; and

--adds "AEL grant recipients" and "AEL service providers" throughout the section as entities subject to the monitoring provisions.

Section 802.82(b) adds "U.S. Department of Education Office of Vocational and Adult Education guidance." AEL service providers' compliance with this guidance will be assessed by monitoring activities.

§802.83. Risk Assessment

Section 802.83 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding risk assessment.

§802.84. Monitoring Plan

Section 802.84 adds "AEL grant recipients" as entities subject to the provisions regarding monitoring plans.

§802.85. Controls over Monitoring

Section 802.85 adds "AEL grant recipients," "AEL service providers," and "AEL consortium members, as applicable" as entities subject to the provisions regarding controls over monitoring.

§802.86. Reporting and Resolution Requirements

Section 802.86 adds "AEL grant recipients," "AEL service providers," and "AEL consortium members" as entities subject to the provisions regarding reporting and resolution requirements.

§802.87. Independent Audit Requirements

Section 802.87 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding independent audit requirements.

Section 802.87(3) adds "OMB Circular A-21" as guidance to be followed by Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees.

Section 802.87(4) adds "OMB Circular A-110" as guidance to be followed by Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees.

Certain paragraphs in this section have been renumbered to accommodate additions.

SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY

The Commission adopts the following amendments to Subchapter F:

§802.101. Scope and Purpose

Section 802.101 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions of the scope and purpose of Subchapter F, regarding performance and accountability.

§802.102. Performance Requirements and Expectations

Section 802.102 adds "AEL grant recipients" as entities subject to the provisions regarding performance requirements and expectations.

Section 802.102(c)(1) adds "U.S. Department of Education Office of Vocational and Adult Education guidance" and "AEL Letters" as guidance that AEL grant recipients must comply with.

§802.103. Performance Review and Assistance

Section 802.103 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding performance review and assistance.

§802.104. Performance Improvement Actions

Section 802.104 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding performance improvement actions.

SUBCHAPTER G. CORRECTIVE ACTIONS

The Commission adopts the following amendments to Subchapter G:

§802.121. Imposition of Corrective Actions and Corrective Action Plans

Section 802.121 adds "AEL grant recipients," "AEL service providers," "AEL grant recipient's chief executive officer," and "AEL consortium members," as appropriate, as entities subject to the provisions regarding imposition of corrective actions and corrective action plans.

Section 802.121(f)(19) removes the term "subrecipient of the Agency" and replaces it with "Agency grantee," to conform with terminology changes made in a previous rulemaking.

Comment: One commenter expressed concern regarding the possibility of corrective actions, as set forth in §802.121, to ensure compliance. Specifically, the commenter was concerned that compliance with one or more contracted performance measures is unrealistic.

Response: Many of the entities funded by the Commission, including Boards, workforce service providers, and Agency grantees, must ensure compliance with multiple federal, state, or Commission-determined performance measures. The Commission intends to hold AEL grant recipients and AEL service providers to the same standard. The Commission also works diligently with the entities that it funds to mitigate risk and provide support and assistance before imposing corrective actions set forth in §802.121.

§802.122. Intent to Sanction

Section 802.122 adds "AEL grant recipients" as entities subject to the provisions regarding intent to sanction.

§802.123. Sanctions

Section 802.123 adds "AEL grant recipient" as an entity subject to the provisions regarding sanctions.

§802.124. Penalties for Noncompliance with Requirements

Section 802.124 adds "AEL grant recipient" and "AEL service provider" as entities subject to the provisions regarding penalties for noncompliance with requirements.

§802.125. Sanction Determination

Section 802.125 adds "AEL grant recipient" as an entity subject to the provisions regarding sanction determination.

SUBCHAPTER I. INCENTIVE AWARDS

The Commission adopts the following amendments to Subchapter I:

§802.161. Scope and Purpose

Section 802.161 adds "AEL grant recipients" as entities subject to the provisions regarding the scope and purpose of incentive awards.

§802.162. Definitions

Section 802.162(1) replaces the term "Board" with "workforce area" to clarify that the Commission allocates funds to local workforce development areas.

§802.164. Data Collection

Section 802.164 adds "AEL grant recipients" as entities subject to the provisions regarding data collection.

New §802.169. AEL Incentive Awards

New §802.169 sets forth the provisions for AEL incentive awards, as follows:

New §802.169(a)(1) - (3) provides that the Commission may issue monetary and nonmonetary awards to AEL grant recipients, which may be awarded annually based on high-performance achievement or continuous improvement in meeting performance measures:

--(1) The Commission may determine the amount of funds for use to reward performance annually.

--(2) The Commission may use any combination of existing state or federal performance measures and may develop its own measures to evaluate performance.

--(3) If the Commission includes a measure that does not already have a target, the Commission may:

--(A) set an incentive target for the sole purpose of evaluating eligible AEL grant recipients for the incentive awards (failure to meet an incentive target does not subject the AEL grant recipients to sanction); or

--(B) rate performance based on each AEL grant recipient's "relative improvement" in performance from the prior year.

New §802.169(b) states that the Commission may use a measure and a subset of a measure in the same year.

New §802.169(c)(1) - (2) sets forth that if the Commission is considering issuing awards under this section, the Commission shall notify AEL grant recipients of the method by which performance shall be evaluated for the purpose of giving awards under this rule for that year.

--(1) The notice required under this subsection shall be provided to the AEL grant recipients concurrent with their yearly contracts.

--(2) The notice may include:

--(A) a listing of awards;

--(B) a listing of the performance measures to be included in each evaluation category including;

--(i) the period of evaluation for each performance measure;

--(ii) the method of evaluation for each performance measure;

--(C) the weightings to be used to aggregate the performance measures to allow each AEL grant recipient's overall performance to be ranked;

--(D) the anticipated amount of funds available to be awarded; and

--(E) other criteria to be used to identify superior performance.

New §802.169(d) provides that AEL grant recipients that receive a performance award shall use the incentive award to carry out AEL activities as allowed by state and federal laws.

New §802.169(e) states that the Commission may modify the assignment of awards based on factors that the Commission identifies as extraordinary circumstances.

COMMENTS WERE RECEIVED FROM:

Kay Brooks, Grant Project Manager for GED & ESL Program, Brazosport College

SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS

40 TAC §802.1

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 February 4, 2014.

TRD-201400466
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: February 24, 2014
Proposal publication date: November 29, 2013
For further information, please call: (512) 475-0829

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SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

40 TAC §§802.61 - 802.66

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER E. BOARD, WORKFORCE SERVICE PROVIDER, AND AEL GRANT RECIPIENT MONITORING ACTIVITIES

40 TAC §§802.81 - 802.87

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY

40 TAC §§802.101 - 802.104

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
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Proposal publication date: November 29, 2013
For further information, please call: (512) 475-0829

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SUBCHAPTER G. CORRECTIVE ACTIONS

40 TAC §§802.121 - 802.125

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER I. INCENTIVE AWARDS

40 TAC §§802.161, 802.162, 802.164, 802.169

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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-201400471
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: February 24, 2014
Proposal publication date: November 29, 2013
For further information, please call: (512) 475-0829

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CHAPTER 805. ADULT EDUCATION AND LITERACY

The Texas Workforce Commission (Commission) adopts new Chapter 805, relating to Adult Education and Literacy, comprising the following subchapters and sections, without changes, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8612):

Subchapter A. General Provisions, §§805.1, 805.2, 805.4, and 805.5

Subchapter B. Staff Qualifications, §805.21

Subchapter C. Service Delivery Structure and Alignment, §§805.41, 805.42, 805.44, and 805.45

Subchapter D. Other Provisions, §805.61 and §805.62

The Commission adopts new Chapter 805, relating to Adult Education and Literacy, comprising the following subchapters and sections, with changes, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8612):

Subchapter A. General Provisions, §805.3

Subchapter C. Service Delivery Structure and Alignment, §805.43

The Commission withdraws the following section of new Chapter 805, relating to Adult Education and Literacy, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8622):

Subchapter B. Staff Qualifications, §805.22

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Senate Bill (SB) 307, enacted by the 83rd Texas Legislature, Regular Session (2013), added Texas Labor Code, Chapter 315, which transferred adult education and literacy (AEL) programs from the Texas Education Agency (TEA) to the Commission no later than January 1, 2014.

SB 307 mandates that the Commission:

--develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for the education and training of adults;

--develop the mechanism and guidelines for the coordination of comprehensive adult education and related skills training services for adults with other entities, including public agencies and private organizations, in planning, developing, and implementing related programs;

--administer adult education funding;

--prescribe rules and standards for teacher certification and accreditation; and

--develop a standardized assessment mechanism and monitor and evaluate educational and employment outcomes of students who participate in AEL programs.

In addition, SB 307 mandates that the Agency use a competitive procurement process to award contracts to service providers of local education programs. To complete a competitive procurement and have contracts in place by July 2014, a January 2014 target date has been set for the adoption of new Chapter 805, regarding AEL.

Further, to fully incorporate AEL programs into the Agency's administrative oversight framework, amendments are necessary in Chapter 800, regarding General Administration, and Chapter 802, regarding Integrity of the Texas Workforce System. To ensure a seamless transition of rules, the Chapter 800 and Chapter 802 amendments are adopted concurrently with this rulemaking.

The Commission is well positioned to administer the AEL programs due to its existing network of partnerships and long-standing commitment to promote and support an effective workforce system that offers employers, individuals, and communities the opportunity to achieve and sustain economic prosperity. The Commission, in partnership with 28 Local Workforce Development Boards (Boards) across the state, forms Texas Workforce Solutions, which is available to employers, workers, job seekers, and youth throughout the state. Texas Workforce Solutions provides vital workforce development tools that help workers find and keep good jobs and help employers hire the skilled workers they need to expand their businesses. Through Workforce Solutions Offices across the state and in collaboration with workforce partners, including community colleges, AEL providers, local independent school districts, economic development groups, and other state agencies, Texas Workforce Solutions provides innovative services to support employers and workers. Collaboration and coordination across these agencies and local entities play a critical role in the success of the Texas workforce system.

To better understand the major issues currently facing adult education, the Commission held a series of nine public meetings across the state to hear from stakeholders concerning the transfer of the AEL programs from TEA to the Commission, and to gather input about what is currently working well and where there is opportunity for improvement. AEL stakeholder communication has continued throughout the transition, and the Commission greatly values the thoughts, recommendations, and suggestions provided by the AEL stakeholder community.

The purpose of new Chapter 805 is to set forth the following for AEL programs:

--General provisions

--Allowable use of state and federal funds

--Essential program components

--Diploma requirements

--Staff qualifications and training

--Staff service requirements

--Procurement and contract provisions

--Program delivery system

--Advisory committees

--Match requirements

--Tuition and fees

--Staff development and special projects

--Evaluation of programs

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts new Subchapter A, General Provisions, as follows:

§805.1. Purpose

New §805.1(a) states that this chapter may be referred to as the AEL rules.

New §805.1(b) sets forth the purpose of the AEL programs, which is to provide adults with sufficient basic education that enables them to effectively:

--acquire the basic educational skills necessary for literate functioning;

--participate in job training and retraining programs;

--obtain and retain employment; and

--continue their education to at least the level of completion of secondary school and preparation for postsecondary education.

In enacting SB 307, the Texas legislature expressed the importance of obtaining and retaining employment, continued education, and acquiring basic skills needed for literate functioning.

The mission of the Commission is to promote and support an effective workforce system that offers employers, individuals, and communities the opportunity to achieve and sustain economic prosperity. By providing opportunities for literacy and basic educational development, the AEL program clearly aligns with this mission by delivering the foundational skills Texas needs for both economic competitiveness and community development.

The Texas workforce system offers a diverse range of services within Texas communities that support current and future economic prosperity for employers, workers, job seekers, students, and communities. The Commission has a long-standing commitment to providing employment services, consistent with Workforce Investment Act, Title I, including job training and retraining programs, which lead to obtaining and retaining productive employment. Providing employment services and developing innovative ways to help eligible individuals find employment opportunities in high-growth, high-wage industries are central to that commitment. The Commission and its workforce partners provide services that lead to thousands of eligible job seekers entering employment each year. These services include job search assistance, labor market and career-planning information, access to training, and unemployment benefits to those who lose their jobs through no fault of their own.

Additionally, the Commission:

--provides services to targeted populations within communities to help them find or maintain employment and become self-sufficient;

--oversees federal funds, which subsidize child care for low-income families and enable parents to work or attend workforce training or education activities; and

--supports job readiness and job-specific skills training for targeted populations with the goal of leading these individuals to self-sustaining employment.

Providing Texas' current and future workforce with education, training, and workplace opportunities is essential to the state's future growth and success, and critical to the Commission's mission. To ensure that Texas' workforce has the skills to meet workforce needs now and into the future, the Commission:

--supports programs that identify educational and career paths for students, including vocational and technical training, as well as those that require two-year, four-year, and higher education levels; and

--develops and distributes educational materials and online tools to help students of all ages and at all levels identify career pathways.

In past years, the Commission has reinforced that commitment by funding workplace literacy training projects across Texas, thereby providing eligible individuals with limited English proficiency or individuals in need of adult education with workplace literacy training integrated with occupational skills training. These projects have allowed eligible individuals to increase functional education levels and earn a certificate or other credential, ultimately leading to employment, career advancement, and increased wages.

Comment: Nine commenters expressed support of the proposed rules and the direction of the AEL program moving forward. Of these, seven commenters expressed appreciation for the Commission's commitment to move more adults into career and technical postsecondary education and focus on promoting career pathways and integrated service delivery, and believe this focus will help provide the skills necessary for moving more adults into stable and higher-paying jobs.

Response: The Commission appreciates the comments.

§805.2. Definitions

New §805.2(1) defines "adult education." Based on an extensive review of TEA rules and consideration of input from numerous AEL stakeholders, the Commission retains this definition as contained in TEA rules at 19 Texas Administrative Code (TAC) §89.21(1), without modification.

New §805.2(1)(A) defines "adult basic education." Based on an extensive review of TEA rules and consideration of input from numerous AEL stakeholders, the Commission retains this definition as contained in TEA rule §89.21(1)(A), with modifications to clarify that adult basic education instruction is in reading, writing, "and speaking and comprehending" English.

New §805.2(1)(B) defines "adult secondary education." Based on an extensive review of TEA rules and consideration of input from numerous AEL stakeholders, the Commission retains this definition as contained in TEA rule §89.21(1)(B), without modification.

New §805.2(1)(C) defines "English literacy education." Based on an extensive review of TEA rules and consideration of input from numerous AEL stakeholders, the Commission retains this definition as contained in TEA rule §89.21(1)(C), without modification.

New §805.2(2) defines "AEL consortium" as a partnership of educational, workforce development, social service entities, and other public and private organizations that agree to partner, collaborate, plan, and apply for funding to provide AEL and related support services. Consortium members shall include an AEL grant recipient, AEL fiscal agent, AEL lead organization of a consortium, and AEL service provider(s). Consortium members may serve in one or more of the functions in accordance with state statutes and Commission rules.

A consortium may include a Board, but Board membership is not required. However, in order to ensure a connection to local workforce needs, an AEL consortium must consider and use local labor market data and information regarding employer needs in designing and proposing service delivery strategies.

New §805.2(3) defines "AEL fiscal agent" as an entity that is assigned financial management duties as outlined in an Agency-AEL contract or is assigned this function as a member of an AEL consortium.

New §805.2(4) defines "AEL grant recipient" as an eligible grant recipient within a local workforce development area (workforce area), as defined in new §800.2(11) of this title, that is awarded AEL funds by the Agency. The AEL grant recipient also may act as an AEL lead organization of a consortium, AEL fiscal agent, or AEL service provider as designated in an agreement with an AEL consortium.

New §805.2(5) defines "AEL lead organization of a consortium" as an organization designated as the AEL consortium manager in a written agreement between AEL consortium members. The AEL lead organization of a consortium is responsible for planning and leadership responsibilities as outlined in the written agreement and also may serve as an AEL grant recipient, AEL fiscal

agent, or AEL service provider. If a consortium does not identify the lead organization of a consortium through a written agreement, the AEL grant recipient will be presumed to have taken responsibility as the lead organization of the consortium.

New §805.2(6) defines "AEL service provider" as an entity that is eligible to provide AEL services as specified in 20 USC §9202 and Texas Labor Code §315.003.

New §805.2(7) defines "contact time." Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, this section retains the provisions of TEA rule §89.21(3), with modifications to replace the reference to TEA rule "§89.25" with a reference to Commission rule "§805.21."

New §805.2(8) defines "eligible grant recipient" as an entity that is eligible to receive AEL program funding. Eligible grant recipients include:

--(A) a local educational agency;

--(B) a community-based organization of demonstrated effectiveness;

--(C) a volunteer literacy organization of demonstrated effectiveness;

--(D) an institution of higher education;

--(E) a public or private nonprofit agency;

--(F) a library;

--(G) a public housing authority;

--(H) a nonprofit institution that is not described in any of subparagraphs (A) - (G) of this paragraph and has the ability to provide literacy services to adults and families; and

--(I) a consortium of the agencies, organizations, institutions, libraries, or authorities described in any of subparagraphs (A) - (H) of this paragraph.

§805.3. Federal and State AEL Funds

New §805.3(a) provides that federal AEL funds may be used for AEL programs for out-of-school individuals who have attained 16 years of age and:

--(1) function at less than a secondary school completion level;

--(2) lack a secondary school credential; or

--(3) are unable to speak, read, or write in English.

New §805.3(b) provides that state AEL funds are to be used for AEL programs for out-of-school individuals who are beyond compulsory school attendance age and:

--(1) function at less than a secondary school completion level;

--(2) lack a secondary school credential; or

--(3) are unable to speak, read, or write in English.

New §805.3(c) provides that the proportion of students served who meet the requirements of subsection (a) of this section, but do not meet the requirements of subsection (b) of this section, must not exceed the grant recipient's percentage of federal funds to the total allocation.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.3(a) - (c) retains the provisions of TEA rule §89.22, without modification.

Although the requirements outlining the allowable use of federal and state funds are retained, the Commission supports employment and training awareness, readiness, and transition opportunities for students and understands that often those who seek services with defined career and higher education goals, who have previous work experience, or who may be functioning at higher levels and need very targeted remedial strategies, are most likely to benefit from service alignment. It is the Commission's intent to support program designs and operations to deliver increased secondary education and career and higher education outcomes for students, including individuals who are low income or have minimal literacy skills.

New §805.3(d) states that the Commission must establish annual performance benchmarks for the use of AEL funds in serving specific student populations, including the population of students receiving other workforce services or coenrolled in postsecondary education or training.

The Commission's goal is to incrementally increase the proportion of students who exit workforce services work ready or are enrolled or coenrolled in college and career training, including those who are registered for work; receiving workforce services through Texas Workforce Solutions; enrolled or coenrolled in a postsecondary education or training program; or currently working in low-wage, low-skill jobs and desire a career change, promotion, or wage increase. The Commission will use the current program year to determine baseline numbers of students across these metrics.

The Commission recognizes that the increase in career and higher education outcomes will occur gradually over multiple years through enhanced enrollment and performance criteria, incentives for innovative acceleration, integration and transition models, and related technical assistance and professional development to support expansion. This comprehensive approach will allow continuity of services, while steadily supporting an upward trajectory in the program's overall direction toward increased employment and training, outcome-based performance (consistent with the requirements in SB 307), recent changes in performance standards at the federal level, and local employer demand.

Comment: Four commenters recommended that the Commission enhance data collection and reporting of ABE and literacy services and ensure that performance outcome data be made available to the public on a quarterly and annual basis.

Response: The Commission recognizes the importance of data in program design, development, implementation, management, and evaluation, and thus, strongly supports data collection for all programs it administers. The Commission also recognizes the importance of transparency and openness, and is committed to making AEL performance outcome data available to the public on at least an annual basis.

Comment: Two commenters pointed out that while the Commission's goal of increasing the proportion of students who exit services ready to work or who are enrolled in college or career training is admirable, the unintended consequence may be that programs become more focused on serving higher-functioning AEL students to the detriment of lower-functioning students.

Response: The Commission has stated clearly that, although it supports positive employment and career training outcomes for all, there are certain individuals who have low incomes or minimal literacy skills who will benefit from AEL services. While there may be a correlation between students functioning at

higher levels and work or career readiness, data indicates that many students functioning at lower levels are already working in low-wage, low-skill jobs and often enter AEL services to gain the skills or English fluency needed to advance in the workforce. Additionally, while many career and technical training programs are aligned to the abilities of higher-skill students, Texas has developed and implemented models, such as the Texas Higher Education Coordinating Board's Accelerate Texas initiative, that provide students with lower skills or limited English with access to career and technical training.

The Commission is committed to making long-term investments in the system that develop the capacity of providers to implement such research-based models, including programs that promote concurrent education and workforce training and distance learning, and provide services that result in employment-advancement outcomes for students. The Commission strongly supports the use of innovative career pathway programs that provide opportunities for students at all levels to obtain incremental success, and ultimately to achieve their goals. The Commission believes that the use of a number of innovative strategies, often using interagency collaborations, allows the program to develop increased employment and workforce training outcomes over time, while serving more students, regardless of functional level.

Comment: Three commenters expressed concern that the Commission's goal of increasing the proportion of students who exit services ready to work or who are enrolled in college or career training will have the consequence of fostering an adult education program environment that would be less welcoming to Texas immigrants and individuals who are not legal citizens.

Response: SB 307 requires the Commission to implement the state AEL program and to develop the mechanisms and guidelines for the coordination of AEL services with workforce and career and technical education services, which are designed to ensure employers have a ready and skilled workforce. When implementing AEL services that are coordinated with workforce and career and technical education services, the Agency leverages the services available through our complementary programs.

Consistent with both SB 307 and federal guidance, the Commission will focus on advancing positive career and postsecondary transition outcomes, building expectations based on current year performance. Texas benefits economically from its large and diversified immigrant population and will continue innovative models that build the educational attainment, English fluency, and technical skills of this population.

Comment: One commenter suggested that the regulations regarding allowable use of federal funds, specifically the population that can be served, set forth in §805.3(a), be brought in line with the rules regarding the population that can be served with state funds.

Response: The Commission clarifies that requirements pertaining to the population that can be served with federal funds are set forth at 20 USC §9202 et seq. The Commission does not have authority to change federal requirements. Under AEFLA, federal funds can be used for services to individuals age 16 and older, but only if those out-of-school individuals are not enrolled or required to be enrolled in secondary school under state law and also meet certain functional criteria. Because the compulsory age of attendance in Texas public schools is 18 years of age, state funds can be used only for individuals age 18 and older, unless specifically exempted from compulsory school attendance by Texas Education Code §25.086.

Thus, the Commission modifies this section to clarify the distinction and fully align the rules with state and federal provisions, including that federal AEL funds may be used for AEL programs for out-of-school individuals who have attained 16 years of age and who are not enrolled or required to be enrolled in secondary school under state law and lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society; do not have a secondary school diploma or its recognized equivalent and have not achieved an equivalent level of education; or are unable to speak, read, or write the English language.

Comment: Eight commenters stressed the importance of family literacy and urged the Commission to ensure alignment with SB 307, which directs the Commission to "provide, within the context of administering adult education and literacy programs, training opportunities for parents regarding how to be the primary teachers for their children and full partners in their children's education."

Response: The Commission agrees that providing AEL services to parents is an important, and required, component of the AEL system. Not only do these services benefit the parents but they benefit the children and the family as a whole. Parents who engage in adult education, and enter and complete career training and higher education, greatly increase their potential earnings and become important role models and guides for their children.

The Commission envisions great opportunities for AEL to support intergenerational literacy efforts based on implementing the objectives of SB 307 and aligning these efforts with other recently passed legislation designed to increase high school completion and seamless transitions to college and career. For example, House Bill 5 presents an opportunity for supporting intergenerational literacy and career exploration objectives by providing parents who are exploring career pathway options in AEL programs with an opportunity to support their children in selecting career endorsements for high school coursework.

The Commission believes it is critical for AEL programs to create innovative ways to align curriculum and classroom activities that support career awareness and exploration for the enrichment of AEL students and to support these students in becoming effective guides and teachers for their children. The Commission is focused on identifying opportunities to ensure that all partners in the AEL service delivery system have the tools, professional development, and support necessary to provide services that prepare adults to support their families, careers, and communities.

Comment: Four commenters recommended that the Commission promote access to ABE and literacy services for immigrant youth potentially eligible for legal relief under the Deferred Action for Early Childhood Arrivals (DACA) program.

Response: The Commission strongly believes in the value of local control and flexibility for local programs--including AEL. While targeting immigrant youth who may be eligible to obtain legal relief through DACA may be one mechanism to further strengthen the Texas workforce, the Commission supports an environment where local programs have discretion to establish service options that will most that benefit their local communities.

§805.4. Essential Program Components

New §805.4 identifies the following essential program components that AEL grant recipients must ensure are provided by AEL programs:

--(1) Adult basic education;

--(2) Programs for adults of limited English proficiency;

--(3) Adult secondary education, including programs leading to a high school equivalency certificate or a high school diploma;

--(4) Instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment;

--(5) Assessment and guidance services related to paragraphs (1) - (4) of this section; and

--(6) Collaboration with multiple partners in the community to expand the services available to adult learners and to prevent duplication of services.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.4 retains the provisions of TEA rule §89.23, with modifications to make minor, nonsubstantive, editorial changes.

Comment: Four commenters requested that the Commission include financial literacy training and resource materials in AEL curriculum.

Response: Texas Labor Code §302.0027 requires the Agency and Boards to ensure that all workforce development programs include financial literacy training, and the Commission has emphasized the importance of this need to Boards in several directives. The Commission recognizes the value of financial literacy training and resources for AEL students, as well as for all individuals served through the Texas workforce system. Boards and local community colleges provide financial literacy training for the customers they serve. The Commission's intent is for grantees to coordinate the provision of financial literacy services with other entities in the workforce area.

§805.5. Diploma Requirements

New §805.5 identifies that the standards for the awarding of diplomas to adults must be those established under 19 TAC Chapter 74, Subchapter A (relating to Curriculum Requirements) with the following exceptions:

--(1) There shall be no limit to the number of secondary credits adults may earn by demonstration of competence.

--(2) Adults may earn the required physical education credits by one or more of the following:

--(A) Satisfactory completion of approved secondary physical education courses; or

--(B) Substitution of state-approved secondary elective courses.

--(3) Adults must meet the requirements for successful performance on a secondary-level test designated by the commissioner of education.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.5 retains the provisions of TEA rule §89.24, without modification.

Comment: One commenter requested clarification regarding the procedures in place for awarding high school diplomas.

Response: The procedures for awarding of diplomas to high school adults remain unchanged. With the exceptions set forth in §805.3, the procedures continue to follow TEA rules at 19 TAC Chapter 74, Subchapter A.

SUBCHAPTER B. STAFF QUALIFICATIONS

The Commission adopts new Subchapter B, Staff Qualifications, as follows:

§805.21. Staff Qualifications and Training

New §805.21 sets forth the following provisions regarding staff qualifications and training for all AEL staff hired after July 1, 2013, excluding clerical and janitorial staff:

--(1) All staff must receive at least 12 clock hours of professional development annually.

--(2) All staff new to AEL and assigned assessment and instructional duties must receive six clock hours of in-service professional development before they begin work in assessment and instructional activities, in addition to the annual professional development requirements set forth in paragraph (1) of this section.

--(3) Aides must have at least a high school diploma or high school equivalency certificate.

--(4) Directors, teachers, counselors, and supervisors shall possess at least a bachelor's degree.

--(5) Directors, teachers, counselors, and supervisors without valid Texas teacher certification shall attend 12 clock hours of in-service professional development annually in addition to that specified in paragraph (1) of this section until they have completed either six clock hours of AEL college credit or attained two years of AEL experience.

--(6) The requirements for in-service professional development may be reduced by local programs in individual cases where exceptional circumstances prevent employees from completing the required hours of in-service professional development. Documentation justifying these circumstances must be maintained. Requests for exemption from staff qualification requirements in individual cases may be submitted to the Commission for approval in the application for funding and must include justification and proposed qualifications.

--(7) Records of staff qualifications and professional development must be maintained by each fiscal agent and must be available for monitoring.

--(8) The requirements in paragraphs (1) - (6) of this section also apply to volunteers who generate student contact time, as defined in §805.2, which is accrued by the AEL program and reported to the Commission for funding purposes.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.21 retains the provisions of TEA rule §89.25, with modifications.

Current TEA rule at §89.25(2) requires that staff receive six clock hours of preservice professional development before they can begin work in an adult education program. Historically, the preservice requirement has led to issues and misunderstanding regarding the types of acceptable, compensable pre- and post-hire activities. Concern has been expressed that noncompensated preservice requirements hinder local programs in hiring qualified staff. An exhaustive review of local program preservice requirements indicated that many of the requirements should be consid-

ered post-hire activities, and thus staff should be compensated for their time. Thus, new §805.21(2) provides that all staff new to AEL and assigned assessment and instructional duties must receive six clock hours of in-service professional development before they begin work in assessment and instructional activities.

§805.22. Staff Service Requirements

New §805.22 provided that teachers and aides must be assigned to instruction, counseling, or assessment for a minimum of 75 percent of the hours for which they are employed. Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.22 retained the provisions of TEA rule §89.26, without modification.

Comment: One commenter expressed concern with §805.22, requiring teachers and aides to be assigned to instruction, counseling, or assessment for a minimum of 75 percent of the hours for which they are employed. The commenter stated that although the allowable percentage of time spent on instruction may be appropriate to experienced teachers, teachers with less than two years of experience in adult education need more professional development and training outside of the classroom, exceeding the 25 percent threshold for these activities.

Response: The Commission agrees with the comment and withdraws §805.22 regarding staff service requirements. The Commission concurs that uniform time-allocation requirements related to instructional and non-instructional duties do not give providers the flexibility needed to accommodate the instructional, preparation, professional development, and other responsibilities they are required to participate in, or consider the time constraints of a largely part-time instructional workforce. Removing this requirement allows providers the flexibility to assign duties to instructors in accordance with job descriptions and program demands. While making the change, the Commission underscores its commitment to quality classroom instruction and stresses the importance of maximizing the time that teachers and aides spend in the classroom, where they can positively impact the lives of students by providing AEL services that assist in meeting career and life goals.

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

The Commission adopts new Subchapter C, Service Delivery Structure and Alignment, as follows:

§805.41. Procurement and Contracting

New §805.41 establishes the structure of the AEL program delivery system as follows:

--(a) Beginning with Program Year 2014, eligible grant recipients must compete for funding through a statewide procurement process conducted in accordance with federal and state procurement requirements. AEL funding must be allocated as set forth in new §800.68 of this title.

--(b) Eligible grant recipients must apply directly to the Agency using the request for proposals (RFP) process, and must meet all deadlines, requirements, and guidelines set forth in the RFP.

--(c) Contracts awarded to AEL grant recipients must be limited to two years, with the option of three one-year renewals, at the Commission's discretion. In considering a renewal, the Commission must take into account performance and other factors.

--(1) Renewals for years three, four, and five are not automatic, and are based on meeting or exceeding performance and expenditure benchmarks, or other factors as determined by the Commission.

--(2) At the completion of the five-year maximum contract term, the Agency must conduct a new competitive statewide procurement, including those contracts that have been in effect for less than the maximum five-year contract term.

--(d) Determinations by the Agency in the statewide procurement process will be based on the indicated ability of the eligible grant recipient to effectively perform all services and activities needed to fully comply with contract performance requirements and all contract terms and conditions, and may be influenced by factors used to determine the allocation of AEL funds or other objective data or criteria.

SB 307 mandates that the Commission ensure that public school districts, public junior colleges, regional education service centers, nonprofit agencies, and community-based organizations have direct and equitable access to those funds. It is the intent of the Commission that these entities each have direct and equitable access to AEL funding opportunities, as evidenced in the proposed AEL program delivery system, and that the appropriate safeguards are in place to ensure access.

Both SB 307 and federal law mandate that a competitive procurement process be used to award AEL funds. The last competitive procurement for these funds occurred in 2003. The lack of competitive procurement for 10 years has effectively removed incentives for performance and detrimentally affected equal and equitable access for those looking to become a part of the system. To comply with the competitive procurement process mandated by SB 307 and federal law, the Commission must address these and other issues surrounding competitive procurement, including alignment with the workforce system.

Beginning with Program Year 2014, eligible grant recipients will be required to compete for funding through a competitive procurement process. Eligible grant recipients must apply directly to the Agency for AEL funding. Eligible grant recipients may compete against other eligible grant recipients for all or a portion of the funds allocated to each workforce area. More than one AEL grant recipient may be awarded in a workforce area. An application may represent an eligible grant recipient, consortium, or multiple consortiums, in order to demonstrate administrative efficiencies and maximization of available funds for services across a workforce area.

It is the intent of the Commission that preference be given to grant applications that demonstrate:

--the ability to expand access to services through the judicious use of distance-learning strategies in urban and rural areas, and for populations where physical access is limited;

--the use of research-based models that achieve substantial learning gains in reading, writing, speaking the English language, numeracy, problem solving, and other literacy skills;

--the use of research-based models that facilitate and accelerate the transition of students to employment or postsecondary education and training in high-growth, high-demand occupations and career pathway models that lead to employment; and

--the capability to leverage community groups in the delivery of services, including volunteer-based literacy providers, libraries, and other organizations providing AEL services.

Preference will also be given to grant applicants that can demonstrate:

--the coordination of service delivery and data sharing with Boards and workforce service providers;

--administrative efficiencies, including proposals reflecting less administrative costs than the maximum allowed, and maximization of funds for service delivery in workforce areas where multiple eligible grant recipients are present; and

--an ability to comprehensively provide services to an entire workforce area.

Preference will not necessarily be given to an eligible grant recipient application to serve an entire workforce area, but rather for an approach, regardless of the number of eligible grant recipients, that is the most administratively effective within a workforce area.

Contracts awarded to AEL grant recipients will be limited to two years, providing enough time to establish programs, but with the option of three one-year renewals at the Commission's discretion, taking into account performance and other factors. Renewals for years three, four, and five are not automatic, and will be based on satisfactory performance on meeting or exceeding performance and expenditure benchmarks, or other factors as determined by the Commission. At the completion of the five-year maximum contract term, the Commission will conduct a new competitive statewide procurement. All contracts, including those that have been in effect for less than the maximum five-year contract term, must be competitively procured during subsequent statewide procurements.

Comment: One commenter requested clarification on the type of Boards that are expected to support AEL grant recipients as referenced in §805.41.

Response: The Commission clarifies that the Boards referenced in §805.41, and throughout this chapter, refer to Local Workforce Development Boards, which partner with the Commission to form the Texas workforce system.

Comment: One commenter requested clarification regarding whether there could be more than one program in a workforce area.

Response: The Commission clarifies that more than one AEL grant recipient in a workforce area may be awarded AEL funds. Eligible grant recipients will apply directly to the Agency for funding, and may compete against other eligible grant recipients for all or a portion of the funds allocated to each workforce area.

Comment: Four commenters pointed out that proposed rules should encourage and reward competitive programming that embeds career, workforce, and career readiness into all levels of ABE and ESL instruction.

Response: The Commission has been vocal about the importance of embedding workforce and career readiness throughout the AEL program using integration and innovative strategies such as career pathways and bridge models, which allow students to reach goals and obtain positive outcomes. The Commission intends to give preference to grant applications that demonstrate an ability to embed workforce and career readiness throughout their AEL programs, in addition to a number of other criteria. Further, the Commission intends to reward local programs that achieve performance benchmarks, as set forth in §800.68 of this title.

Comment: One commenter agreed that adult education will benefit from a grant competition beginning in 2014 and that a five-year funding cycle is appropriate.

Response: The Commission appreciates the comment.

Comment: One commenter asked that the Commission consider the relatively small amount of money available under the EL/Civics set-aside and whether it is efficient or effective to grant these funds under a separate competition in any or all of the workforce areas.

Response: The Commission will allocate the EL/Civics federal funds to workforce areas in Texas on the same basis (and using the same data) as used by ED in allocating the funds to Texas. Based on the comment, the Commission will consider whether including the AEL and EL/Civics funding in one competition is a more effective use of the available funds.

§805.42. Program Delivery System

New §805.42 sets forth the requirements for the AEL program delivery system:

--(a) There shall be a statewide AEL program delivery system that provides AEL services on a coordinated basis within each workforce area.

--(b) An eligible grant recipient must apply directly to the Agency for AEL funding.

--(c) Each eligible grant recipient must demonstrate an ability to:

--(1) plan and develop a service delivery strategy that includes a broad analysis of the educational, economic, and workforce development trends across the entire workforce area to provide eligible AEL students with comprehensive and locally responsive services; and

--(2) expand, improve, and coordinate delivery of education, career training, workforce development, and support services.

--(d) Each eligible grant recipient applying for AEL funding on behalf of an AEL consortium must:

--(1) meet the requirements set forth in subsection (c)(1) - (2) of this section;

--(2) designate an entity to serve as the AEL lead organization of the consortium; and

--(3) designate an entity to serve as AEL fiscal agent for the AEL consortium. The AEL fiscal agent is responsible for making and filing all financial reports to the AEL grant recipient that will review all reports and submit to the Agency on behalf of the consortium.

--(e) An AEL grant application must reflect service delivery strategies for the workforce area. In workforce areas that are heavily populated or have large service regions, the Agency may elect to contract with more than one AEL grant recipient within a workforce area.

--(f) An AEL grant recipient, awarded AEL funds from the Agency, shall be responsible for performing all services and activities required to fully comply with contract performance requirements and all contract terms and conditions. Responsibilities include, but are not limited to, the following:

--(1) Communication.

--(A) The AEL grant recipient shall serve as the point of contact with the Agency.

--(B) For an AEL consortium, on behalf of AEL consortium members, the AEL grant recipient must:

--(i) transmit questions and grant-related needs for AEL consortium members to the Agency; and

--(ii) carry out the programmatic functions of an AEL grant by communicating regularly with members of the AEL consortium, and by sharing information, policy or procedural changes, and technical assistance provided by the Agency to oversee the grant.

--(2) Monitoring. The AEL grant recipient must:

--(A) monitor programmatic and fiscal progress against goals and project deliverables; and

--(B) timely notify the Agency of problems related to achievement of programmatic and fiscal goals of the grant in accordance with appropriate systems to receive and compile outcome measures and fiscal reports.

--(3) Technical assistance. The AEL grant recipient must carry out the programmatic and reporting functions of an AEL grant by providing or requesting technical assistance for its program, or in an AEL consortium for AEL consortium members, related to the design, implementation, and internal evaluation of their AEL services or support services.

--(4) Professional development. The AEL grant recipient must plan and coordinate the provision of necessary professional development opportunities for its program, or in an AEL consortium to the AEL consortium members.

--(5) Reporting. The AEL grant recipient must:

--(A) collect and compile all fiscal and programmatic information regarding the activities, expenses, and performance outputs and outcomes of the AEL grant; and

--(B) submit this information to the Agency.

--(6) Workforce Area Coverage.

--(A) The AEL grant recipient shall ensure that services are provided to the portion of the workforce area designated in the AEL grant application, whether through in-person services or distance learning, or a combination of methods.

--(B) For an AEL consortium, the AEL grant recipient must ensure that services are provided to the portion of the workforce area designated for the consortium in the AEL grant application, whether through in-person services or distance learning, or a combination of methods.

--(i) If a consortium member fails to perform in accordance with the consortium's coordinated service delivery plan, the AEL grant recipient must provide or request technical assistance, as appropriate.

--(ii) If a consortium member withdraws from a consortium, the AEL grant recipient must ensure that a letter of intent to withdraw is provided to the Agency contract manager. The AEL grant recipient must coordinate with remaining consortium members to develop an alternative proposal for service delivery and submit it to the Agency for approval.

--(iii) If an AEL lead organization of a consortium withdraws from a consortium or from its role as the lead organization of the consortium, the AEL grant recipient must ensure that a letter of intent to withdraw is provided to the Agency contract manager. The AEL grant recipient must coordinate with remaining consortium members to identify an alternative lead organization of the consortium and submit it to the Agency for approval; and

--(iv) If, in a workforce area with multiple consortiums that cover the entire workforce area, one or more consortiums withdraws, the AEL grant recipient shall ensure that a letter of intent to withdraw is provided to the Agency's grant contract manager. The Agency will coordinate with the remaining consortiums to develop an alternative proposal for service delivery for the entire workforce area.

--(g) For an AEL consortium, the Agency reserves the right to reevaluate an AEL grant in light of any change in the AEL consortium membership based upon the consortium's continued ability to meet the terms of the original grant award as demonstrated through the alternative proposal. The Agency's reevaluation may include termination of all awards under the AEL consortium if deemed appropriate.

--(1) If an AEL consortium or AEL consortium member withdraws, the funds and activities committed to in the application may not be shifted to another AEL consortium, AEL consortium member, or to a new institution without written Agency approval.

--(2) The AEL grant recipient must contact the Agency-designated grant contract manager to discuss options for replacement grants within the AEL consortium.

TEA rule §89.22 mandated a statewide system of adult education cooperatives for the coordinated provision of adult education services. Service delivery areas, while not clearly defined, must be large enough to support required program activities while allowing for the efficient and effective delivery of services. Under the existing model, eligible grant recipients have applied directly to TEA for funding often working in coordination with a consortium/cooperative to reduce duplication of services and minimize excessive costs. Each consortium has been headed by a grant applicant that serves as the lead for the consortium and acts as the fiscal agent. There has been no prohibition against entities that directly provide AEL services from acting as the fiscal agent of the consortium.

Currently, there is a statewide network of 55 consortium grantees that deliver AEL services and 53 grantees, often overlapping, that deliver English Literacy and Civics services. TEA service delivery areas are not consistently aligned with the Commission's workforce areas, independent school districts, education service center regions, or community college districts. As a result, each workforce area may have multiple service providers, potentially creating inefficiencies and difficulties in aligning AEL programs with workforce services, data, and resources, and, ultimately, programmatic employment goals and objectives.

The Texas workforce system is organized geographically across the state, comprising 28 workforce areas with workforce services managed by a network of Boards. Boards are responsible for contracting out most direct services through local contractors that operate largely through Workforce Solutions Offices. Recognizing the importance of program efficiencies and avoiding duplication of services, and that one service delivery model may not work in all parts of the state, the new AEL program delivery system will require that service delivery areas be defined and represented by grant recipients that drive service delivery, but enhancing efficiency and coordination with the Texas workforce system by requiring that service delivery areas be aligned geographically with workforce areas. Thus, AEL funds will be allocated geographically to workforce areas, and eligible grant

recipients, as defined in §805.2(8), will apply directly to the Commission for AEL funding.

The Commission believes that students are best served through a model where partners can provide an array of services. The main function of the grant recipient is to apply and execute AEL funds in a strategic, coordinated, and cost-efficient manner. If the eligible grant recipient is an AEL consortium, it must include an AEL grant recipient, AEL service provider(s), and an AEL fiscal agent. Definitions of AEL grant recipient, AEL service provider, and AEL fiscal agent are set forth in §805.2. Consortium members may serve in one or more of these capacities. Historically, AEL grantees have assumed all of these roles. By defining these functions independently, the Commission intends to provide flexibility and to open access to different organizations to execute roles centered on their individual organizational strengths. For example, a Board may have strong fiscal and monitoring abilities and provide a variety of organizational and workforce development resources, while a regional literacy council my be less established in these areas, but better able to coordinate, direct, and align educational services across a workforce area. Community colleges and local education agencies, each within their specific service areas, would act in their traditional role as service providers. By acting in concert, and leveraging their organizational strengths, these diverse consortium members would be more competitively positioned to effectively and efficiently address the needs of regions larger than many grant recipients historically have been able to address, but without forcing organizations to operate outside their areas of strength or designated service areas. To complement and augment services to address the varied needs of adult learners, consortiums may include other educational and human service agencies, community-based organizations, libraries, and volunteer-based literacy providers that agree to collaborate for the provision and support of AEL services. These groups would combine resources and services to comprehensively serve and support those eligible to receive AEL services.

At a minimum, Boards are expected to support AEL grant recipients with strategic and program design guidance through analysis of employment statistics and local labor market information, regional economic development, and industry or occupational demand studies; identification of targeted high-growth or emerging industries; and prioritization or targeting of high-growth, high-demand occupations for which Boards direct their training resources. Boards may also support direct services for eligible individuals by aligning the education, training, and employment services and support services provided by their workforce service providers with AEL service providers such as enrollment or coenrollment in technical training, related support services, on-the-job training, and employment guidance.

The intent of the Commission is to establish a statewide system of AEL grant recipients aligned and coordinated with the workforce system that provide AEL services on a coordinated basis within each workforce area. Each AEL grant recipient must plan and develop a service delivery strategy that includes a broad analysis of the educational, economic, and workforce development trends across the entire workforce area to provide eligible AEL students with comprehensive and locally responsive services. AEL grant recipients must also expand, improve, and coordinate delivery of education, career training, workforce development, and support services to support both program performance and greater efficiencies.

An AEL grant recipient must perform all services and activities required to fully comply with the Agency's contract performance requirements and all contract terms and conditions. An AEL grant recipient's responsibilities include, but are not limited to, communication, monitoring, technical assistance, professional development, reporting, and ensuring workforce area coverage, as set forth in §805.42(d).

It is also the Commission's intent that if the AEL grant recipient is an AEL consortium, it must designate an entity to serve as the AEL lead organization of the consortium and designate an entity to serve as AEL fiscal agent for the AEL consortium.

The AEL fiscal agent is responsible for making and filing all financial reports with the AEL grant recipient that will review all reports and submit to the Agency on behalf of the consortium.

Comment: One commenter recommended that AEL programs be encouraged to partner with other institutions and agencies that provide further education, employment-related training, and opportunities for employment.

Response: The Commission reiterates its intent that AEL programs work closely with workforce partners, including Boards and Workforce Solutions Offices across the state, and community colleges, AEL providers, independent school districts, economic development groups, community and volunteer-based literacy providers, and other state agencies to help meet the employment, education, and training needs of students. Collaboration and coordination with these partners play a critical role in the success of AEL programs, as well as the Texas workforce system.

Comment: One commenter suggested that the Commission consider expanding its vision for adult education programs to embrace service delivery models that "expand, improve, and coordinate delivery of education, career training, workforce development and support services" to include the coordination and delivery of entrepreneurship training and small business development.

Response: The Commission and Boards, in partnership with a number of state and local organizations, provide access to information and resources for individuals starting or expanding their businesses, and directly administer programs that support the needs of growing and expanding small businesses. Individuals who are served through AEL programs will have access to information and resources to assist with business creation or expansion.

Comment: One commenter requested that the Commission strengthen the AEL system by building capacity for community and volunteer-based literacy providers and incentivizing their inclusion in regional consortiums.

Response: As stated in the preamble discussion of §805.1 and §805.41, the Commission recognizes the importance of building capacity for community and volunteer-based literacy providers to serve AEL students. Community and volunteer-based literacy providers may serve as AEL service providers and AEL grant recipients as specified in 20 USC §9202 and Texas Labor Code §315.003. The Commission recognizes the value these entities offer to the community's advancement, and has provided that preference be given to grant applications that demonstrate the capacity to leverage community groups in the delivery of services, including volunteer-based literacy providers, libraries, and other organizations providing AEL services.

Comment: Four commenters expressed support for the proposed emphasis on analyzing workforce needs within each region, specifically the guidance given to "expand, improve, and coordinate delivery of education, career training, workforce development, and support services to support both program performance and greater efficiencies." The commenters also recommended revising this section to ensure that support services are clearly defined to incorporate research-based integrated service delivery systems.

Response: The Commission intends to expand upon the delivery of integrated AEL and vocational training models, such as the Accelerate Texas initiative administered by the Texas Higher Education Coordinating Board. Critical to the success of such programs is the identification and provision of support services. The continued enhancement of AEL providers' partnerships with Boards, community colleges, community-based and faith-based organizations, and other local organizations ensures that AEL students have the infrastructure and support services to gain necessary basic skills and successfully transition to productive career and postsecondary pathways.

§805.43. Advisory Committees

New §805.43 sets forth the criteria regarding a statewide AEL advisory committee.

--Statewide Advisory Committee--The Commission shall establish a statewide AEL advisory committee, composed of not more than nine members appointed by the Commission.

--(1) Committee members must:

--(A) have expertise in AEL and may include adult educators, providers, advocates, current or former AEL program students, and leaders in the nonprofit community engaged in literacy promotion efforts;

--(B) include at least one representative of the business community and at least one representative of a Board; and

--(C) serve for staggered two-year terms and be limited to one term.

--(2) Membership shall be reviewed when a member's employment changes to determine whether the individual continues to meet the requirements for membership.

--(3) The committee shall meet at least quarterly and report to the Commission on an annual basis.

SB 307 mandates the establishment of a statewide AEL committee. The statute requires that the committee must meet at least quarterly, and advise the Agency annually on a number of issues pertaining to the AEL community. These issues include the development of policies and program priorities that support the development of an educated and skilled workforce in Texas, statewide curriculum guidelines and standards for AEL services that ensure a balance of education and workplace skill development, a statewide strategy for improving student transitions to postsecondary education and career and technical education training, and a centralized system for collecting and tracking comprehensive data on performance outcomes.

Consistent with statutory requirements, the committee must be composed of no more than nine members appointed by the Commission, and members must have expertise in AEL; may include adult educators, providers, advocates, current or former AEL program students, and leaders in the nonprofit community engaged in literacy promotion efforts; and must include at least one representative of the business community and at least one representative of a Board.

To support the statewide advisory committee, the Agency will plan, organize, and staff the meetings of the advisory committee. Members will be appointed for staggered two-year terms, with initial terms being two years or three years based on random selection by the members, with membership limited to one term. Continued membership will be reviewed when a member no longer serves in the same employment capacity as when appointed.

Current TEA rule §89.28 provides a basis for the use of local advisory committees. There are currently a number of local advisory committees in place, linked in large part with the existing AEL cooperatives. Although not mandated in rule, the Commission recognizes the importance of local communities using local advisory committees or other mechanisms to bring a broad spectrum of community representatives together locally to ensure that the resources available to support AEL efforts are fully integrated with other partner services. The Commission expects that workforce areas will establish methods for ensuring that Boards and AEL grant recipients regularly communicate and plan for the delivery of services to their common customers.

Comment: One commenter requested clarification on whether or not AEL programs will have access to the statewide advisory committee to voice issues or concerns.

Response: The Commission notes that the purpose of the advisory committee is to advise the Commission on program and policy priorities. The advisory committee's first meeting is scheduled for January 2014, where the methods it will use to advise the Commission will be discussed. Organizations are urged to communicate directly with the Agency to identify areas that would benefit from technical assistance, whether to individual providers or more broadly. As the Commission continues to develop, administer, and support a comprehensive AEL program, it will continue to pursue opportunities for collaboration and engagement with all partners in the AEL community.

Comment: Four commenters requested that the statewide advisory committee select from among its members a presiding officer, pursuant to Texas Government Code, Chapter 2110, and that the rules pertaining to the advisory committee include specific references to SB 307's intent for the committee to advise the Commission on program and policy priorities.

Response: The Commission agrees and modifies the rule. The Commission notes that Texas Government Code §2110.003 indicates that an advisory committee must select a presiding officer from among its members. The rule is modified to indicate that the AEL Advisory Committee must select a presiding officer from among its members who must preside over the committee.

Further, §2110.005 requires a state agency that establishes an advisory committee to state by rule the purpose and tasks of the committee and describe the manner in which the committee will report to the agency. SB 307 added Texas Labor Code §315.005(c), which lists the purposes of the advisory committee and indicates that the committee must report to the Commission at least annually. The Commission incorporates these provisions in rule to clarify that the purpose and tasks of the advisory committee are to advise the Commission on the following:

--(A) The development of:

--(i) policies and program priorities that support the development of an educated and skilled workforce in the state;

--(ii) statewide curriculum guidelines and standards for AEL services that ensure a balance of education and workplace skills development;

--(iii) a statewide strategy for improving student transitions to postsecondary education and career and technical education training; and

--(iv) a centralized system for collecting and tracking comprehensive data on AEL program performance outcomes;

--(B) the exploration of potential partnerships with entities in the nonprofit community engaged in literacy-promotion efforts, entities in the business community, and other appropriate entities to improve statewide literacy programs; and

--(C) any other issue the Commission considers appropriate.

In addition, the Commission modifies §805.43(3) to state that the advisory committee must submit a written report to the Commission, as required by SB 307.

§805.44. Match Requirements

New §805.44 sets forth the requirements for match requirements, as follows:

--(a) AEL grant recipients must provide and document any cash or in-kind match. The match must be met using non-federal (i.e., local or state) sources.

--(b) The cash or in-kind match may be obtained from any state or local source that is fairly evaluated, excluding any sources of federal funds.

--(c) The match may include allowable costs, including the following:

--(1) goods and services;

--(2) fair market value of third-party goods and services donated by volunteers and employees or other organizations; and

--(3) supplies, equipment, and building space not owned by the fiscal agent.

--(d) The AEL grant recipient is required to maintain auditable records for all expenditures relating to the cash or in-kind match the same as for the funds granted through an approved application.

--(e) If public funds, other than state and federal adult education funds, are used in the AEL instructional program, the program may claim a proportionate share of the student contact time as the cash or in-kind match.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.44 retains the provisions of TEA rule §89.32, without modification.

§805.45. Tuition and Fees

New §805.45 provides that tuition and fees must not be charged unless the entity charging them is statutorily authorized to do so. Funds generated by tuition and fees must be used for the AEL instructional programs.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, this section retains the provisions of TEA rule §89.33, without modification.

Comment: One commenter requested clarification regarding whether or not AEL programs will be allowed to charge tuition and fees to students.

Response: The Commission clarifies, as set forth in §805.45, that tuition and fees must not be charged unless the entity charging them is statutorily authorized to do so. If statutorily authorized, an entity must use funds generated by tuition and fees for AEL instructional programs.

SUBCHAPTER D. OTHER PROVISIONS

The Commission adopts new Subchapter D, Other Provisions, as follows:

§805.61. Staff Development and Special Projects

New §805.61 provides that from the federal funds set aside for state administration, special projects, staff development, and leadership, a portion of funds shall be used to provide training and professional development to organizations that are not currently receiving grants but are providing literacy services.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.61 retains the provisions of TEA rule §89.34(b), without modification.

§805.62. Evaluation of Programs

New §805.62 sets forth that the Commission shall evaluate AEL programs based on the indicators of program quality for adult education. Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.62 retains the provisions of TEA rule §89.34(c), with modifications to make minor, nonsubstantive, editorial changes.

Comment: One commenter requested clarification regarding whether or not AEL programs will be allowed to charge tuition and fees to students.

Response: The Commission clarifies, as set forth in §805.45, that tuition and fees must not be charged unless the entity charging them is statutorily authorized to do so. If statutorily authorized, an entity must use funds generated by tuition and fees for AEL instructional programs.

COMMENTS WERE RECEIVED FROM:

Amy Beneski, Associate Executive Director, Texas Association of School Administrators

Carole Belver, Executive Director of Community Action Inc. of Central Texas

Kay Brooks, Grant Project Manager for GED & ESL Program, Brazosport College

Mary Alice Carlson, Community Action, Inc.

Bret Champion, Superintendent, Leander ISD

Lori Donley, Executive Director of Literacy Texas

Leslie Helmcamp, Policy Analyst for the Center for Public Priorities

Selsa Lerma, Odessa College

Dean Ransdell, Director of Adult Education, Texarkana ISD

Lee Rector, Director of the Texas Workforce Investment Council

Kendra Shaffer, Executive Director of K-12 programs, Leander ISD

Mike Temple, Director of the Gulf Coast Workforce Development Board

Kimberly B. Vinton, Coordinator III of the Region 20 Adult Education Service Center

Barbara Yoder, Adult Education, Cleburne ISD

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§805.1 - 805.5

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.3. Federal and State AEL Funds.

(a) Federal AEL funds may be used for AEL programs for out-of-school individuals who have attained 16 years of age and who are not enrolled or required to be enrolled in secondary school under state law and:

(1) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) are unable to speak, read, or write the English language.

(b) State AEL funds are to be used for AEL programs for out-of-school individuals who have attained 18 years of age unless specifically exempted from compulsory school attendance by Texas Education Code §25.086 and:

(1) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) are unable to speak, read, or write the English language.

(c) The proportion of students served who meet the requirements of subsection (a) of this section, but do not meet the requirements of subsection (b) of this section, shall not exceed the grant recipient's percentage of federal funds to the total allocation.

(d) The Commission shall establish annual performance benchmarks for the use of AEL funds in serving specific student populations, including the population of students receiving other workforce services or coenrolled in postsecondary education or training.

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 February 4, 2014.

TRD-201400472

Laurie Biscoe

Deputy Director, Workforce Programs

Texas Workforce Commission

Effective date: February 24, 2014

Proposal publication date: November 29, 2013

For further information, please call: (512) 475-0829

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SUBCHAPTER B. STAFF QUALIFICATIONS

40 TAC §805.21

The new rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 February 4, 2014.

TRD-201400473

Laurie Biscoe

Deputy Director, Workforce Programs

Texas Workforce Commission

Effective date: February 24, 2014

Proposal publication date: November 29, 2013

For further information, please call: (512) 475-0829

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SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

40 TAC §§805.41 - 805.45

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.43. Advisory Committees.

Statewide Advisory Committee. The Commission shall establish a statewide AEL advisory committee, composed of no more than nine members appointed by the Commission.

(1) Committee members shall:

(A) have AEL expertise and may include adult educators, providers, advocates, current or former AEL students, and leaders in the nonprofit community engaged in literacy promotion efforts;

(B) include at least one representative of the business community and at least one representative of a Local Workforce Development Board (Board); and

(C) serve for staggered two-year terms and be limited to one term.

(2) Membership shall be reviewed when a member's employment changes to determine whether the individual continues to meet the requirements for membership.

(3) The committee shall meet at least quarterly and submit a written report to the Commission on an annual basis.

(4) The committee shall select a presiding officer as required by Texas Government Code, Chapter 2110.

(5) The committee shall advise the Commission on:

(A) the development of:

(i) policies and program priorities that support the development of an educated and skilled workforce in the state;

(ii) statewide curriculum guidelines and standards for AEL services that ensure a balance of education and workplace skills development;

(iii) a statewide strategy for improving student transitions to postsecondary education and career and technical education training; and

(iv) a centralized system for collecting and tracking comprehensive data on AEL program performance outcomes;

(B) the exploration of potential partnerships with entities in the nonprofit community engaged in literacy-promotion efforts, entities in the business community, and other appropriate entities to improve statewide literacy programs; and

(C) any other issue the Commission considers appropriate.

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 February 4, 2014.

TRD-201400474
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: February 24, 2014
Proposal publication date: November 29, 2013
For further information, please call: (512) 475-0829

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SUBCHAPTER D. OTHER PROVISIONS

40 TAC §805.61, §805.62

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 February 4, 2014.

TRD-201400475
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: February 24, 2014
Proposal publication date: November 29, 2013
For further information, please call: (512) 475-0829

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board (Board) files this notice of intent to review 31 TAC Chapter 529, Subchapter B, §§529.50 - 529.62, concerning Structural Repair Grant Program, in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the rules continues to exist.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review in the *Texas Register.*

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503; by e-mail to risom@tsswcb.texas.gov; or by facsimile at (254) 773-3311.

TRD-201400596
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: February 10, 2014

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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 105, Foundation School Program, Subchapter A, Definitions, and Subchapter B, Use of State Funds, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 105, Subchapters A and B, in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8931).

The SBOE finds that the reasons for adopting 19 TAC Chapter 105, Subchapters A and B, continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapters A and B. No changes are necessary as a result of the review.

TRD-201400678
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 12, 2014

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Texas State Soil and Water Conservation Board

Title 31, Part 17

Pursuant to the notice of proposed rule review published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7479), the Texas State Soil and Water Conservation Board (Board) has reviewed and considered for readoption, revision or repeal 31 TAC Chapter 529, Subchapter A, §§529.1 - 529.8, concerning Operation and Maintenance Grant Program, in accordance with Texas Government Code, §2001.039.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist.

No public comments were received on the proposed rule review.

As a result of the review, the Board determined that the rules are still necessary and readopts the rules, without changes, since it governs the Board's program for maintaining the safe operation of flood water control structures.

This completes the Board's review of 31 TAC Chapter 529, Subchapter A, §§529.1 - 529.8.

TRD-201400650
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: February 11, 2014

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Morgan Smith
10th Grade

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §109.3001(c)(1)

IDEA-B LEA
MAINTENANCE OF EFFORT
(MOE)
GUIDANCE HANDBOOK

FOR FISCAL YEAR 2014 AND BEYOND

Version 2.0 (10/2013)

Contents

Introduction

For a local educational agency (LEA) to be eligible to receive Individuals with Disabilities Education Act, Part B (IDEA-B) grant funds, the LEA must meet the federal fiscal accountability requirement known as maintenance of effort (MOE), defined under Title 34 of the Code of Federal Regulations (34 CFR) 300.203.

This handbook provides Texas LEAs with guidance on the process of complying with the IDEA-B LEA MOE requirement beginning with fiscal year 2014 (school year 2013–2014).

Relationship of Maintenance of Effort (MOE) to Other IDEA-B Fiscal Compliance Requirements

Prior to defining and providing specific guidance on compliance with IDEA-B LEA MOE, it is helpful to understand the relationship of MOE to other IDEA-B fiscal compliance requirements.

MOE is only one of several fiscal compliance requirements governing the expenditure of federal funds on students with disabilities. Others include excess cost and coordinated early intervening services (CEIS) requirements. To assist LEAs, this handbook includes definitions of these fiscal compliance requirements. Additional resources on those topics are listed below. It is important to note that the excess cost and CEIS requirements apply to the federal IDEA funds while the MOE and voluntary MOE reduction requirements relate to the expenditure of state and local funds. Voluntary MOE reduction is further described in the Voluntary Reduction of MOE section.

Before budgeting both federal and state and/or local funds for services to identified students with disabilities, the LEA should first review and determine the requirements for excess cost, CEIS, voluntary reduction, and MOE.

Definition of Excess Costs

The excess cost requirement mandates how much the LEA must expend in state and local funds before it may begin expending IDEA-B grant funds. The excess cost requirement focuses on per-student spending in special education as compared to per-student spending across all students, whereas the IDEA-B LEA MOE requirement focuses on special education spending in the current year as compared to special education spending in the previous year.

Per 34 CFR 300.202(a)(2), IDEA-B funds "Must be used only to pay the excess costs of providing special education and related services to children with disabilities" [emphasis added]. Per 34 CFR 300.16, "Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student." Per 34 CFR, Appendix A to Part 300, "An LEA must spend at least the average annual per student expenditure on the education of an elementary school or secondary school child with a disability before funds under Part B of the Act are used to pay the excess costs of providing special education and related services."

Definition of Coordinated Early Intervening Services (CEIS)

Spending of IDEA-B grant funds on CEIS is related to IDEA-B LEA MOE in that when an LEA is eligible and intends to voluntarily reduce MOE, a voluntary reduction in MOE must be planned for at the same time as any funds are set aside for CEIS. This relationship is further described in the Relationship between Voluntary Reduction of MOE and CEIS section.

CEIS is defined in 34 CFR 300.226(a) as services "for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment."

An LEA may use up to 15% of IDEA-B funds received by the LEA for any fiscal year to develop and implement CEIS. In accordance with 34 CFR 300.646, if the LEA is identified with significant proportionality, the LEA is required to reserve the maximum amount of funds (i.e., 15% of the IDEA-B allocation) to serve children in the LEA with CEIS, particularly children in those groups that were over identified. In other words, if the percentage of children of certain racial or ethnic backgrounds who are identified as disabled is significantly greater than the percentage that children of

those racial and ethnic backgrounds represent of the LEA's entire population, the LEA is required to set aside the maximum amount for CEIS, particularly for serving those children. See the Significant Disproportionality page of the TEA website for additional information on significant disproportionality.

Additional Resources Related to Other IDEA-B Fiscal Compliance Requirements

In addition to the information provided in this MOE handbook, the Division of Federal Fiscal Compliance and Reporting's (FFCR's) IDEA-B MOE page of the TEA website provides links to the IDEA-B Excess Cost Guidance and IDEA-B CEIS Guidance Handbook. Additional resources will be linked to FFCR's IDEA-B MOE page of the TEA website as they become available. To receive an alert when those resources become available, subscribe to TEA's Grants Administration and Federal Program Compliance listserv. A notice will be sent via that listserv when new resources are posted.

Definition of LEA MOE

34 CFR 300.203(a) defines LEA MOE for IDEA-B as follows: "Funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year." 34 CFR 300.203(b) requires TEA to ensure that the LEA spent (for that purpose) at least the same total or per capita amount of local funds only or the combination of state and local funds.

In other words, an LEA that accepts IDEA-B funds is required under IDEA-B to expend, for services to students with disabilities, at least an amount equal to 100% of the state and/or local funds it expended on students with disabilities during the previous year. Federal law provides four methods of demonstrating compliance (or "maintaining effort"), as described in the Methods of Determining Compliance section.

Purpose of LEA MOE

In awarding grant funds for education purposes, the federal government does not intend for LEAs to use federal funds as the primary means of providing services to students with disabilities. The LEA agrees when it accepts the IDEA-B funds that it will expend nonfederal (that is, state and local) funds in accordance with two federal fiscal accountability requirements: (i) supplement, not supplant, and (ii) MOE.

The supplement, not supplant provision of IDEA-B (34 CFR 300.202(a)(3)) mandates that state and local funds may not be diverted to other purposes simply because federal funds are available. The MOE requirement ensures, moreover, that the LEA continues to expend its state and/or local funds at the same level from year to year, either in the aggregate or on a per-pupil basis, instead of limiting services to what can be provided using federal dollars.

IDEA-B LEA MOE Methodology

This handbook includes, in Appendix 3, a detailed description of the steps the Texas Education Agency (TEA) takes to calculate an LEA's compliance with the IDEA-B LEA MOE requirement. Appendix 4 contains information on an LEA MOE Calculation Tool available to assist LEAs in planning for satisfying the MOE compliance requirement. Please note, beginning in fiscal year 2014, the PIC 99 allocation (which is used to allocate PIC 99 expenditures among specific organizations and programs within the LEA) is not used in the IDEA-B LEA MOE calculation. LEAs may use the calculation tool described in Appendix 4 to calculate their own compliance for fiscal year 2014 and beyond.

Compliance with IDEA-B MOE Requirement

Per 34 CFR 300.203, LEAs that expend IDEA-B funds must comply with the IDEA-B MOE requirement. This section describes the methods of determining compliance, the consequences of noncompliance, and allowable federal exceptions and state reconsiderations to the MOE requirement.

Methods of Determining Compliance

To meet the IDEA-B MOE requirement in any fiscal year, an LEA is required to expend state and/or local funds on special education at 100% of the level at which it expended state and/or local funds on special education in the

preceding fiscal year. 34 CFR 300.203 provides the following four methods for determining whether an LEA has met the IDEA-B MOE requirement:

- The *total* amount the LEA expended in *state and local funds* must equal or exceed the amount it expended from those sources for special education during the previous fiscal year.
- The *per-pupil* amount the LEA expended in *state and local funds* must equal or exceed the amount it expended per capita from those sources for special education during the previous fiscal year.
- The *total* amount the LEA expended in *local funds* must equal or exceed the amount it expended from that source for special education during the previous fiscal year.
- The *per-pupil* amount the LEA expended in *local funds* must equal or exceed the amount it expended per capita from that source for special education during the previous fiscal year.

An LEA only needs to pass one of the four tests to be compliant.

If the LEA was noncompliant in maintaining effort in the preceding year, then the current year must be compared to the second preceding year' rather than the preceding year when the LEA was noncompliant. (See the USDE guidance from April 4, 2012, posted on the Division of Federal Fiscal Compliance and Reporting IDEA-B MOE page of the TEA website.) For example, if the LEA was noncompliant in the fiscal year 2013 final determination, then the fiscal year 2014 determination must compare fiscal year 2014 to fiscal year 2012.

Consequences of Noncompliance

If an LEA fails all four tests, it will be notified of its preliminary determination of noncompliance and given the opportunity to respond by claiming allowable federal exceptions, voluntary MOE reduction, and/or requesting state reconsiderations.

If an LEA does not have sufficient allowable federal exceptions, a voluntary MOE reduction, and/or state reconsiderations to offset the decline in fiscal effort, the LEA **must refund** to TEA the amount by which the LEA failed to maintain effort (i.e., the difference between its prior and current year expenditures on students with disabilities after all applicable federal exceptions, voluntary MOE reduction, and state reconsiderations have been applied). Likewise, note that sufficient allowable federal exceptions, voluntary MOE reduction, and/or state reconsiderations may offset, or exceed, the entire decline in fiscal effort causing no refund to be required.

If the refund amount exceeds the LEA's IDEA-B maximum entitlement for the fiscal year under determination, the LEA will only be required to refund the amount up to the LEA's maximum entitlement. **The repayment must be made from nonfederal funds or from funds for which accountability to the federal government is not required, that is, from state and/or local funds.**

Federal Exceptions to the MOE Requirement

As stated in 34 CFR 300.204, the LEA may reduce the level of its state and/or local expenditures below the level of those expenditures for the preceding fiscal year only if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State Education Agency (SEA), because the child—

  (1) Has left the jurisdiction of the agency;

  (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

  (3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the SEA under 34 CFR 300.704(c)."

These federal exceptions, if applicable, reduce the IDEA-B LEA MOE requirement in the fiscal year under determination and may result in the LEA becoming compliant or may reduce the amount of any refund due for noncompliance.

LEAs complete TEA's standardized assertion forms to document any reductions attributable to the allowable causes described above. The assertion forms will be posted to the Grants and Federal Fiscal Compliance (GFFC) Reports and Data Collections application available in TEASE/TEAL.

Departure of Personnel

In order for the level of state and/or local expenditures to be reduced on the basis of departure of personnel, the LEA must provide the following source documentation:

- Source payroll record (e.g., personnel action form, resignation letter signed and dated by the employee) indicating the reasons why the employee departed the LEA
- Year-to-date payroll distribution journal
- Employee's State Board of Educator Certification (SBEC) record (i.e., certification)
- Employee's signed and dated job description

In addition, the following conditions must be satisfied:

- Departed personnel may no longer be employed by the LEA. If a special education teacher has been reassigned to other duties within the LEA, the reassignment **does not qualify** the LEA to claim the "departure of personnel" exception.
- The departure must be voluntary (that is, the employee resigned or retired) or for just cause (the employee was terminated as the result of misconduct or negligence). If the LEA reduces the number of special education personnel as the result of a reduction in force, the LEA **may not** claim the "departure of personnel" exception.
- The LEA **may not** claim the "departure of personnel" exception when releasing or failing to renew the contract of a probationary employee, as neither of those cases meets the "just cause" requirement.

Decrease in Enrollment of Children with Disabilities

TEA automatically accounts for a decrease in the enrollment of children with disabilities when calculating the LEA's IDEA-B MOE in the following two ways.

1. If the number of students with disabilities decreases, and per-pupil special education expenditures remain the same or increase, the LEA will pass the second and fourth tests described in the Methods of Determining Compliance section.
2. In addition, TEA implements allowable flexibility to reduce the refund due by the percentage decrease in enrollment of children with disabilities from the preceding comparison year to the most recent year. For example, if the special education enrollment in the LEA decreased by 5% and the LEA was determined to be noncompliant, then the refund due would be decreased by 5%. This reduction is reflected on the LEA's MOE report.

Termination of Obligation

In order for the level of state and/or local expenditures to be reduced because the LEA no longer has an obligation to serve a child with an exceptionally costly program, the LEA must provide the following supporting documentation:

- A schedule summarizing the total costs for each special education student that participated in an exceptionally costly program. The schedule must reconcile to the LEA's detailed general ledger and source records which must include the fund/net asset code and object code for each cost description.
- A detailed general ledger and source records supporting costs identified on the summary schedule provided.

- TEA may also request a student's individualized education program (IEP). If the IEP is requested, the LEA must provide it to TEA through a secure transmission method (provided by TEA) within 24 hours of the request.

An exceptionally costly program for serving a student with a disability is defined as an amount greater than the average per pupil expenditure (as defined in section 9101 of the ESEA) in Texas. Examples of reductions in an exceptionally costly program include, but are not limited to, the following:

- A student in a residential placement graduates or moves out of the LEA.
- A residential facility closes.
- A charter school or another school district begins providing educational services for a student.
- A student with a high number/level of personnel assigned to implement the student's individualized education program (IEP) leaves the LEA. Such students would include but are not limited to students who are identified as deaf, blind, deaf-blind, autistic, medically fragile, emotionally disturbed, or having a severe disability across eligibility categories.
- A settlement agreement/corrective action ends.

Termination of Costly Expenditures

In order for the level of state and/or local expenditures to be reduced because of a termination of costly expenditures for long-term purchases, the LEA must provide the following supporting documentation:

- A schedule listing all of the items purchased, description of the items purchased, and the general ledger classification of the purchases, i.e., fund/net asset code, function code and object code. The schedule must agree to the LEA's detailed general ledger and source records, which must include the fund/net asset code and object code.
- A detailed general ledger and source records supporting the costs identified on the summary schedule provided.

Assumption of Cost by High Cost Fund

In order for the level of state and/or local expenditures to be reduced because of assumption of cost by the high cost fund operated by TEA, meaning the expenditure in the current year was charged to the IDEA-B High Cost grant received from TEA, the LEA must provide the following supporting documentation:

- A detailed general ledger for the previous school year indicating the cost was previously recorded under fund code 199 or 420.
- A detailed general ledger for the current school year indicating the cost was subsequently recorded under fund code 226 (High Cost Grant).
- The source records supporting costs identified on the detailed general ledgers.

Voluntary Reduction of MOE

The federal exceptions described in the preceding section provide LEAs with possible means of addressing a preliminary determination of noncompliance with IDEA-B LEA MOE. In addition, under certain circumstances, the LEA may have the option to voluntarily reduce the amount of state and/or local expenditures on special education required to comply with IDEA-B LEA MOE.

In accordance with 34 CFR 300.205(a), if an LEA's federal IDEA-B allocation for the current year is greater than the allocation for the preceding year, the LEA may choose to reduce the level of its state and/or local expenditures below what was spent on special education services in the preceding year. **In addition, the voluntary reduction may only be taken if the LEA's state Determination Level is "Meets Requirements" and the LEA has not been identified as having "significant disproportionality."** [34 CFR 300.205(c)] The amount of that "voluntary" reduction may not exceed 50% of the allocation increase in IDEA-B formula funding.

For example, assuming the LEA has a state determination level of "Meets Requirements" and is not identified for significant disproportionality, if the LEA was allocated $100,000 more in IDEA-B formula funding for the current year than it received in the previous year, it would be eligible to reduce its state and/or local special education spending by

$50,000 while still maintaining compliance with IDEA-B LEA MOE. Note, however, that before voluntarily reducing MOE, LEAs should carefully consider the relationship of CEIS and voluntary MOE reduction and how the state and/or local funds which are reduced may be expended.

To ensure the LEA properly applies any voluntary MOE reduction, the LEA must take two requirements into consideration:

1. Per 34 CFR 300.205(b), the amount by which IDEA-B MOE is voluntarily reduced must be expended "to carry out activities that could be supported with funds under the ESEA [Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act (NCLB) of 2001] regardless of whether the LEA is using funds under the ESEA for those activities."

   The LEA must spend the amount of the reduction for ESEA activities in the same year that it takes the IDEA-B MOE reduction. The LEA must also demonstrate in the detailed general ledger that the amount of the reduction was spent on ESEA activities by using a local option code that uniquely identifies the amounts expended for ESEA activities.

2. Per 34 CFR 300.205(d), the amount by which IDEA-B MOE is voluntarily reduced is interconnected to the amount of IDEA-B funds the LEA chooses to set aside for CEIS, as described in the following section.

Relationship between Voluntary Reduction of MOE and CEIS

CEIS and the voluntary reduction of MOE provision are interconnected. 34 CFR 300.226(a) states the amount set aside for CEIS must include the amount used for voluntary MOE reduction. At the same time, 34 CFR 300.205(d) states the amount an LEA uses for CEIS shall count toward the maximum amount the LEA may voluntarily reduce the level of its expenditures for MOE. This interconnection may be due to the fact that both provisions are in essence diverting the use of federal funds (CEIS) or state and local funds (MOE reduction) away from providing services to students with disabilities for other uses.

The decisions an LEA makes about the amount of funds it uses for one purpose affects the amount it may use for the other. **The LEA must plan both for CEIS and MOE at the beginning of each grant year.** Otherwise the use of funds for CEIS could prohibit a later decision to voluntarily reduce MOE, as illustrated in 34 CFR, Appendix D to Part 300.

In summary, the rule for using funds for CEIS and MOE is as follows:

- If the LEA is either setting aside funds for CEIS or voluntarily reducing its MOE (but not doing both), it is unnecessary to consider the interconnection between CEIS and MOE. For CEIS, the LEA may set aside up to 15% of its IDEA-B allocation (Section 611 and Section 619 funds; 34 CFR 300.226(a)). For MOE, the LEA may voluntarily reduce its level of expenditures by up to 50% of any increase from the prior year to the current year's IDEA-B allocation (Section 611 funds; 34 CFR 300.205(a)).
- If the LEA is both setting aside funds for CEIS and voluntarily reducing its MOE, the LEA should determine which amount is the lesser: the amount available for CEIS set-aside, or the amount available for voluntary MOE reduction. **Combined, the CEIS set-aside and MOE reduction may not exceed that lesser amount.**

See Appendix 1 for a flowchart illustrating the process the LEA should use in planning for its CEIS set-aside and voluntary reduction of MOE. The Definition of CEIS section provides a list of resources where grantees may find additional detail on CEIS. See Appendix 2 for examples of the relationship between CEIS and the voluntary MOE reduction provisions.

State Reconsiderations in the MOE Calculation

As authorized by the US Department of Education (USDE), Texas law, or adopted commissioner's rule, TEA may reconsider how certain costs are accounted for in the MOE calculation. The types of state reconsiderations available to LEAs for consideration by TEA include the following:

- Legislatively mandated changes to account for funds (i.e., statutory data collection requirements)
- Federal funds that may be considered equivalent state or local funds (e.g., Ed Jobs funds)

- Significant errors in an LEA's reported expenditures

The requirements, terms, and conditions for state reconsiderations are identified below.

Legislatively Mandated Changes to Account for Funds

Occasionally, the Texas State Legislature passes a law that includes a statutory requirement for data collections that may affect the recording of special education expenditures. In those cases, if the statutory requirement affects the calculation of MOE adversely for the LEA, the LEA may submit a request for state reconsideration, and TEA may reconsider how certain costs are accounted for in the MOE calculation. For each fiscal year, where the Legislature has required specific reporting, TEA will provide the LEA a list of required supporting documentation, which identifies the special education costs coded to meet the Legislative requirement, which also meet the IDEA-B MOE requirement.

Federal Funds That *May* be Considered as State or Local Funds

In years when the federal government provides special and/or additional federal funds that TEA designates as state or local funds (such as ARRA SFSF, fund code 266), those specific funds will be automatically included in the total aggregated expenditures by function code for each respective compliance year in the MOE calculation.

However, federal funds that TEA does not specifically designate as state or local funds are not automatically included in the MOE calculation. For example, the federal Ed Jobs funds (fund code 287) ***may*** at the LEA's discretion be considered as state or local funds. In other words, the LEA was the entity that decided whether to consider the specially allocated federal funds as state or local funds.

The LEA may request a state reconsideration for inclusion of federal funds that the LEA used as state or local funds in the determination of compliance with IDEA-B LEA MOE. The following requirements apply:

- The LEA will be required to submit supporting documentation identifying the federal funds expended as state or local funds.
- The LEA must have available for inspection auditable documentation demonstrating that the federal funds treated as non-federal funds were spent in accordance with the requirements for use in determining compliance with IDEA-B LEA MOE.

Significant PEIMS Errors

USDE has approved TEA's request to reconsider significant errors reported in the Public Education Information Management System (PEIMS), the agency's official system of record, with "significant" defined to mean the following in relation to IDEA-B LEA MOE:

> "Corrections that change the LEA's compliance status (from noncompliant to compliant or compliant to noncompliant)."

To demonstrate that an error is "significant", the LEA must enter its self-reported, corrected data into TEA's IDEA-B LEA MOE calculation tool (available on the IDEA-B MOE page of the TEA website) and the results must reflect a change in the LEA's compliance status.

If the results of the TEA IDEA-B LEA MOE calculation tool show a change in compliance status, TEA will recalculate a revised compliance determination using the corrected data. **The calculation performed by the IDEA-B LEA MOE calculation tool is an estimate only and does not duplicate the exact calculation process. The results of TEA's recalculation will be the basis of the final MOE determination.**

The LEA may request a state reconsideration for significant errors in the LEA's reported expenditures by providing the following to TEA:

- The results returned by the IDEA-B MOE calculation tool, signed by the LEA's external auditor, showing how the corrections change the LEA's compliance status.
- A detailed schedule prepared and signed by the LEA's external auditor containing the erroneous and the correct PEIMS data, along with the supporting documentation for such claims.

- A detailed schedule with the corrected PEIMS data in the appropriate PEIMS format provided by TEA to be used in lieu of the original PEIMS data. **This schedule will not be modified by TEA. It will be used exactly as provided.**
- A description of how the error occurred and the administrative procedures taken to ensure such PEIMS data errors do not reoccur.

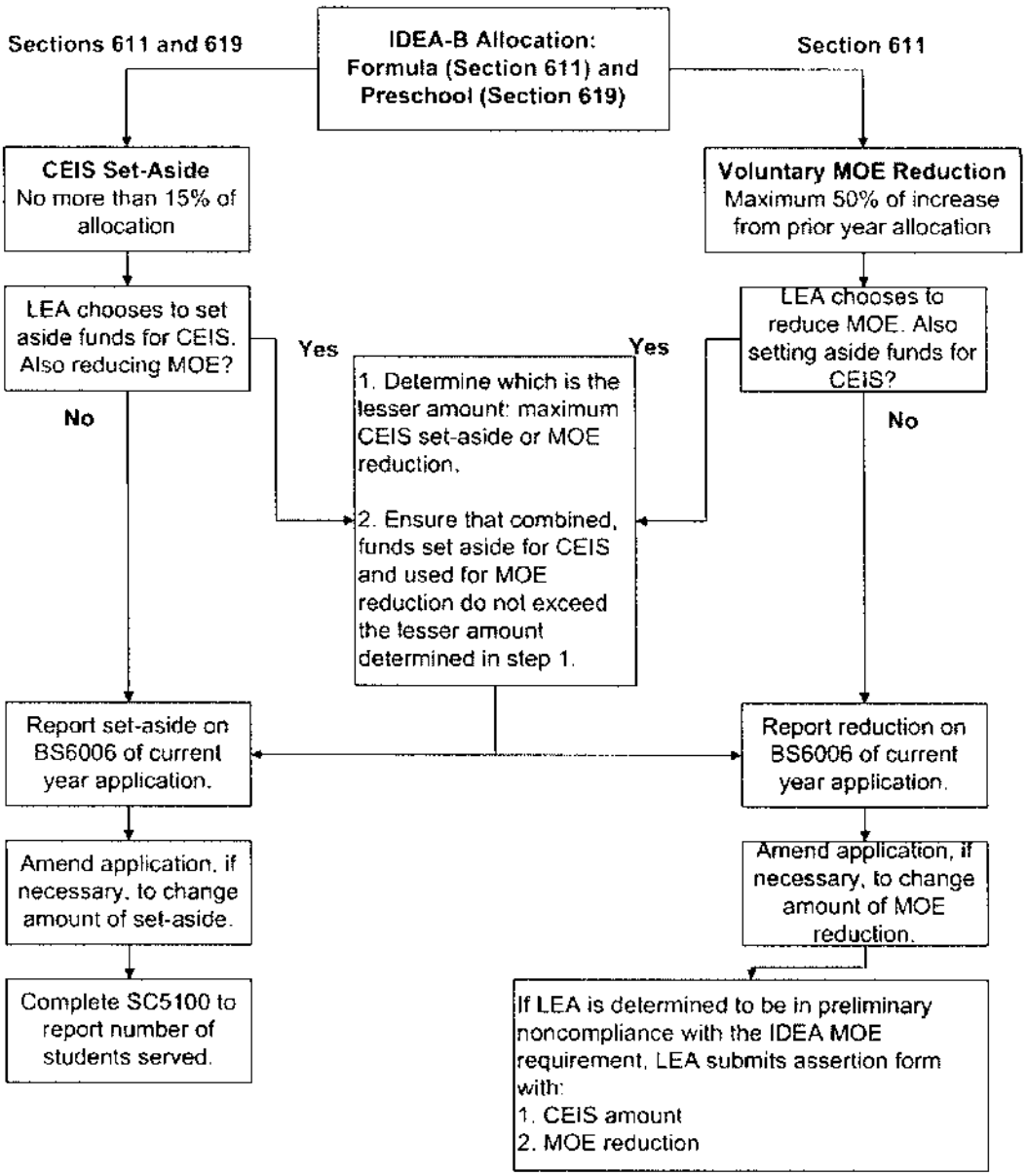
Any decision to use revised data in the calculation of IDEA-B MOE determinations will not change the official PEIMS data, which is the agency's official system of record. The official PEIMS data is final and will remain unchanged on all TEA products and reports that rely on that information.

Possible Consequences of a State Reconsideration Request Due to Significant PEIMS Errors

When an LEA notifies TEA of significant PEIMS errors in the LEA's reported expenditures in the process of requesting the state reconsideration, TEA's FFCR division will make the following notifications of the erroneous data submission to the following TEA divisions and departments, with the following possible results:

- Division of Financial Compliance: Possible increased risk for audit, investigation and/or review
- Division of State Funding: Possible effect on state funding
- Division of Federal Fiscal Monitoring: LEA's possible identification as a high-risk grantee. High-risk grantees may be subject to a review of all reimbursements across one or more grants or a random sampling of expenditures across one or more grants.
- Office for Statewide Education Data Systems: LEA's possible identification as a high-risk grantee
- Department of Accreditation and School Improvement: Possible increased risk for investigation and/or review
- Division of Enforcement Coordination and Governance: LEA possibly recommended for district-level interventions or sanctions based on investigation findings

Appendix 1: CEIS and Voluntary MOE Reduction LEA Process Flowchart



TEA reports data from SC5100 and BS6006 to USDE annually in the spring. Data reported includes allocations, amount of CEIS set-aside, CEIS students served, and amount of voluntary MOE reduction.

Process based on 34 CFR, Appendix D to Part 300.

Appendix 2: Examples of CEIS and Voluntary MOE Reduction

USDE Example 1

In this example, the maximum amount the LEA may use for CEIS is greater than the amount the LEA may use for voluntary MOE reduction. **MOE is therefore the lesser amount.** If the LEA chooses to set funds aside for CEIS and not to reduce MOE, the LEA may set aside up to the maximum of 15% of the allocation. **However, if the LEA chooses to set aside funds for CEIS *and* voluntarily reduce MOE, the combination of the LEA's CEIS set-aside and MOE reduction may not exceed the maximum amount available for MOE.**

Prior Year's Allocation: $900,000

Current Year's Allocation: $1,000,000

Increase: $100,000

Maximum Available for Voluntary MOE Reduction: $50,000 (50% of increase, or 50% of $100,000)

Maximum Available for CEIS: $150,000 (15% of current-year allocation, or 15% of $1,000,000)

- If the LEA chooses to set aside $150,000 for CEIS, it may not reduce its MOE (MOE maximum $50,000 less $150,000 for CEIS means $0 can be used for MOE).
- If the LEA chooses to set aside $100,000 for CEIS, it may not reduce its MOE (MOE maximum $50,000 less $100,000 for CEIS means $0 can be used for MOE).
- If the LEA chooses to set aside $50,000 for CEIS, it may not reduce its MOE (MOE maximum $50,000 less $50,000 for CEIS means $0 can be used for MOE).
- If the LEA chooses to set aside $30,000 for CEIS, it may reduce its MOE by $20,000 (MOE maximum $50,000 less $30,000 for CEIS means $20,000 can be used for MOE).
- If the LEA chooses to set aside $0 for CEIS, it may reduce its MOE by $50,000 (MOE maximum $50,000 less $0 for CEIS means $50,000 can be used for MOE).

USDE Example 2

In this example, the maximum amount the LEA may use for voluntary MOE reduction is greater than the amount the LEA may use for CEIS. **CEIS is therefore the lesser amount.** If the LEA chooses to voluntarily reduce MOE and not to set funds aside for CEIS, the LEA may reduce MOE by up to 50% of the increase from the prior year's allocation. **However, if the LEA chooses to set aside funds for CEIS *and* voluntarily reduce MOE, the combination of those two amounts may not exceed the maximum amount available for CEIS.**

Prior Year's Allocation: $1,000,000

Current Year's Allocation: $2,000,000

Increase: $1,000,000

Maximum Available for Voluntary MOE Reduction: $500,000 (50% of increase, or 50% of $1,000,000)

Maximum Available for CEIS: $300,000 (15% of current-year allocation, or 15% of $2,000,000)

- If the LEA chooses to use no funds for MOE, it may set aside $300,000 for CEIS (CEIS maximum $300,000 less $0 means $300,000 for CEIS).
- If the LEA chooses to use $100,000 for MOE, it may set aside $200,000 for CEIS (CEIS maximum $300,000 less $100,000 means $200,000 for CEIS).
- If the LEA chooses to use $150,000 for MOE, it may set aside $150,000 for CEIS (CEIS maximum $300,000 less $150,000 means $150,000 for CEIS).
- If the LEA chooses to use $300,000 for MOE, it may not set aside anything for CEIS (CEIS maximum $300,000 less $300,000 means $0 for CEIS).
- If the LEA chooses to use $500,000 for MOE, it may not set aside anything for CEIS (CEIS maximum $300,000 less $500,000 means $0 for CEIS).

Appendix 3: IDEA-B MOE Calculation Methodology

The methodology for calculating IDEA-B MOE compliance is based on both federal and state requirements. 34 CFR 300.203 provides the following four methods for determining compliance:

- The *total* amount the LEA expended in *state and local* funds must equal or exceed the amount it expended from those sources for special education during the previous fiscal year.
- The *per-pupil* amount the LEA expended in *state and local* funds must equal or exceed the amount it expended per capita from those sources for special education during the previous fiscal year.
- The *total* amount the LEA expended in *local* funds must equal or exceed the amount it expended from that source for special education during the previous fiscal year.
- The *per-pupil* amount the LEA expended in *local* funds must equal or exceed the amount it expended per capita from that source for special education during the previous fiscal year.

Calculating State and Local Funds

To calculate the total amount expended in state and local funds, TEA uses expenditures reported on PEIMS Record 032, Fund Code 199 for school districts, or 420 for charter schools, coded to program intent code (PIC) 23 and PIC 33. TEA also includes PEIMS Record 033, Fund Code 437 Shared Services Arrangement – Special Education for Shared Service Arrangements (Type 11) expenditures.

As described in the Federal Funds That *May* be Considered as State or Local Funds section, in years when the federal government provides special and/or additional federal funds that TEA designates as state or local funds (such as ARRA SFSF, fund code 266), those specific funds will be automatically included in the total aggregated expenditures by function code for each respective compliance year in the MOE calculation.

Function Codes Used in MOE Determination

The function codes listed in the following table meet the requirements of the IDEA regulations and are used to aggregate state and/or local expenditures within PIC 23 and PIC 33.

Function Code	Description
11	Instruction
12	Instructional Resources and Media Services
13	Curriculum and Instructional Staff Development
21	Instructional Leadership
23	School Leadership
31	Guidance and Counseling Service
32	Social Work Services
33	Health Services
34	Student (Pupil) Transportation
36	Cocurricular/Extracurricular Activities
41	General Administration
51	Plant Maintenance and Operations
53	Data Processing Services

Function Codes Not Used in MOE Determination

The function codes listed in the following table do *not* meet the requirements of the IDEA regulations and are *not* used to aggregate state and/or local expenditures within PIC 23 and PIC 33.

Function Code	Description
35	Food Service
52	Security/Monitoring Service
61	Community Service
71	Debt Service
81	Facilities Acquisition and Construction
91	Contract Services
92	Cst/SI WADA
93	PMT – SSA
95	PMT – JJAEP
97	PMT – TIF
99	Other Intragov Chgs

Special Education Student Count

PEIMS Record 163 - Child-Count-Funding-Type-Code 3 is used to identify the Special Education Student Population. This special education student count is also found on the line titled IDEA-B of the PEIMS Edit+ report PRF5D010, Special Education Child Counts by Funding Type.

Local Funds

As the State's current expenditure reporting systems do not allow tracking of which LEA expenditures (or portions thereof) are made using local funds, the local portion of these expenditures must be imputed for use in the MOE calculation.

Imputing the total local portion of LEA special education expenditures requires the following data:

- The LEA's total state and local special education expenditures.
- The LEA's Tier I Special Education Adjusted Allotment, Total Cost of Tier I, and Local Fund Assignment from the Legislative Planning Estimate (LPE) column in the Summary of Finance (SOF) dated September 10 or first date thereafter in the year under determination.

Below describes how the LEA total local special education expenditures are imputed for purposes of IDEA-B LEA MOE. The total local expenditures are imputed through a three-step process.

1. Determine the LEA's local special education expenditures that are in excess of its Tier I Special Education Adjusted Allotment.
    a. This determination is done by subtracting the Tier I Special Education Adjusted Allotment from the LEA's total state and local special education expenditures.
    b. If the LEA's total state and local special education expenditures is greater than the LEA's Tier I Special Education Adjusted Allotment, then the difference (the expenditures made in excess of the Tier I Special Education Adjusted Allotment) is considered to be expended from local funds.

2. Impute the LEA's local special education expenditures using the ratio of local funding within its total Tier I Allotment.
    a. First, determine the percentage of local funding within the Tier I Allotment by dividing the LEA's Local Fund Assignment by the Total Tier I Allotment. If the Local Fund Assignment is greater than the Total Tier I Allotment, then the percentage of local funding within Tier I is automatically adjusted to 100%.
    b. Next, multiply that percentage by the total state and local expenditures up to the Special Education Adjusted Allotment. The result is the LEA's imputed local special education expenditures.

3. Determine the LEA total local special education expenditures for IDEA-B LEA MOE by summing (a) the LEA's local special education expenditures that are in excess of its Special Education Adjusted Allotment (determined in Step 1 above); and (b) the LEA's imputed local special education expenditures (determined in Step 2 above).

Sample MOE Determination: Failure to Maintain Effort

As described in the Methods of Determining Compliance section, the LEA must pass one of four tests to determine whether it met the IDEA-B LEA MOE requirement.

In this example because the LEA failed to maintain effort, the LEA must refund to TEA the lesser of the amounts listed on lines 1 through 4. This refund may not exceed the LEA's IDEA-B maximum entitlement for the current school year.

The example below is provided for purposes of demonstrating the calculation methodology and is not intended to reflect the actual formatting of the LEA's actual MOE report that will be provided by TEA.

Function Code	Function Code Name	Prior Year	Current Year	Comparison
11	Instruction	$4,387,613.00	$4,102,277.00	($285,336.00)
12	Instructional Resources and Media Services	$109,175.00	$101,820.00	($7,355.00)
13	Curriculum and Instructional Staff Development	$36,822.00	$45,485.00	$8,663.00
21	Instructional Leadership	$0.00	$0.00	$0.00
23	School Leadership	$477,316.00	$434,765.00	($42,551.00)
31	Guidance and Counseling Service	$205,576.00	$215,552.00	$9,976.00
32	Social Work Services	$0.00	$0.00	$0.00
33	Health Services	$49,250.00	$49,313.00	$63.00
34	Student (Pupil) Transportation	$365,551.00	$424,995.00	$59,444.00
36	Cocurricular/ Extracurricular Activities	$0.00	$0.00	$0.00
41	General Administration	$0.00	$0.00	$0.00
51	Plant Maintenance and Operations	$467,082.00	$437,156.00	($29,926.00)
53	Data Processing Services	$1,678,862.00	$839,848.00	($839,014.00)

Function Code	Function Code Name	Prior Year	Current Year	Comparison
n/a	Shared Services Arrangement (from Record 033)	$149,573.00	$177,818.00	$28,245.00
Special Education Student Population (Student Count)		576	568	
1. Total state and local expenditures		$7,926,820.00	$6,829,029	($1,097,791.00)
2. Per capita expenditure of state and local funds (total state and local expenditures divided by student count)		$13,761.84	$12,022.94	($1,738.90) X 568 = ($987,695.20)
3. Total local expenditures		$5,809,263.81	$4,521,587.98	($1,287,675.83)
4. Per capita expenditure of local funds (total local expenditures divided by student count)		$10,085.53	$7,960.54	($2,124.99) X 568 = ($1,206,994.32)
Refund Due (Lesser of 1, 2, 3, or 4):				**$987,696.28**

In this example, if the LEA's current maximum entitlement is greater than the refund amount, then the refund amount would be due to TEA upon request. If the LEA's current maximum entitlement is less than the refund amount, then the amount equal to the maximum entitlement would be due to TEA upon request.

Sample MOE Determination: Effort Maintained

In this example, the result shown on line 2 of the table is a positive number, indicating that expenditures for the determination year exceeded expenditures in the prior year. The LEA thus met the MOE requirement.

Function Code	Function Code Name	Prior Year	Current Year	Comparison
11	Instruction	$4,387,613.00	$4,102,277.00	($285,336.00)
12	Instructional Resources and Media Services	$109,175.00	$101,820.00	($7,355.00)
13	Curriculum and Instructional Staff Development	$36,822.00	$45,485.00	$8,663.00
21	Instructional Leadership	$0.00	$0.00	$0.00
23	School Leadership	$477,316.00	$434,765.00	($42,551.00)
31	Guidance and Counseling Service	$205,576.00	$215,552.00	$9,976.00
32	Social Work Services	$0.00	$0.00	$0.00
33	Health Services	$49,250.00	$49,313.00	$63.00
34	Student (Pupil) Transportation	$365,551.00	$424,995.00	$59,444.00
36	Cocurricular/ Extracurricular Activities	$0.00	$0.00	$0.00
41	General Administration	$0.00	$0.00	$0.00
51	Plant Maintenance and Operations	$467,082.00	$437,156.00	($29,926.00)

Function Code	Function Code Name	Prior Year	Current Year	Comparison
53	Data Processing Services	$1,678,862.00	$839,848.00	($839,014.00)
n/a	Shared Services Arrangement (from Record 033)	$149,573.00	$177,818.00	$28,245.00
Special Education Student Population (Student Count)		665	568	
1. Total state and local expenditures		$7,926,820	$6,829,029.00	($1,097,791)
2. Per capita expenditure of state and local funds (total state and local expenditures divided by student count)		$11,920.03	$12,022.94	$102.91 X 568 = $58,452.88
3. Total local expenditures		$5,809,263.81	$4,521,587.98	($1,287,675.83)
4. Per capita expenditure of local funds (total local expenditures divided by student count)		$8,735.73	$7,960.54	($775.19) X 568 = ($440,307.92)
Refund Due (Lesser of 1, 2, 3, or 4):				**$0**

Appendix 4: IDEA-B MOE Calculation Tool

To assist LEAs in complying with the MOE requirements for FY2014 and beyond, TEA has developed a calculation tool (available on the FFCR IDEA-B MOE page of the TEA website) that LEAs may use to estimate their MOE compliance. To use the tool, LEAs must be prepared to enter the following data:

- Prior year and current year state and/or local expenditures in relevant function codes as described in Appendix 3.
- Special Education Student counts for the prior year and current year (PEIMS Record 163, Child-Count-Funding-Type-Code=3).
- Tier I Special Education Adjusted Allotment, Total Cost of Tier I, and Local Fund Assignment data from the LPE Column of the LEA's Summary of Finance (SOF) dated September 10 or the first date thereafter in the year under determination.

Figure: 19 TAC §109.3001(c)(2)

NCLB LEA
MAINTENANCE OF EFFORT
(MOE)
GUIDANCE HANDBOOK

Version 1.0 (09/2013)

Contents

Introduction

As a condition for receiving its full allocation in any fiscal year, for covered programs under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), a local educational agency (LEA) must maintain its own state and local fiscal effort in accordance with Section 9521, ESEA. This requirement is known as maintenance of effort (MOE). This handbook provides Texas LEAs with guidance on how to interpret and determine compliance with the NCLB LEA MOE requirement.

Definition of Maintenance of Effort

Section 9521, ESEA, provides that "a local educational agency may receive funds under a covered program for any fiscal year only if the State educational agency (SEA) finds that either the combined fiscal effort per student or the aggregate expenditures of the LEA was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year."

In other words, an LEA must maintain 90% of its expenditures for public education from state and local funds from one year to the next. If the percentage of state and local funds expended in the year under determination is less than 90% of what was expended in the prior fiscal year, the LEA's NCLB allocations for the upcoming fiscal year will be reduced in the exact proportion by which the LEA did not meet the MOE requirement. See the Methods of Determining Compliance section for details on the four calculations used to determine compliance.

For example, if the LEA expended $500,000 in fiscal year 2013, it is required to expend at least $450,000 in fiscal year 2013 (90% of its prior year expenditures). If the LEA expends only $400,000, it has failed to maintain effort, and its allocation for the next fiscal year will be reduced by 11.1%. (The LEA expended $50,000 less than the $450,000 that was required to maintain effort; $50,000 is 11.1% of $450,000, and the allocation for the next fiscal year will be reduced by that same amount.)

Covered Programs

As used in Section 9521, ESEA, the term "covered program" means each of the following:

- Title I, Part A, Improving Basic Programs Operated by Local Educational Agencies
- Title I, Part B, Subpart 3, Even Start
- Title I, Part D, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk
- Title II, Part A, Improving Teacher Quality State Grants
- Title III, Part A, English Acquisition State Grants
- Title IV, Part B, 21st Century Learning Centers
- Title VI, Part B, Subpart 2, Rural Education

Purpose of the Provision

In awarding grant funds for education purposes, the federal government does not intend that LEAs should use those dollars as the primary means of providing services. The LEA agrees when it accepts NCLB funds that it will expend non-federal (that is, state and local) funds in accordance with a minimum of two federal fiscal accountability requirements: supplement, not supplant (at the student level), and MOE (at the LEA level). In addition, when the LEA accepts Title I, Part A funds, it also agrees it will meet the comparability of services fiscal requirement (at the campus level).

Supplement, not supplant mandates that state and local funds may not be diverted to other purposes simply because federal funds are available. The MOE requirement ensures that the LEA continues to expend its state and/or local

funds at the same level from year to year, instead of limiting services to what can be provided using federal dollars. (The Title I, Part A comparability of services provision further requires that each campus receives its fair share of state and local resources, regardless of whether the campus is also federally funded.)

Methods of Determining Compliance

To meet the NCLB LEA MOE requirement in any fiscal year, an LEA is required to expend state and/or local funds at 90% of the level at which it expended funds in the preceding fiscal year. There are four calculations for determining whether an LEA has met the NCLB LEA MOE requirement.

An LEA needs to meet at least **one** of the following four tests to be compliant.

- Total state and local expenditures: The LEA's total state and local expenditures must equal or exceed 90% of expenditures during the previous fiscal year.
- Total state and local expenditures per-pupil for refined average daily attendance (RADA): The RADA per-pupil amount the LEA expended must equal or exceed 90% of the amount it expended during the previous fiscal year.
- Total state and local expenditures per-pupil for membership: The membership per-pupil amount the LEA expended must equal or exceed 90% of what it expended during the previous fiscal year.
- Total state and local expenditures per-pupil for enrollment: The enrollment per-pupil amount the LEA expended must equal or exceed 90% of what it expended during the previous fiscal year.

Total State and Local Expenditures

Per Title 34 of the Code of Federal Regulations (34 CFR) 299.5(d)(1), in determining an LEA's compliance with NCLB LEA MOE, the SEA shall consider only the LEA's total expenditures from state and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

For more detailed information, see the NCLB LEA MOE Calculation Methodology in Appendix 1.

Total State and Local Expenditures per Pupil (RADA, Membership, or Enrollment)

In addition to the comparison of total state and local expenditures, the LEA may meet NCLB LEA MOE requirements if its fiscal effort per student is maintained at 90% of what it expended during the previous fiscal year. Fiscal effort per student is calculated by dividing total state and local expenditures by the LEA's student count. Student count may be calculated on the basis of RADA, membership, or enrollment, as follows:

- **RADA:** The aggregate eligible days of student attendance is divided by the number of days of instruction to compute RADA. LEAs may find RADA in the reports, by school year, posted on the School Finance Average Daily Attendance (ADA) Reports page of the TEA website. (The column headed "ADA" actually reflects the RADA figure.)
- **Membership:** The total number of public school students who were reported in membership as of the October snapshot date (defined by the Public Education Information Management System [PEIMS] as the last Friday in October) at any grade, from early childhood education through grade 12. Membership is a slightly different number from enrollment because it does not include those students who are served in the LEA for fewer than two hours per day. LEAs may find their membership figure through the District Detail Search link on the Snapshot School District Profiles page of the TEA website. On the detail report, membership is listed as "Total Students."
- **Enrollment (In Enrollment):** The number of students actually receiving instruction by attendance in a public school, as opposed to being registered but not yet receiving instruction. The LEA's enrollment figure is included on the PEIMS Edit + Report View - PRFD002 Summary by Sex and Ethnicity. The Public

Education Information Management System (PEIMS) page of the TEA website includes an EDIT+ link, for more information on EDIT+ reports.

Consequences for Failure to Meet NCLB LEA MOE

Under ESEA, P.L. 107-110, Section 9521(b), if the LEA fails to meet all four tests listed in the Methods of Determining Compliance section, TEA must reduce the amount of funds allocated under ESEA-covered programs in exact proportion to the LEA's failure to meet the requirement, using the test that is most favorable to the LEA.

Fiscal Years Used in Comparison

USDE's Non-Regulatory Guidance on Title I Fiscal Issues dictates the fiscal years TEA is required to use in determining whether the LEA maintained fiscal effort in accordance with Section 9521, ESEA. Under this guidance, TEA is required to compare the LEA's state and local fiscal effort for the "preceding fiscal year" to the "second preceding fiscal year". The "preceding fiscal year" is defined as the federal fiscal year, or the 12-month fiscal period most commonly used in a state for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available. *[34 CFR 299.5(c)].*

Furthermore, Section 9521(b)(2), ESEA, provides that **for a year in which an LEA failed to maintain effort, the expenditure amount TEA uses for computing maintenance of effort in subsequent years will be 90 percent of the prior year amount rather than the actual expenditure amount.**

If the LEA was compliant with NCLB LEA MOE in the year prior to the year under determination, then NCLB LEA MOE determinations are calculated based on expenditure data from the year under determination and expenditure data from the year prior to the year under determination. For example, NCLB LEA MOE determinations for fiscal year 2012 (school year 2011-2012) would be calculated based on expenditure data from fiscal year 2012 and fiscal year 2011 (school year 2010-2011). For compliance, the required level of expenditures for fiscal year 2012 must be at least 90% of what was expended in fiscal year 2011, either in the aggregate or on a per pupil basis.

If the LEA was not compliant with NCLB LEA MOE in the year prior to the year under determination, then NCLB LEA MOE determinations are calculated based on expenditure data from the year under determination and expenditure data from two years prior to the year under determination. For example, NCLB LEA MOE determinations for fiscal year 2012 (school year 2011-2012) would be calculated based on expenditure data from fiscal year 2012 and fiscal year 2010 (school year 2009-2010). For compliance, the required level of expenditures for fiscal year 2012 must be at least 90% of 90% of what was expended in fiscal year 2010, either in the aggregate or on a per pupil basis.

The following chart demonstrates the applicable calculations and fiscal years under comparison for a three-year period where the LEA is assumed to have been in compliance the year prior to FY 2012, failed to comply in FY 2012, then returned to compliance in FY 2013 and FY 2014. In the example, the calculation to use the test that is most favorable to the LEA has already been determined, and the results are reflected below.

	1	2	3	4
Determination Year	State and Local Expenditures During Determination Year	State and Local Expenditures During Applicable Comparison Year	Level required to meet the requirement (90% of column 2)	Amount by which LEA did not maintain effort
FY 2012 (SY 2011-2012)	FY 2012 (SY 2011-2012) $850,000	FY 2011 (SY 2010-2011) $1,000,000	**$900,000** (assuming LEA was compliant in FY 2011)	($50,000)
FY 2013 (SY 2012-2013)	FY 2013 (SY 2012-2013) $810,000	FY 2012 (SY 2011-2012) **$900,000**[1]	$810,000	n/a
FY 2014 (SY 2013-2014)	FY 2014 (SY 2013-2014) $800,000	FY 2013 (SY 2012-2013) $810,000[2]	$729,000	n/a

[1]The state and local expenditures used for MOE purposes in FY 2013 is $900,000, which is 90% of FY 2011 expenditures (*fiscal year in which effort was not maintained*) rather than the actual FY 2012 expenditures of $850,000 because the LEA failed to maintain effort in FY 2012.

[2]The state and local expenditures used for MOE purposes in FY 2014 is the actual FY 2013 expenditures of $810,000 because the LEA met the MOE requirement in FY 2013.

Fiscal Years Affected By Determination

Due to the timing of when LEA expenditure data are reported to TEA and become available in PEIMS, the fiscal year to which any reduction in allocation will apply based on an LEA's failure to comply with NCLB LEA MOE will be the second year after the year of determination. For example, NCLB LEA MOE determinations are calculated for FY 2012 in late spring of 2013 (when the data are available). Any reduction in allocation for LEAs determined to be noncompliant are applied to FY 2014 (school year 2013-2014) as those allocations are calculated in the summer of 2013.

The example used in the previous chart is expanded below by the addition of an extra column to demonstrate the fiscal year affected by the NCLB LEA MOE determination. Note that only in years where an LEA is determined to be noncompliant will there be a reduction to the applicable allocations:

	1	2	3	4	5
Determination Year	State and Local Expenditures During Determination Year	State and Local Expenditures During Applicable Comparison Year	Level required to meet the requirement (90% of column 2)	Amount by which LEA failed to maintain effort	**Fiscal Year in Which Allocation is Reduction if LEA Non-Compliant**
FY 2012 (SY 2011-2012)	FY 2012 (SY 2011-2012)	FY 2011 (SY 2010-2011)			**FY 2014 (SY 2013-2014)**
	$850,000	$1,000,000	$900,000 (assuming LEA was compliant in FY 2011)	($50,000)	**Reduction of allocation by 5.6% ($50,000/$900,000)**
FY 2013 (SY 2012-2013)	FY 2013 (SY 2012-2013)	FY 2012 (SY 2011-2012)			**FY 2015 (SY 2014-2015)**
	$810,000	$900,000	$810,000	n/a	**No reduction**
FY 2014 (SY 2013-2014)	FY 2014 (SY 2013-2014)	FY 2013 (SY 2012-2013)			**FY 2016 (SY 2015-2016)**
	$800,000	$810,000	$729,000	n/a	**No reduction**

Federal Funds That *May* be Considered as State or Local Funds

In future years if the federal government provides special and/or additional federal funds that TEA designates as state or local funds (such as ARRA SFSF, fund code 266 was previously), those specific funds will be automatically included in the total aggregated expenditures by function code for each respective compliance year in the MOE calculation.

However, federal funds that TEA does not specifically designate as state or local funds will not be automatically included in the MOE calculation. For example, the federal Ed Jobs funds (fund code 287) ***may*** at the LEA's discretion have been considered as state or local funds. In other words, the LEA was the entity that decided whether to consider the specially allocated federal funds as state or local funds.

In a determination year when applicable, the LEA may request a state reconsideration for inclusion of federal funds that the LEA used as state or local funds in the determination of compliance with NCLB LEA MOE. The following requirements would apply:

- The LEA will be required to submit supporting documentation identifying the federal funds expended as state or local funds.
- The LEA must have available for inspection auditable documentation demonstrating that the federal funds treated as non-federal funds were spent in accordance with the requirements for use in determining compliance with NCLB LEA MOE.

Significant PEIMS Errors in an LEA's Reported Expenditures

USDE has approved TEA's request to reconsider significant errors reported in PEIMS. To demonstrate that an error is "significant," the LEA must enter its self-reported, corrected data into TEA's NCLB LEA MOE determination calculation tool (available on the NCLB LEA Maintenance of Effort (MOE) page of the TEA website) and the results must reflect a change in the LEA's compliance status.

If the results of the TEA NCLB LEA MOE determination calculation tool show a change in compliance status, TEA will recalculate a revised compliance determination using the corrected data. **The calculation performed by the NCLB MOE determination calculation tool is an estimate only and does not duplicate the exact calculation process. The results of TEA's recalculation will be the basis of the final MOE determination.**

The LEA may request a state reconsideration for significant errors in the LEA's reported expenditures by providing the following to TEA:

- The results returned by the NCLB MOE determination calculation tool, signed by the LEA's external auditor, showing how the corrections change the LEA's compliance status.
- A detailed schedule prepared and signed by the LEA's external auditor containing the erroneous and the correct PEIMS data, along with the supporting documentation for such claims.
- A detailed schedule with the corrected PEIMS data in the appropriate PEIMS format provided by TEA to be used in lieu of the original PEIMS data. **This schedule will not be modified by TEA. It will be used exactly as provided.**
- A description of how the error occurred and the administrative procedures taken to ensure such PEIMS data errors do not reoccur.

Any decision to use revised data in the calculation of NCLB MOE determinations will not change the official PEIMS data, which is the agency's official system of record. The official PEIMS data is final and will remain unchanged on all TEA products and reports that rely on that information.

Possible Consequences of a State Reconsideration Request Due to Significant PEIMS Errors

When an LEA notifies TEA of significant PEIMS errors in the LEA's reported expenditures in the process of requesting the state reconsideration, TEA's Division of Federal Fiscal Compliance and Reporting will make the following notifications of the erroneous data submission to the following TEA divisions and departments, with the following possible results:

- Division of Financial Compliance: Possible increased risk for audit, investigation and/or review
- Division of State Funding: Possible effect on state funding
- Division of Federal Fiscal Monitoring: LEA's possible identification as a high-risk grantee. High-risk grantees may be subject to a review of all reimbursements across one or more grants or a random sampling of expenditures across one or more grants.
- Office for Statewide Education Data Systems: LEA's possible identification as a high-risk grantee
- Department of Accreditation and School Improvement: Possible increased risk for investigation and/or review
- Division of Enforcement Coordination and Governance: LEA possibly recommended for district-level interventions or sanctions based on investigation findings

US Department of Education Waiver

Section 9521(c), ESEA, allows the US Department of Education (USDE) to waive the statutory penalty of the MOE requirement if an LEA's failure to maintain effort resulted from one or both of the following:

- Exceptional or uncontrollable circumstances, such as a natural disaster
- A precipitous decline in the financial resources of the LEA

An LEA that fails to meet the MOE requirement may request a waiver from USDE, as described in the following section. In order to make decisions on an LEA's MOE waiver request, USDE will review revenue and expenditure data provided by TEA.

TEA has no authority to waive the MOE requirement and has no input into USDE's decision regarding LEA waiver requests.

If USDE grants the LEA's request for a waiver, USDE will notify TEA, and TEA staff will notify the LEA. The LEA then receives its full allocation for Title I, Part A and other covered ESEA programs for the following fiscal year.

An approved USDE waiver only waives the statutory penalty for failing to maintain effort related to the determination year for which it was granted—i.e., the proportionate reduction in the upcoming allocations of programs subject to the NCLB LEA MOE requirements. An approved USDE waiver does not eliminate the MOE requirement or authorize the LEA to not maintain effort in future years.

Regardless of whether USDE grants the waiver, the LEA is still noncompliant with the NCLB LEA MOE requirement for that determination year. Remaining noncompliant will affect how the determination of the LEA's compliance with NCLB LEA MOE will be calculated in future determination years as discussed in the Fiscal Years Used in Determination section above.

Requesting USDE Waiver to NCLB LEA MOE Requirement

To request an MOE waiver from USDE, the LEA must write a letter outlining the reason(s) the LEA did not maintain effort and email it to TitleIWaivers@ed.gov: A copy of the letter must also be emailed to compliance@tea.state.tx.us (TEA's Division of Federal Fiscal Compliance and Reporting).

NCLB LEA MOE Timeline

- April – PEIMS actual audited financial data from PEIMS Record 032 for the applicable fiscal years is extracted by the Division of Federal Fiscal Compliance and Reporting (FFCR) to determine LEAs' compliance with the NCLB LEA MOE requirement
- May/June – Listserv announcement regarding availability of *Summary of Compliance with NCLB LEA MOE Requirement* in NCLB Reports is transmitted via the Grants Administration and Federal Program Compliance listserv (http://miller.tea.State.tx.us/list/)
- May/June – Using the ASK TED email address information, Superintendents are emailed a notification if their LEA's status is one of noncompliance with the NCLB LEA MOE requirement
- May/June – As applicable, LEAs submit waiver requests directly to the USDE and also provides a copy of the letter to TEA's Division of Federal Fiscal Compliance and Reporting at: compliance@tea.State.tx.us
- May/June – TEA posts final *Summary of Compliance with NCLB LEA MOE Requirement* in NCLB Reports
- July – TEA reduces the amount of funds allocated under ESEA covered programs in exact proportion to which an LEA fails to meet the 90 percent requirement
- Ongoing – TEA reinstates any reductions taken from an LEA's allocations, upon notification by the USDE of NCLB LEA MOE waivers granted

NCLB Reports

NCLB LEA MOE determinations are currently made available via NCLB Reports, a web-based application available through TEAL that provides reports on NCLB-related programs. Each superintendent and charter school executive director should apply for access. Other authorized LEA officials may also be granted access by the LEA superintendent or charter school director.

Accessing Summary of Compliance with NCLB LEA MOE Requirement

To access the NCLB LEA MOE Summary of Compliance, do the following:

Login through the Texas Education Agency Login (TEAL) at: https://pryor.tea.State.tx.us/

1. Select **NCLB Reports.**
2. For Report Title, select "**NCLB LEA MOE Reports**" from the drop-down menu.
3. For School Year, select the applicable school year. (For example, select the 2011–2012 school year to obtain the Summary of Compliance with NCLB LEA MOE Requirement for FY 2012, which compares total expenditures and per-pupil expenditures from 2010–2011 to 2011–2012.)

Example of the Summary of Compliance with NCLB LEA MOE Requirement

Below is an example of the *Summary of Compliance with NCLB LEA MOE Requirement* located in NCLB Reports. The report provides the LEA's status of "Compliant" or "Noncompliant" in the top right-hand corner of the document. The percent expended for state and local expenditures and per-pupil expenditures in comparison to the prior fiscal year will be shown in the far right-hand column in Line numbers 15, 17, 19, and 21, which represent the four methods of determining compliance.

In the example below, the LEA is compliant. While the LEA met compliance in all four methods for determining compliance, it only needs to show compliance for at least **one** test to be compliant.

If the LEA is noncompliant, Line 22 calculates the exact proportion to which an LEA did not meet the MOE requirement using the measure most favorable to the LEA (i.e., the test closest to demonstrating that the LEA expended at least 90% of the amount expended the prior year).

TEXAS EDUCATION AGENCY

Summary of Compliance with NCLB LEA Maintenance of Effort Requirement

Region CDN LEA Name

Status: COMPLIANT

Line Ncr	Function Code	Function Code Description	Prior Fiscal Year)	Fiscal Year XX	
01	11	Instruction	$2,284,382	$2,176,034	
02	12	Instructional Resources and Media Services	$25,504	$34,792	
03	13	Curriculum and Instructional Staff Development	51,249	$5,725	
04	21	Instructional Leadership	$0	$0	
05	23	School Leadership	$259,794	$258,845	
06	31	Guidance and Counseling Service	$22,049	$16,982	
07	32	Social Work Services	$0	$0	
08	33	Health Services	$48,021	$45,766	
09	34	Student (Pupil) Transportation	$148,461	$133,331	
10	35	Food Services (Deficit only)	$0	$0	
11	36	Cocurricular/Extracurricular Activities (Deficit only)	$0	$0	
12	41	General Administration	$266,904	$261,070	
13	51	Plant Maintenance and Operations	$531,412	$513,330	
14	53	Data Processing Services	$2,800	$0	
15		Total Operating Expenditures (Add 01-14)	$3,589,570	$3,445,875	95.997 %
16		Refined Average Daily Attendance	447.848	449.63	
17		Total Operating Expend. per Pupil (Refined ADA) (15/16)	$8,015	$7,664	95.616 %
18		Membership	458	471	
19		Total Operating Expend. per Pupil (Membership) (15/18)	$7,670	$7,316	95.385 %
20		Enrollment	458	471	
21		Total Operating Expend. per Pupil (Enrollment) (15/20)	$7,670	$7,316	95.385 %
22		Adjustment to NCLB Entitlements (Refer to C Note below)			0.000 %

NCLB LEA MOE Calculation Template

To estimate preliminary compliance (prior to the consideration of exceptions or state considerations) with the NCLB LEA MOE requirement, LEAs may complete the template posted on the Maintenance of Effort page of the TEA website.

Appendix 1: NCLB LEA MOE Calculation Methodology

The information required to calculate MOE is obtained from the Public Education Information Management System (PEIMS). PEIMS Record 032- Financial Actual Data identifies the LEA's financial information as audited by a certified public accountant (CPA). LEA expenditure data from this record is used to determine compliance with the NCLB LEA MOE requirement.

Included Expenditures

Per Title 34 of the Code of Federal Regulations (34 CFR) 299.5(d)(1), in determining an LEA's compliance with NCLB LEA MOE, the SEA shall consider only the LEA's expenditures from state and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

Therefore, total state and local expenditures expended for the functions listed below are included in the NCLB LEA MOE calculation:

11	Instruction
12	Instructional Resources and Media Services
13	Curriculum and Instructional Staff Development
21	Instructional Leadership
23	School Leadership
31	Guidance and Counseling Service
32	Social Work Services
33	Health Services
34	Student (Pupil) Transportation
35	Food Services (Deficits Only)
36	Cocurricular/Extracurricular Activities (Deficits Only)
41	General Administration
51	Plant Maintenance and Operations
53	Data Processing Services

Excluded Expenditures

Per 34 CFR 299.5(d)(2), the SEA may not consider any expenditures for community services, capital outlay, debt service or supplemental expenses made as a result of a presidentially declared disaster, or any expenditures made from funds provided by the federal government.

Therefore, state and local expenditures expended for the functions and object codes listed below are excluded from the NCLB LEA MOE calculation:

Function Codes Excluded

61 Community Service

71 Debt Service

81 Facilities Acquisition and Construction

Object Codes Excluded

6500 Debt Service

6600 Capital Outlay

Figure: 31 TAC §57.981(c)(5)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	34	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and smallmouth bass.		14	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white.	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30*
*Special Regulation: One black drum over 52 inches may be retained per day as part of the five-fish bag limit.			
Drum, red.	3*	20	28*

*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.			
Flounder: all species, their hybrids, and subspecies.	5*	14	No limit
*Special Regulation: During the month of November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means.			
Gar, alligator.*	1	No limit	No limit
*Special Regulation: Between May 1 and May 31 no person shall take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge.			
Grouper, gag.	2	22	No limit
Grouper, goliath.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	15	14	No limit
Marlin, blue.	No limit	131	No limit
Marlin, white.	No limit	86	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special Regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish.	No limit	84	No limit
Saugeye.	3	18	No limit
Seatrout, spotted	5*	15	25**
*Special Regulation: The daily bag limit of five is the possession limit allowed for spotted seatrout.			

**Special Regulation: One spotted seatrout greater than 25 inches may be retained per day.			
Shark: all species, their hybrids, and subspecies other than Atlantic sharpnose, blacktip, and bonnethead sharks.	1*	64*	No limit
Atlantic sharpnose, blacktip, and bonnethead sharks.	1*	24	No limit
*Special Regulation: The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time: Atlantic angel, Basking, Bigeye sand tiger, Bigeye sixgill, Bigeye thresher, Bignose, Caribbean reef, Caribbean sharpnose, Dusky, Galapagos, Longfin mako, Narrowtooth, Night, Sandbar, Sand tiger, Sevengill, Silky, Sixgill, Smalltail, Whale, and White.			
Sheepshead.	5	15	No limit
Snapper, lane.	No limit	8	No limit
Snapper, red.	4*	15	No limit
*Special Regulation: Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.			
Snapper, vermilion.	No limit	10	No limit
Snook.	1	24	28
Tarpon.	1	85	No limit
Triggerfish, gray.	20	16	No limit
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Tripletail.	3	17	No limit
Walleye.	5*	No limit	No limit
*Special Regulation: Two walleye of less than 16 inches may be retained per day.			

Figure: 31 TAC §57.981(d)(1)

Species and Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
In all waters in the Lost Maples State Natural Area (Bandera).	0	No limit	Catch and release only.
Bass: largemouth and spotted.			
Lake Alan Henry.	5	No limit	It is unlawful to retain more than two bass of less than 18 inches in length.
Caddo Lake (Marion and Harrison).	8 (in any combination with spotted bass)	14 - 18 inch slot limit (largemouth bass); no limit for spotted bass.	It is unlawful to retain largemouth bass between 14 and 18 inches. No more than 4 largemouth bass 18 inches or longer may be retained. Possession limit is 10.
Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby).	8 (in any combination with spotted bass)	14 (largemouth bass); no limit for spotted bass.	Possession limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Granbury (Hood), Possum Kingdom (Palo Pinto, Stephens, Young), and Ratcliff (Houston).	5	16	

Lakes Kurth (Angelina) and Nacogdoches (Nacogdoches).	5		It is unlawful to retain largemouth bass of 16 inches or greater in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.
Lakes Bellwood (Smith), Braunig (Bexar), Bright (Williamson), Brushy Creek (Williamson), Bryan (Brazos), Calaveras (Bexar), Casa Blanca (Webb), Cleburne State Park (Johnson), Cooper (Delta and Hopkins), Fairfield (Freestone), Gilmer (Upshur), Marine Creek Reservoir (Tarrant), Meridian State Park (Bosque), Naconiche (Nacogdoches), Old Mount Pleasant City (Titus), Pflugerville (Travis), Rusk State Park (Cherokee), and Welsh (Titus).	5	18	

Buck Lake (Kimble), Lake Kyle (Hays), and Nelson Park Lake (Taylor).	0	No limit	Catch and release and only.
Lake Jacksonville (Cherokee) and O.H. Ivie Reservoir (Coleman, Concho, and Runnels).	5	No limit	It is unlawful to retain more than two bass of less than 18 inches in length.
Purtis Creek State Park Lake (Henderson and Van Zandt), and Raven (Walker).	0	No limit	Catch and release only except that any bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.
Lakes Bridgeport (Jack and Wise), Burke- Crenshaw (Harris), Davy Crockett (Fannin), Grapevine (Denton and Tarrant), Georgetown (Williamson), Madisonville (Madison), San Augustine City (San Augustine), and Sweetwater (Nolan).	5	14 - 18 inch slot limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.

Lakes Athens (Henderson), Bastrop (Bastrop), Buescher State Park (Bastrop), Houston County (Houston), Joe Pool (Dallas, Ellis, and Tarrant), Kyle (Hays), Lady Bird (Travis) Mill Creek (Van Zandt), Murvaul (Panola), Pinkston (Shelby), Timpson (Shelby), Walter E. Long (Travis) and Wheeler Branch (Somervell).	5	14 - 21 inch slot limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Gibbons Creek Reservoir (Grimes), and Monticello (Titus).	5	14 - 24 inch slot limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Lake Fork (Wood, Rains and Hopkins).	5	16 - 24 inch slot limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls, and Wheeler Branch (Somervell).	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12 - 15 inch slot limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.

Bass: striped and white bass, their hybrids, and subspecies.			
Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby).	5	No limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. 3278 bridge.	2 (in any combination)	18	
Bass: white.			

Lakes Caddo (Harrison and Marion), Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby), and Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge.	25	No limit	
Carp: common.			
Lady Bird Lake (Travis).	No limit	No limit	It is unlawful to retain more than one common carp of 33 inches or longer per day.
Catfish: blue.			
Lakes Lewisville (Denton), Richland-Chambers (Freestone and Navarro), and Waco (McLennan).	25 (in any combination with channel catfish)	30-45-inch slot limit	It is unlawful to retain blue catfish between 30 and 45 inches in length. No more than one blue catfish 45 inches or greater in length may be retained each day.
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Kyle (Hays)	0	No limit	Catch and release and only.
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.

Lakes Kirby (Taylor) and Palestine (Cherokee, Anderson, Henderson, and Smith).	50 (in any combination)	No limit	No more than five catfish 20 inches or greater in length may be retained each day. Possession limit is 50.
Lakes Caddo (Harrison and Marion) and Toledo Bend (Newton, Sabine, and Shelby), and Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge.	50 (in any combination)	No limit	No more than five catfish 30 inches or greater in length may be retained each day. Possession limit is 50.
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	No more than one blue catfish 30 inches or greater in length may be retained each day.
Canyon Lake Project #6 (Lubbock), North Concho River (Tom Green) from O.C. Fisher Dam to Bell Street Dam, and South Concho River (Tom Green) from Lone Wolf Dam to Bell Street Dam.	5 (in any combination)	No limit	
Community fishing lakes.	5 (in any combination)	No limit	
Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead.			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	

Lakes Caddo (Harrison and Marion), Toledo Bend (Newton, Sabine, and Shelby), and Sabine River (Newton and Orange) from Toledo Bend dam to the I.H. 10 bridge.	10	18	Possession limit is 10.
Crappie: black and white crappie, their hybrids and subspecies.			
Caddo Lake (Harrison and Marion), Toledo Bend Reservoir (Newton, Sabine, and Shelby), and Sabine River (Newton and Orange) from Toledo Bend dam to the I.H. 10 bridge.	25 (in any combination)	No limit	
Lake Fork (Wood, Rains, and Hopkins) and Lake O' The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), and Coleto Creek Reservoir (Goliad and Victoria), Fairfield (Freestone).	3	20	No maximum length limit.
Shad, gizzard and threadfin.			
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No limit	Possession limit 1,000 in any combination.

Sunfish: all species			
Lake Kyle (Hays)	0	No limit	Catch and release and only.
Trout: rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. 306.	1	18	
Guadalupe River (Comal) from the easternmost bridge crossing on F.M. 306 upstream to 800 yards below the Canyon Lake dam.	5	12 - 18 inch slot limit	It is unlawful to retain trout between 12 and 18 inches in length. No more than one trout 18 inches or greater in length may be retained each day.
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

Figure: 31 TAC §57.981(d)(2)

Species	Daily Bag	Minimum Length (Inches)	Special Regulation
Seatrout, spotted.			
All inside waters from F.M. 457 northward to the Louisiana border.	10	15	25*
*Special Regulation: One spotted seatrout greater than 25 inches may be retained per day.			

Figure: 31 TAC §57.992(b)(4)

Species and Location	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	34	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)*	14	No limit
*Special Regulation: In Lake Livingston (Polk, San Jacinto, Trinity, and Walker counties), the daily bag limit for channel and blue catfish is 50 in any combination. In lakes lying totally within a state park and community fishing lakes, the daily bag limit for channel and blue catfish is five in any combination.			
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Drum, black.	No limit	14	30
Flounder: all species, their hybrids, and subspecies.	30*	14	No limit
*Special Regulation: The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 30 flounder, except on board a licensed commercial shrimp boat. During the month of November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means.			
Gar, alligator.*	1	No limit	No limit
*Special Regulation: Between May 1 and May 31 no person shall take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge.			
Grouper, gag.	2	22	No limit
Grouper, goliath.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	15	14	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Shad: gizzard and threadfin.	No limit	No limit	No limit*
*In the Trinity River below Lake Livingston in Polk and San Jacinto counties, the daily bag for shad is 500 and the possession limit is 1,000 fish in any combination.			

Shark: all species, their hybrids, and subspecies other than Atlantic sharpnose, blacktip, and bonnethead sharks.	1*	64	No limit
Atlantic sharpnose, blacktip, and bonnethead sharks.	1*	24	No limit
*Special Regulation: The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time: Atlantic angel, Basking, Bigeye sand tiger, Bigeye sixgill, Bigeye thresher, Bignose, Caribbean reef, Caribbean sharpnose, Dusky, Galapagos, Longfin mako, Narrowtooth, Night, Sandbar, Sand tiger, Sevengill, Silky, Sixgill, Smalltail, Whale, and White.			
Sheepshead.	No limit	15	No limit
Snapper, lane.	No limit	8	No limit
Snapper, red.	4*	15	No limit
*Special Regulation: Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.			
Snapper, vermilion.	No limit	10	No limit
Triggerfish, gray.	20	16	No limit
Tripletail.	3	17	No limit

Figure: 40 TAC §108.1431(b)

DARS ECI Sliding Fee Scale for Families Enrolled Before January 1, 2014

Adjusted Income by % Federal Poverty Guideline	Maximum Charge
≤ 100%	$0
>100% to 150%	$3
>150% to 200%	$5
> 200% to 250%	$10
> 250% to 350%	$20
> 350% to 450%	$55
> 450% to 550%	$85
> 550% to 650%	$115
> 650% to 750%	$145
> 750%	$175
refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate.	$175

Figure: 40 TAC §108.1431(c)

DARS ECI Sliding Fee Scale for Families Enrolled On or After January 1, 2014

If the adjusted income is within the following % of the federal poverty guideline:	**then the maximum charge is:**
≤ 100%	$0
>100% to ≤150%	$3
>150% to ≤200%	$5
> 200% to ≤250%	$10
> 250% to ≤350%	$20
> 350% to ≤400%	$55
>400%	equal to the full cost of services, not to exceed 5% of family's adjusted income
If the parent:	**then the family monthly maximum payment equals the:**
refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate.	full cost of services.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Harris County, Texas and the State of Texas v. LKQ Best Automotive Corp.,* Cause No. 2013-23295, in the 80th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant owns and operates an automotive recycling facility in Houston, Harris County, Texas. During several investigations in 2012, Harris County environmental investigators documented spills of oily material to the ground and into a culvert that flowed off-site. Harris County investigators also documented that the Defendant had failed to conduct required quarterly visual inspection of its storm water management practices and facilities for three years. In May, 2012, Defendant remediated the oily soils and amended its operations to prevent future discharges and ensure visual inspections as required.

Proposed Agreed Judgment: The Agreed Final Judgment orders Defendant to pay civil penalties, and costs of prosecution to the State. Defendant agrees to pay civil penalties of $66,540 to be divided equally between Harris County and the State of Texas. The Defendant will pay attorney's fees to the State of Texas in the amount of $4,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201400575
Katherine Cary
General Counsel
Office of the Attorney General
Filed: February 6, 2014

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Capital Area Council of Governments

Request for Proposals - Older Americans Act Services

The Capital Area Council of Governments (CAPCOG)/Area Agency on Aging is requesting proposals from qualified contractors to provide services and supports to persons age 60 and older from October 1, 2014 through September 30, 2016. Service categories include Congregate Meals, Home Delivered Meals and Senior Center Operations. Proposals must address the area-wide needs of at least one of the 10 counties within CAPCOG's planning region (Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis and Williamson).

The Request for Proposals packet is available at www.capcog.org - About CAPCOG - Doing Business with CAPCOG. Proposals must be received at CAPCOG (6800 Burleson Road, Building 310, Suite 165, Austin, Texas 78744) by 3:00 p.m. CDT on April 21, 2014.

Staff Contact: Alpha A. Baldé at abalde@capcog.org or (512) 916-6022.

TRD-201400657
Sheila Jennings
Deputy Director
Capital Area Council of Governments
Filed: February 11, 2014

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 54, Subchapters F, G, H, and I of the Texas Education Code, the Texas Comptroller of Public Accounts ("Comptroller"), on behalf of the Texas Prepaid Higher Education Tuition Board ("Board"), issues this Request for Letter Proposals ("RFP") No. 207f from qualified, independent individuals and law firms to serve as outside counsel to the Board. The Board administers the state's qualified tuition plans, including (i) the Texas Guaranteed Tuition Plan, (ii) the LoneStar 529 Plan®, (iii) the Texas College Savings Plan®, and (iv) the Texas Tuition Promise Fund®. The Board also administers, in cooperation with the Texas Match the Promise Foundation, the Texas Save and Match program. The qualified tuition plans are authorized under Section 529 of the Internal Revenue Code. Each individual and law firm submitting a proposal ("Letter Proposal") in response to this RFP shall be referred to as a "Respondent."

Under the terms of this RFP, the Board intends to select qualified counsel to provide the Board with legal services on an as-needed, as-requested basis in a variety of matters requiring expertise in federal taxation, securities, contracts, family law, probate, intellectual property rights, administrative law, and fiduciary responsibility. The Board estimates that it will evaluate Respondents and announce a contract award or awards on or about August 20, 2014, or as soon thereafter as practical. Graves, Dougherty, Hearon & Moody, P.C., currently serves as legal counsel to the Board, and its contract with the Board expires on August 31, 2014. Respondents must be able to begin providing services no later than about September 1, 2014, or earlier if requested by Comptroller, and throughout the expected initial contract term, which shall be September 1, 2014, through August 31, 2016, with two (2) options to renew at the Board's sole discretion, for one (1) year periods, exercised one (1) year at a time.

The anticipated schedule for this RFP is as follows: Issuance of RFP - Friday, February 21, 2014, after 10:00 a.m. CT; Questions and Request for Copies of Sample Contract Due - Friday, February 28, 2014, 2:00 p.m. CT; Electronic Posting of Official Response to Questions posted - Friday, March 7, 2014, or as soon thereafter as practical; Proposals Due - Friday, March 21, 2014, 2:00 p.m. CT; Oral Presentations to the Board (if any) - on or about May 13, 2014, at 10:00 a.m. CT.

Potential Respondents should see the Electronic State Business Daily ("ESBD") for a complete copy of the RFP.

TRD-201400673
Robin Reilly
Assistant General Counsel
Comptroller of Public Accounts
Filed: February 12, 2014

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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 02/17/14 - 02/23/14 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 02/17/14 - 02/23/14 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-201400649
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 11, 2014

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Texas Council for Developmental Disabilities

Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to two organizations to hire and support Developmental Disabilities Policy Fellows to increase the capacity of individuals and organizations in Texas to engage effectively in developmental disability policy advocacy and to increase the number of individuals who have the skills, knowledge and experience to work effectively in developmental disabilities policy.

TCDD has approved funding up to $67,500 per year, per organization, for up to two organizations, for up to two years. TCDD may decide to issue a similar Request for Proposals (RFP) for up to an additional two organizations in 2015. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP or more information about TCDD may be obtained through TCDD's website at **http://www.tcdd.texas.gov/grants-rfps/funding-available-for-grants/.** All questions pertaining to this RFP should be directed in writing to Joanna Cordry, Planning Coordinator, via email **Joanna.Cordry@tcdd.texas.gov** or fax (512) 437-5434.

Deadline: One electronic copy and one hard copy with original signatures must be submitted. Electronic copies should be sent to **Joanna.Cordry@tcdd.texas.gov** and must be received by TCDD no later than 4:00 p.m. Central Time, Wednesday, March 26, 2014. Hard copies may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, Texas 78741-7509 to the attention of Joanna Cordry. Hard copies, if delivered by hand, must be received no later than 4:00 p.m. Central Time on the due date. If mailed, hard copies must be postmarked prior to midnight on the date specified above. Faxed proposals cannot be accepted.

Proposals will not be accepted after the due date.

Grant Proposers' Workshops: The Texas Council for Developmental Disabilities will conduct telephone conferences to help potential proposers understand the grant proposal process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD website at **http://tcdd.texas.gov/grants-rfps/funding-available-for-grants/** for a schedule of conference calls for this RFP.

TRD-201400676
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: February 12, 2014

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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 **March 24, 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 March 24, 2014.** Written comments may also be sent by facsimile machine to the en-

forcement 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: 2012 Weatherford Holdings, LLC dba Highland Court; DOCKET NUMBER: 2013-2042-PWS-E; IDENTIFIER: RN105596860; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 5.0 picoCuries per liter (pCi/L) for combined radium-226 and radium-228, based on the running annual average; and 30 TAC §290.108(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 15.0 pCi/L for gross alpha particle activity, based on the running annual average; PENALTY: $576; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: BeGreen Recycling, L.L.C. dba Browns Corner RV; DOCKET NUMBER: 2013-2110-PWS-E; IDENTIFIER: RN106357379; LOCATION: Karnes County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $672; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: CHRISTUS HEALTH dba Christus St. Mary Hospital; DOCKET NUMBER: 2013-1574-PST-E; IDENTIFIER: RN100663236; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: medical center with a gasoline powered emergency generator system; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the UST; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Chuck Ziemba; DOCKET NUMBER: 2014-0163-WOC-E; IDENTIFIER: 106951288; LOCATION: Prosper, Wilbarger County; TYPE OF FACILITY: site; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license for public water supply program; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, 79602-7833, (325) 655-9479.

(5) COMPANY: City of Galveston; DOCKET NUMBER: 2013-1847-MWD-E; IDENTIFIER: RN101607091; LOCATION: Galveston, Texas 77553, Galveston County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0010688001, Interim II Phase Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $15,750; Supplemental Environmental Project offset amount to $15,750 applied to Galveston Bay Foundation, Incorporated; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Efren Rocha dba Fiestas Mart; DOCKET NUMBER: 2013-1698-PST-E; IDENTIFIER: RN102050002; LOCATION: Mission, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: EL PASO DISPOSAL, LP; DOCKET NUMBER: 2013-1893-PST-E; IDENTIFIER: RN102773017; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $4,876; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Galveston ISD; DOCKET NUMBER: 2013-1717-PST-E; IDENTIFIER: RN101833457; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: Fleet Refueling Refining facility; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of regulated substance into the underground storage tanks (USTs); 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor for release at the frequency of at least once every month; and 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the USTs; PENALTY: $9,346; ENFORCEMENT COORDINATOR: Mike Pace (817) 588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Green Expectations Lawn and Tree Care LLC; DOCKET NUMBER: 2014-0178-AIR-E; IDENTIFIER: 106857667; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: site; RULE VIOLATED: 30 TAC §111.201, by failing no person may cause, suffer, allow or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the Commission (repeat only); PENALTY: $875; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, (806) 796-7092.

(10) COMPANY: GREENWOOD TERRACE MHP, LLC; DOCKET NUMBER: 2013-2181-PWS-E; IDENTIFIER: RN101250603; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $13,090; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 9900 West IH-20, Ste. 100, Midland, Texas 79706, (432) 570-1359.

(11) COMPANY: Hardeep S. Grewal dba Sunmart 133; DOCKET NUMBER: 2013-1616-PST-E; IDENTIFIER: RN102004850; LOCATION: Houston, Harris 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 Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $3,036; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Harris County Municipal Utility District 25; DOCKET NUMBER: 2013-2041-PWS-E; IDENTIFIER: RN103129193; LOCATION: Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 15 picoCuries per liter for gross alpha particle activity, based on the running annual average; PENALTY: $172; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239 2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: KAMIRA PROPERTY OWNERS ASSOCIATION, INCORPORATED dba Kamira Water System; DOCKET NUMBER: 2013-2024-PWS-E; IDENTIFIER: RN101264380; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 5 picoCuries per liter for combined radium-226 and radium-228, based on the running annual average; PENALTY: $172; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 14250 Judson Road San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Leona Bullock dba Blue Ridge Mobile Home Park; DOCKET NUMBER: 2013-1971-PWS-E; IDENTIFIER: RN101226538; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(s)(1), by failing to calibrate the well flow meter at least once every three years; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.45(b)(1)(F)(iv) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, storage and pressure maintenance facilities, water treatment units, and all related appurtenances in a watertight condition; 30 TAC §290.45(b)(1)(F)(i) and THSC, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(F)(iii) and THSC, §341.0315(c), by failing to provide a minimum service pump capacity of 2.0 gallons per minute per connection; 30 TAC §290.39(e)(1) and (h)(1) and THSC, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; PENALTY: $603; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Lester A. Saucier Jr. dba Ancar Water System; DOCKET NUMBER: 2013-1916-PWS-E; IDENTIFIER: RN105234819; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e) and §290.113(e), by failing to provide the results of annual nitrate and Stage 1 disinfectant byproducts sampling to the executive director for the 2010 monitoring period; 30 TAC §290.106(e) and §290.108(e), by failing to provide the results of triennial metals, minerals, and radionuclides sampling to the executive director for the January 1, 2008 - December 31, 2010 monitoring period; PENALTY: $660; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: OCEAN PETROLEUM, INCORPORATED dba South Shore Shell; DOCKET NUMBER: 2013-1789-PST-E; IDENTIFIER: RN102254836; LOCATION: League City, 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 tanks for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: PRITCHETT OIL, LLC dba Pritchett Oil & Grocery; DOCKET NUMBER: 2013-1517-PST-E; IDENTIFIER: RN104590435; LOCATION: Quinlan, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; 30 TAC §334.72, by failing to report a suspected release of a regulated substance to the TCEQ within 24 hours of the discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: $9,792; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: REED RV PARK, INCORPORATED; DOCKET NUMBER: 2013-1994-PWS-E; IDENTIFIER: RN105814818; LOCATION: Garza County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $990; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(19) COMPANY: ROCHELLE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-2010-PWS-E; IDENTIFIER: RN101188290; LOCATION: McCulloch County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 5 picoCuries per liter for combined radium-226 and radium-228, based on the running annual average; PENALTY: $178; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(20) COMPANY: Samsung Austin Semiconductor, LLC; DOCKET NUMBER: 2013-1753-AIR-E; IDENTIFIER: RN100518026; LOCATION: Austin, Travis County; TYPE OF FACILITY: Semiconductor Fabrication Plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number 03046, Special Terms and Conditions Number 2(F), by failing to report Incident Numbers

172451 and 174373 within 24 hours of discovery; 30 TAC §122.143(4) and §122.142(2)(A), THSC, §382.085(b), and FOP Number 03046, General Terms and Conditions (GTC), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.146(1), THSC §382.085(b), FOP Number 03046, GTC, by failing to certify compliance with the terms and conditions of permits for at least each 12-month period following initial permit issuance; PENALTY: $5,400; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(21) COMPANY: San Antonio River Authority; DOCKET NUMBER: 2014-0122-WR-E; IDENTIFIER: 106903859; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: watershed; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to impound, divert or us state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, (210) 490-3096.

(22) COMPANY: San Jacinto River Materials, Incorporated; DOCKET NUMBER: 2014-0103-WQ-E; IDENTIFIER: 105327365; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, (713) 767-3500.

(23) COMPANY: STEAMBOAT MOUNTAIN WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-2126-PWS-E; IDENTIFIER: RN101450773; LOCATION: Tuscola, Taylor County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $714; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(24) COMPANY: Sue-Ann Operating, L.C.; DOCKET NUMBER: 2013-1912-AIR-E; IDENTIFIER: RN106854656; LOCATION: Ames, Liberty County; TYPE OF FACILITY: oil and gas production facility; RULE VIOLATED: 30 TAC §101.10(e) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an annual emissions inventory for calendar year 2010 - 2012; and 30 TAC §106.4(c) and THSC, §382.085(b), by failing to maintain all emissions control equipment in good condition; PENALTY: $4,513; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: SUPERIOR LUBRICANTS TRANSPORT, INCORPORATED dba Superior Transport; DOCKET NUMBER: 2013-1665-PST-E; IDENTIFIER: RN103026993; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank for fleet refueling; RULE VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month; and 30 TAC §334.50(b)(2), and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST; PENALTY: $10,232; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: US Foods, Incorporated; DOCKET NUMBER: 2014-0160-PST-E; IDENTIFIER: 101804557; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: plant; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel and also by failing to submit initial/renewal underground storage tank Registration and Self-certification form; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, (806) 796-7092.

TRD-201400656
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 11, 2014

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Enforcement Orders

An agreed order was entered regarding L.F. Martinez, Inc. dba Fer's Alignment, Brakes and Mufflers, Docket No. 2012-0702-AIR-E on January 16, 2014, assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sheridan Water Supply Corporation, Docket No. 2012-1980-MWD-E on January 16, 2014, assessing $4,363 in administrative penalties with $872 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Odessa, Docket No. 2012-1995-PST-E on January 16, 2014, assessing $1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2012-2667-AIR-E on January 16, 2014, assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Joe Swartz Electric Co., Ltd., Docket No. 2013-0008-PST-E on January 16, 2014, assessing $1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prosper, Inc dba Ingram Mart, Docket No. 2013-0524-PST-E on January 16, 2014, assessing $5,564 in administrative penalties with $1,112 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Conrad D. Liles dba Liles Lawn Service, Docket No. 2013-0556-LII-E on January 16, 2014, assessing $800 in administrative penalties with $160 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Danny Ginez dba Jesse's Radiator & Muffler Shop, Docket No. 2013-0642-MSW-E on January 16, 2014, assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ADIBA, INC. dba Cut Rate, Docket No. 2013-0787-PST-E on January 16, 2014, assessing $3,891 in administrative penalties with $778 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C & L Diamond Liquor, Inc. dba Diamond Famous Fried Chicken, Docket No. 2013-0892-PST-E on January 16, 2014, assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PERRIN WATER SYSTEMS, INC., Docket No. 2013-0903-MLM-E on January 16, 2014, assessing $3,822 in administrative penalties with $764 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Federal Bureau of Prisons, Docket No. 2013-0988-PST-E on January 16, 2014, assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Estate of Patrick Gene Chapman, Sr. and Catherine Naomi Wylie, Docket No. 2013-0989-MWD-E on January 16, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Affiliated Foods, Inc., Docket No. 2013-0998-AIR-E on January 16, 2014, assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Louie Koonce, Docket No. 2013-1007-PWS-E on January 16, 2014, assessing $606 in administrative penalties with $121 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Christina T. Vo dba C & D Kwik Stop 2, Docket No. 2013-1021-PST-E on January 16, 2014, assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BIG SCORE INVESTORS, LLC dba Parkway Mobil Mart 2, Docket No. 2013-1022-PST-E on January 16, 2014, assessing $7,110 in administrative penalties with $1,422 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valor Telecommunications of Texas, LLC, Docket No. 2013-1051-PST-E on January 16, 2014, assessing $3,516 in administrative penalties with $703 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2013-1058-PST-E on January 16, 2014, assessing $4,063 in administrative penalties with $812 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Watson and Lauretta Watson dba Old Barn Ice House and BBQ, Docket No. 2013-1069-PWS-E on January 16, 2014, assessing $1,195 in administrative penalties with $239 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cuero Independent School District, Docket No. 2013-1092-PST-E on January 16, 2014, assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bar T Travel Center, LLC, Docket No. 2013-1095-PST-E on January 16, 2014, assessing $2,942 in administrative penalties with $588 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LITTLE SAM INC. dba Little Sam #5, Docket No. 2013-1096-PST-E on January 16, 2014, assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ABF FREIGHT SYSTEM, INC., Docket No. 2013-1098-PST-E on January 16, 2014, assessing $4,630 in administrative penalties with $926 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Worth Automotive, Inc., Docket No. 2013-1106-PST-E on January 16, 2014, assessing $3,068 in administrative penalties with $613 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Izaguirre Generation Skipping Trust dba Sunset View Estates, Docket No. 2013-1114-PWS-E on January 16, 2014, assessing $450 in administrative penalties with $90 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROMAN C-STORE, INC dba Red Mart, Docket No. 2013-1130-PST-E on January 16, 2014, assessing $3,725 in administrative penalties with $745 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Point, Docket No. 2013-1153-MWD-E on January 16, 2014, assessing $3,412 in administrative penalties with $682 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kuraray America, Inc., Docket No. 2013-1156-AIR-E on January 16, 2014, assessing $6,338 in administrative penalties with $1,267 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Basu Dev Bhandari dba Jimmy's Food Store, Docket No. 2013-1172-PST-E on January 16, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nepalko, Inc dba Kountry Korner Store 1, Docket No. 2013-1176-PST-E on January 16, 2014, assessing $3,693 in administrative penalties with $738 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Russell Andrepont dba Russell's Service Center, Docket No. 2013-1178-PST-E on January 16, 2014, assessing $3,563 in administrative penalties with $712 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of China, Docket No. 2013-1180-MWD-E on January 16, 2014, assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M-I L.L.C., Docket No. 2013-1182-AIR-E on January 16, 2014, assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mahmoud A. Alrafati dba Horizon Grocery #2, Docket No. 2013-1200-PST-E on January 16, 2014, assessing $2,943 in administrative penalties with $588 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oxy Vinyls, LP, Docket No. 2013-1206-AIR-E on January 16, 2014, assessing $3,863 in administrative penalties with $772 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cimarex Energy Co. of Colorado, Docket No. 2013-1209-AIR-E on January 16, 2014, assessing $3,937 in administrative penalties with $787 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M SIDDIQI & SON'S, INC. dba B-Z Shop 2, Docket No. 2013-1214-PST-E on January 16, 2014, assessing $3,735 in administrative penalties with $747 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Finley Resources Inc., Docket No. 2013-1216-AIR-E on January 16, 2014, assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rita's Convenience Store and Restaurant, LLC dba Ritas, Docket No. 2013-1218-PST-E on January 16, 2014, assessing $2,931 in administrative penalties with $586 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TAHA INVESTMENTS "INC" dba Lee's Quick Pak, Docket No. 2013-1219-PST-E on January 16, 2014, assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Denison Independent School District, Docket No. 2013-1227-PST-E on January 16, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Biswajit Roy dba Roy's Grocery Store, Docket No. 2013-1231-PST-E on January 16, 2014, assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert McCaffety dba Barney's Country Store, Docket No. 2013-1234-PST-E on January 16, 2014, assessing $3,879 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Samkwang USA, Inc. dba Lockwood Texaco Mart, Docket No. 2013-1246-PST-E on January 16, 2014, assessing $3,879 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harborlight Marina and Resort, LLC, Docket No. 2013-1260-MWD-E on January 16, 2014, assessing $4,275 in administrative penalties with $855 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Corpus Christi, LLC, Docket No. 2013-1262-AIR-E on January 16, 2014, assessing $6,563 in administrative penalties with $1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RURAL BARDWELL WATER SUPPLY CORPORATION, Docket No. 2013-1267-MLM-E on January 16, 2014, assessing $209 in administrative penalties with $41 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patna Enterprises, Inc. dba Papa Keith's Food Mart #3, Docket No. 2013-1273-PST-E on January 16, 2014, assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ladonia, Docket No. 2013-1278-MWD-E on January 16, 2014, assessing $1,275 in administrative penalties with $255 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mercedes, Docket No. 2013-1282-PWS-E on January 16, 2014, assessing $1,155 in administrative penalties with $231 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 5M'S GROUP LLC dba PARADISE MARKET, Docket No. 2013-1283-PST-E on January 16, 2014, assessing $2,567 in administrative penalties with $513 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pipe Distributors, Ltd., Docket No. 2013-1286-PST-E on January 16, 2014, assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rupinderjit Singh dba Family Mart, Docket No. 2013-1288-PST-E on January 16, 2014, assessing $2,931 in administrative penalties with $586 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S Sagani Inc dba Shell Corner Store, Docket No. 2013-1295-PST-E on January 16, 2014, assessing $5,755 in administrative penalties with $1,151 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NADOSH LLC dba Wally's Grocery & Deli, Docket No. 2013-1308-PST-E on January 16, 2014, assessing $4,255 in administrative penalties with $851 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Suntex Marinas, LLC, Docket No. 2013-1313-WQ-E on January 16, 2014, assessing $1,312 in administrative penalties with $262 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAM RAYBURN WATER, INC., Docket No. 2013-1315-PWS-E on January 16, 2014, assessing $1,905 in administrative penalties with $381 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HABIBCO, INC. dba Whistle Stop Grocery, Docket No. 2013-1317-PST-E on January 16, 2014, assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MANGAL ENTERPRISE LLC dba First Colony Shell, Docket No. 2013-1326-PST-E on January 16, 2014, assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roy Robinson, Docket No. 2013-1330-AIR-E on January 16, 2014, assessing $2,675 in administrative penalties with $535 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ongley Trucking, Inc., Docket No. 2013-1331-PST-E on January 16, 2014, assessing $1,350 in administrative penalties with $270 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Dirt & Paving, Ltd., Docket No. 2013-1334-AIR-E on January 16, 2014, assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rodriguez Chavez Corporation, Docket No. 2013-1341-AIR-E on January 16, 2014, assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Detroit, Docket No. 2013-1345-PWS-E on January 16, 2014, assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rosebud, Docket No. 2013-1349-PWS-E on January 16, 2014, assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Double Diamond, Inc. dba The Retreat Golf Course, Docket No. 2013-1353-WR-E on January 16, 2014, assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phillips 66 Company, Docket No. 2013-1366-AIR-E on January 16, 2014, assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southstar LLC dba Southstar Logistics LLC of Texas, Docket No. 2013-1380-PST-E on January 16, 2014, assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AJ BUSINESS INC dba Oak Lake Country Store, Docket No. 2013-1389-PST-E on January 16, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carmela Jackson dba Jacksons 281 Store, Docket No. 2013-1395-PST-E on January 16, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOWN & COUNTRY FOOD STORES, INC. and Stripes LLC dba Stripes 121, Docket No. 2013-1430-PWS-E on January 16, 2014, assessing $713 in administrative penalties with $142 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AC VIP Marina, LLC, Docket No. 2013-1445-PST-E on January 16, 2014, assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Express Stores LLC dba Boney Joe's, Docket No. 2013-1449-PST-E on January 16, 2014, assessing $2,567 in administrative penalties with $513 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H2Go, LLC dba Speedy Bee Car Wash, Docket No. 2013-1453-PST-E on January 16, 2014, assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lamesa, Docket No. 2013-1454-PST-E on January 16, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patrick B. Kelly And Hunter Media, L.L.C., Docket No. 2013-1458-EAQ-E on January 16, 2014, assessing $937 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joseph A. Boulais dba Boulais Mobile Home Park, Docket No. 2013-1468-PWS-E on January 16, 2014, assessing $2,434 in administrative penalties with $486 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 8 Mile Park, L.P. dba Autumn Shadows Mobile Home Park, Docket No. 2013-1469-PWS-E on January 16, 2014, assessing $1,618 in administrative penalties with $322 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fred A. Mitchell dba Fred Mitchell Mobile Home Park, Docket No. 2013-1471-PWS-E on January 16, 2014, assessing $700 in administrative penalties with $140 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dhungana Corporation dba Discount Mart, Docket No. 2013-1476-PST-E on January 16, 2014, assessing $2,567 in administrative penalties with $513 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nazma, L.L.C. dba Mi Rancho Meat Market, Docket No. 2013-1480-PST-E on January 16, 2014, assessing $7,254 in administrative penalties with $1,450 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KAML Inc. dba Mini Mart 110, Docket No. 2013-1483-PST-E on January 16, 2014, assessing $4,125 in administrative penalties with $825 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rafina LLC dba Korner Food Store, Docket No. 2013-1484-PST-E on January 16, 2014, assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Production Company LLC, Docket No. 2013-1487-AIR-E on January 16, 2014, assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIGNOR Logistics, LP dba The Studios, Docket No. 2013-1490-PWS-E on January 16, 2014, assessing $105 in administrative penalties with $21 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WRIGHT CONSTRUCTION CO., INC., Docket No. 2013-1493-PST-E on January 16, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FW DRIVE IN BEER & GROCERY, INC., Docket No. 2013-1494-PST-E on January 16, 2014, assessing $3,450 in administrative penalties with $690 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Moss Bluff Hub, LLC, Docket No. 2013-1502-AIR-E on January 16, 2014, assessing $5,850 in administrative penalties with $1,170 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of New Boston, Docket No. 2013-1513-PWS-E on January 16, 2014, assessing $255 in administrative penalties with $51 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MILBERGER LANDSCAPING, INC., Docket No. 2013-1515-PWS-E on January 16, 2014, assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding POINT TIGER ENTERPRISE, INC. dba Big Daddy's Convenience, Docket No. 2013-1520-PST-E on January 16, 2014, assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Broadway Motors, Inc. dba Bill Williams Tire Center, Docket No. 2013-1524-PST-E on January 16, 2014, assessing $3,423 in administrative penalties with $684 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Petroleum Transports, Inc., Docket No. 2013-1532-AIR-E on January 16, 2014, assessing $1,375 in administrative penalties with $275 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ya Razzak, Inc. dba Fast Trak, Docket No. 2013-1537-AIR-E on January 16, 2014, assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texarkana Mobile Home Park, LLLP, Docket No. 2013-1538-PWS-E on January 16, 2014, assessing $1,151 in administrative penalties with $229 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Payan's Fuel Center, Inc., Docket No. 2013-1557-AIR-E on January 16, 2014, assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Happy Lucky Corporation dba Discount Gas Tobacco & Beverage, Docket No. 2013-1572-PST-E on January 16, 2014, assessing $4,125 in administrative penalties with $825 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lithia CM, Inc. dba All American Chevrolet of Midland, Docket No. 2013-1587-PST-E on January 16, 2014, assessing $6,257 in administrative penalties with $1,251 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SBC, LP, Docket No. 2013-1589-WQ-E on January 16, 2014, assessing $1,837 in administrative penalties with $367 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jalynn Raybion dba Texas Empire, Docket No. 2013-1633-PWS-E on January 16, 2014, assessing $928 in administrative penalties with $185 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John E. Gross and Amy Morales, Docket No. 2013-1672-EAQ-E on January 16, 2014, assessing $938 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Billy Hung Nguyen dba Stop & Shop, Docket No. 2013-1696-PST-E on January 16, 2014, assessing $4,312 in administrative penalties with $862 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Millersview-Doole Water Supply Corporation, Docket No. 2013-1740-MSW-E on January 16, 2014, assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ziabon, Inc. dba Super Kwik Pantry, Docket No. 2013-1782-PST-E on January 16, 2014, assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Wise Choice Construction, Docket No. 2013-2008-WQ-E on January 16, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201400662
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 12, 2014

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Notice of Water Quality Applications

The following notices were issued on February 4, 2014, through February 7, 2014.

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

WEST ROAD WATER SUPPLY CORPORATION AND MCDONALDS CORPORATION which operate West Road Wastewater Treatment Plant, have applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002761000, which authorizes the discharge of treated wastewater at a daily average flow not to exceed 13,000 gallons per day. The facility is located at 185 West Road, approximately 100 feet south and 100 feet east of the intersection of West Road and Interstate Highway 45, in the community of Aldine, Harris County, Texas 77037.

CITY OF KERMIT has applied for a renewal of TCEQ Permit No. WQ0010200002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 850,000 gallons per day via surface irrigation of 225 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1.5 miles southeast of the intersection of State Highway 115 and State Highway 302 in Winkler County, Texas 79745.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. WQ0011180002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 264 Farm-to-Market Road 3478, Huntsville in Walker County, Texas 77320.

TEMPE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014957001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 7,500 gallons per day. The facility is located at 1580 Farm-to-Market Road 2457, Livingston in Polk County, Texas 77351.

CALUMET PENRECO LLC which operates the Calumet Penreco, LLC - Dickinson Plant that produces purified mineral oils, lubricating oils, and sulfonated hydrocarbons, has applied for a renewal of TPDES Permit No. WQ0000377000, which authorizes the discharge of treated process wastewater, utility wastewater, and stormwater at a daily average flow not to exceed 75,000 gallons per day via Outfall 001; and process-area stormwater on an intermittent and flow-variable basis via Outfalls 002 and 003. The facility is located at 4401 Park Avenue, north of Dickinson Bayou, east of Galveston, Houston, and Henderson rail line, and approximately 1,500 feet southeast of the intersection of Farm-to-Market Road 517 and Farm-to-Market Road 1226 in the City of Dickinson, Bexar County, Texas 77539. 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 General Land Office, and has determined that the action is consistent with the applicable goals and policies.

THE WHITMORE MANUFACTURING COMPANY which produces specialty lubricating oils, greases, and coatings, has applied for a major amendment without renewal to TPDES Permit No. WQ0003099000 to remove the authorization to discharge once through noncontact cooling water and the total copper reporting requirement at Outfall 001; add the discharge of stormwater from secondary containment

structures on an intermittent and flow-variable basis via Outfall 001; reconfigure drainage patterns and inputs to Pond 1; and note the stormwater discharges coverage under the TPDES multi-sector general permit (MSGP) for stormwater associated with industrial activity (TXR050000 for MSGP Outfalls 002-005). The current permit authorizes the discharge of stormwater and once through noncontact cooling water on an intermittent and flow-variable basis via Outfall 001. The facility is located at 930 Whitmore Drive, approximately 1,400 feet east of the intersection of Whitmore Drive and TL Townsend Drive, in the City of Rockwall, Rockwall County, Texas 75087.

CITY OF GLEN ROSE has applied for a major amendment to TPDES Permit No. WQ0010177001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to an annual average flow not to exceed 1,000,000 gallons per day. The facility is located at 1509 Northeast Big Bend Trail (U.S. Highway 67) at the crossing of Van Zandt Branch and U.S. Highway 67 on the north side of U.S. Highway 67 (Big Bend Trail Northeast) and approximately 2,000 feet northeast of the intersection of U.S. Highway 67 and State Highway 144 (Bernard Street) in Somervell County, Texas 76043.

CITY OF PORT ARTHUR has applied for a renewal of TPDES Permit No. WQ0010364002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,750,000 gallons per day. The facility is located at 2901 Farm-to-Market Road 365 immediately northeast of the intersection of Farm-to-Market Road 365 and Rhodair Gully, approximately 6,000 feet west-southwest of the intersection of Farm-to-Market Road 365 and Port Arthur Road in Jefferson County, Texas 77640.

CITY OF LULING has applied for a renewal of TPDES Permit No. WQ0010582002, 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 1001 Willow Street, Luling, in Caldwell County, Texas, approximately 0.5 mile north of U.S. Highway 90 and approximately 1 mile east-northeast of U.S. Highway 90 and U.S. Highway 183 in Caldwell County, Texas 78648.

AQUA TEXAS INC a water and wastewater utility service provider, has applied for a renewal of TPDES Permit No. WQ0014117001, 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 approximately 0.75 mile southwest of the intersection of West Little York (Fisher) Road and Brittmore Road, at 11501 South Petropark Drive, Houston, in Harris County, Texas 77041.

ACTON MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014212001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 820,000 gallons per day. The facility is located at 6524 Edgewood Court, on the north bank of the Brazos River approximately 13.5 miles downstream of the De Cordova Bend Reservoir Dam and approximately 0.5 mile due west of the Pecan Plantation Airport in Hood County, Texas 76049.

CITY OF RISING STAR has applied for a renewal of TPDES Permit No. WQ0014515001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The facility is located approximately 500 feet north of State Highway 36, one mile east of the intersection of State Highway 36 and U.S. Highway 183 - East Pioneer Street in Eastland County, Texas 76471.

WHITE RIVER MUNICIPAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0010621001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 90,000 gallons per day. The facility is located at 2880 Farm-to-Market Road 2794, Spur, approximately 6.5 miles east-southeast of the intersection of Farm-to-Market Road 2794 and Farm-to-Market Road 2794 and Farm-to-Market Road 651, approximately 16.5 miles south-southeast of the City of Crosbyton in Crosby, Texas 79370.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TPDES Permit No. WQ0010896001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located approximately 4,300 feet north of the intersection of Peach Street and Park Road 38 in the Stephen F. Austin State Park in Austin County, Texas 77473.

CITY OF HOLLAND has applied for a renewal of TPDES Permit No. WQ0010897001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 0.5 mile east of the intersection of Travis Street and U.S. Highway 95, in Holland, Bell County, Texas 76534.

CITY OF MORGANS POINT RESORT has applied for a renewal of TPDES Permit No. WQ0010918002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 2.3 acres of public access grassland. The facility is located at 9 Helmsman Drive, Abstract 812 of S.P. Terry Survey, Lots 10, 11, 12, and 13 of Block 35 in the Morgan's Point Resort Subdivision in Bell County, Texas 76513.

CITY OF LEVELLAND has applied for a renewal of TCEQ Permit No. WQ0010965001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,800,000 gallons per day via surface irrigation of 475 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately two miles southeast of the intersection of U.S. Highway 385 and State Highway 114, southeast of Levelland, and 2.5 miles southwest of the intersection of State Highway 114 and Farm-to-Market Road 3261 in Hockley County, Texas 79336.

LIBERTY CITY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0011179001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day. The facility is located at 5600 State Highway 135, Gladewater, immediately west of State Highway 135 on the south bank of Rocky Creek in Gregg County, Texas 75647.

MEADOWLAND UTILITY CORPORATION has for a renewal of TPDES Permit No. WQ0013632001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 23,400 gallons per day. The facility is located approximately 7,600 feet west of the intersection of State Highway 35 and American Canal, approximately 1.9 miles north of the intersection of State Highway 6 and McCormick Street in Brazoria County, Texas 77511.

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.

LOWER COLORADO RIVER AUTHORITY which operates the Fayette Power Plant, has applied for a minor amendment to TPDES Permit No. WQ0002105000 to add a lined contact water retention pond within the area identified for future Cell 2 of the Coal Combustion Byproduct Landfill; update the facility map to include the new pond; update the status of the Ash Pond (closed but with minimal transfers to the Reclaim Pond); and update information related to disposal of sewage sludge. The existing permit authorizes the discharge of

once-through cooling water and previously monitored effluent (low volume waste, coal pile runoff, truck wash water, and stormwater from the Coal Pile Runoff Pond) at a daily average flow not to exceed 1,165,000,000 gallons per day (Phase I) and 1,509,000,000 gallons per day (Phase II) via Outfall 001; cooling water drained from condensers and other cooling equipment during maintenance periods at a daily average flow not to exceed 2,500,000 gallons per day via Outfall 002; low volume waste, coal pile runoff, truck wash water, previously monitored effluent (treated domestic wastewater), and stormwater on an intermittent and flow variable basis via Outfall 003; and low volume waste, truck wash water, and stormwater from the Combustion Byproducts Landfill Pond on an intermittent and flow variable basis via Outfall 004. The facility is located at 6549 Power Plant Road, adjacent to the south shore of Cedar Creek Reservoir, approximately two miles north of State Highway 71, and seven miles east of the City of La Grange, Fayette County, Texas 78945.

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-201400659
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 12, 2014

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Revised Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40271

Application. Tri-State Recycling, P.O. Box 421, Texline, Texas 79087, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40271, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Tri-State Recycling, will be located at 503 Highway 87 North, 0.4 miles northwest of the intersection of US 87 and FM 296, in Texline, Dallam County, Texas 79087. The Applicant is requesting authorization to process, store, and transfer municipal solid waste which includes residential and commercial municipal solid waste, class 2 and 3 industrial solid waste, and pesticide containers contained in normal household waste. The registration application is available for viewing and copying at the Texline City Hall, 517 S 2nd Street, Texline, Texas 79087 and may be viewed online at www.tristaterecyclingtexline.com. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.051659&lng=-96.976511&zoom=12&type=r For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, Mail Code 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www10.tceq.state.tx.us/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Tri-State Recycling at the address stated above or by calling Mr. Jim Smith at (806) 362-4828.

TRD-201400660
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 12, 2014

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Revised Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40281

Application. Stericycle Specialty Waste Solutions, Inc., 28161 N. Keith Drive, Lake Forest, Illinois 60045, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40281, to operate a Type V municipal solid waste transfer station. The proposed facility, Stericycle - Dallas Facility, will be located at 8801 Governors Row, Dallas, Texas 75247, in Dallas County. The Applicant is requesting authorization to transfer and store non-hazardous pharmaceuticals, municipal solid waste, and non-hazardous chemicals. The registration application is available for viewing and copying at the J. Erik Jonsson Central Library, 1515 Young Street, Dallas, Texas 75201 and may be viewed online at www.cirrusassociates.com. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.825555&lng=-96.879722&zoom=13&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the

meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, Mail Code 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically submitted to http://www10.tceq.texas.gov/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Stericycle Specialty Waste Solutions, Inc., at the address stated above or by calling Ms. Catherine Moss, Environmental Safety & Health Manager, at (224) 343-1200.

TRD-201400661
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 12, 2014

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Texas Facilities Commission

Request for Proposals #303-5-20427

The Texas Facilities Commission ("TFC"), on behalf of the Texas Department of Criminal Justice ("TDCJ"), announces the issuance of Request for Proposals ("RFP") #303-5-20427. TFC seeks a five (5) or ten (10) year lease of approximately 7,122 square feet of office space in Rosenberg, Fort Bend County, Texas.

The deadline for questions is March 3, 2014 and the deadline for proposals is March 13, 2014 at 3:00 p.m. The award date is April 16, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=109989.*

TRD-201400677
Kay Molina
General Counsel
Texas Facilities Commission
Filed: February 12, 2014

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General Land Office

Public Notice of the Texas Coastal Management Program's Submission of Routine Program Changes to the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management

On December 6, 2013, the General Land Office (GLO), on behalf of the State of Texas, submitted a program change document for the Texas Coastal Management Program (CMP) to the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management (OCRM). Pursuant to the Coastal Zone Management Act (CZMA) and applicable regulations, the GLO requested OCRM's concurrence with the determination that the program changes are "routine program changes," as that term is defined in 15 C.F.R. §923.84.

Concurrent with notifying and submitting the routine program changes to OCRM, the GLO provided public notice of the submittal to the general public and affected parties (including local governments, state agencies, and relevant federal agencies) by posting a public notice on the GLO's website, emailing stakeholders, and publishing a public notice in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8943). The program change document has been available to the public since December 6, 2013. As stated in the prior public notice, a copy of the program change document may be obtained from the GLO (see contact information below) or downloaded from the GLO's website: http://www.glo.texas.gov/what-we-do/caring-for-the-coast/grants-funding/cmp/.

In a letter dated January 27, 2014, OCRM concurred with the GLO's routine program changes determination and approved the incorporation of the changes as enforceable and non-enforceable policies of the CMP. OCRM also recognized the incorporation of changes to various statutes that the GLO included in the program change document. A comprehensive list of the approved program changes, which was an enclosure to OCRM's concurrence letter, is provided as part of this public notice.

The approved program changes do not add to or change the enforceable policies of the CMP in 31 TAC §§501.10 - 501.34 (CMP Goals and Policies), with the exception of minor technical changes to 31 TAC §§501.10(a), 501.34(a)(4), and 501.16. The other changes are to Texas CMP statutory, regulatory, and enforcement authorities, which do not change the enforceable policies of the program.

This public notice is being published pursuant to 15 C.F.R. §923.84(b)(4), which requires the Texas CMP to provide public notice of OCRM's concurrence. Upon publication of this notice, Federal Consistency will apply to the approved changes to the enforceable policies.

For more information on this matter, or to request a copy of OCRM's concurrence letter, please contact Sheri Land, Director, Coastal Resources, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873 or email sheri.land@glo.texas.gov.

TRD-201400654
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: February 11, 2014

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Office of the Governor

Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application

The Governor's Criminal Justice Division (CJD) is planning to apply for federal fiscal year (FFY) 2014 formula funds under the Edward Byrne Justice Assistance Grant (JAG) program administered by the U.S. Department of Justice (DOJ). The FFY 2014 allocation to Texas is estimated to be $14 million.

CJD proposes to use the FFY 2014 award to fund initiatives that target violent crimes, organized criminal activity, improve technology, substance abuse diversion programs and enhance border security. You may request a copy of the FFY 2014 application from Ms. Judy Switzer, Law Enforcement Program Manager, by email at judy.switzer@gov.texas.gov.

Comments regarding the proposed use of JAG funds should be submitted in writing to the attention of Ms. Switzer no later than 30 days from the date of publication of this announcement in the *Texas Register*. Comments may be submitted by email at the email address noted above or by mail to the Office of the Governor, Criminal Justice Division, Post Office Box 12428, Austin, Texas 78711.

TRD-201400543
David Zimmerman
Deputy General Counsel
Office of the Governor
Filed: February 5, 2014

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	BSA Hospital, L.L.C. dba Baptist St. Anthony's Hospital	L06573	Amarillo	01	01/22/14
Amarillo	Panhandle Nuclear RX, Ltd.	L04683	Amarillo	28	01/30/14
Arlington	Texas Health Arlington Memorial Hospital	L02217	Arlington	106	01/30/14
Austin	Texas Oncology	L06206	Austin	12	01/22/14
Austin	The Austin Diagnostic Clinic Association	L05646	Austin	15	01/27/14
Baytown	Chevron Phillips Chemical Company, L.P.	L00962	Baytown	44	01/22/14
Big Spring	Alon USA, L.P.	L04950	Big Spring	15	01/28/14
Big Spring	Alon USA, L.P.	L04950	Big Spring	16	01/31/14
Brownsville	Columbia Valley Healthcare System, L.P. dba Valley Regional Medical Center	L02274	Brownsville	50	01/30/14
College Station	Texas A&M University Environmental Health and Safety	L00448	College Station	141	01/16/14
College Station	Texas A&M University Environmental Health and Safety Department	L05683	College Station	25	01/31/14
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	121	01/22/14
Dallas	Tenet Hospitals, Limited A Texas Limited Partnership dba Doctors Hospital at White Rock Lake	L01366	Dallas	53	01/17/14
Dallas	Texas Health Physicians Group dba Texas Health Presbyterian Heart and Vascular Group	L06578	Dallas	02	01/21/14
Denton	University of North Texas Risk Management Services Radiation Safety Office	L00101	Denton	94	01/28/14
El Paso	Tenet Hospital Limited dba Sierra Providence East Medical Center	L06152	El Paso	14	01/30/14
Fort Worth	Fort Worth Heart, P.A.	L05480	Fort Worth	45	01/17/14
Fort Worth	Heartplace, P.A.	L05883	Fort Worth	11	01/17/14
Garland	Insight Health Corporation	L05504	Garland	14	01/17/14
Graham	City of Graham dba Graham Regional Medical Center	L03271	Graham	25	01/17/14
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	29	01/16/14
Houston	Northwest Houston Cardiology, P.A.	L05823	Houston	10	01/17/14
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	143	01/17/14
Houston	Surefire Industries USA, L.L.C.	L06385	Houston	03	01/17/14
Houston	C & J Spec-Rent Services, Inc.	L06594	Houston	01	01/17/14
Houston	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L05472	Houston	50	01/21/14
Houston	University of Houston Environmental Health and Life Safety Department	L01886	Houston	69	01/21/14
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	190	01/17/14
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	191	01/31/14
Houston	Texas Children's Hospital	L04612	Houston	60	01/21/14
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	82	01/23/14
Houston	Memorial City Cardiology Associates dba Katy Cardiology Associates	L05713	Houston	18	01/23/14

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Radiomedix, Inc. dba Radiomedix	L06044	Houston	10	01/31/14
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	83	01/31/14
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L04655	Houston	47	01/31/14
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	149	01/31/14
Huntsville	Huntsville Memorial Hospital	L02822	Huntsville	22	01/31/14
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	97	01/28/14
Longview	Eastman Chemicals Company Texas Operations	L00301	Longview	118	01/31/14
Lubbock	University Medical Center	L04719	Lubbock	128	01/16/14
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	95	01/23/14
Lubbock	Texas Tech University Health Sciences Center	L06567	Lubbock	02	01/29/14
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	63	01/30/14
McAllen	Columbia Rio Grande Healthcare, L.P. dba Rio Grande Regional Hospital	L03288	McAllen	54	01/22/14
North Richland Hills	Columbia North Hills Hospital Subsidiary, L.P. dba North Hills Hospital	L02271	North Richland Hills	73	01/22/14
Round Rock	Scott & White Hospital Round Rock	L06085	Round Rock	14	01/31/14
San Angelo	San Angelo Hospital, L.P. dba San Angelo Community Medical Center	L02487	San Angelo	54	01/17/14
San Antonio	Radiation Oncology of San Antonio, P.A. dba Oncology San Antonio	L05853	San Antonio	17	01/17/14
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	226	01/21/14
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	323	01/21/14
San Antonio	Cardinal Health	L02033	San Antonio	106	01/31/14
Sweeny	Phillips 66 Company Sweeny Refinery	L06524	Sweeny	04	01/23/14
Texarkana	Christus Health Ark-LA-TEX dba Christus Saint Michael Health System	L04805	Texarkana	28	01/21/14
The Woodlands	St. Luke's The Woodlands Hospital	L05763	The Woodlands	26	01/23/14
Throughout TX	The Dow Chemical Company Texas Operations	L00451	Freeport	95	01/16/14
Throughout TX	CIMA Inspection, Inc.	L06586	Pasadena	02	01/16/14
Throughout TX	Casedhole Solutions, Inc.	L06356	Midland	08	01/17/14
Throughout TX	Warrior Energy Services Corporation	L06342	Odessa	09	01/21/14
Throughout TX	Austin Bridge & Road, L.P.	L06455	Irving	01	01/22/14
Throughout TX	Holt Engineering, Inc.	L02752	Austin	19	01/22/14
Throughout TX	Professional Service Industries, Inc.	L04942	Houston	25	01/22/14
Throughout TX	Sunset Well Service, Inc.	L06426	Midland	03	01/22/14
Throughout TX	RWLS, L.L.C. dba Renegade Services	L06307	Andrews	21	01/22/14
Throughout TX	Savoy Technical Services, Inc.	L06502	Houston	04	01/22/14
Throughout TX	Spectrum NDT USA, Inc.	L06545	Angleton	02	01/21/14
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	138	01/22/14
Throughout TX	ACE NDT	L06595	Perryton	01	01/23/14
Throughout TX	Techcorr USA, L.L.C. dba Aut Specialists, L.L.C.	L05972	Palestine	100	01/27/14
Throughout TX	Professional Service Industries, Inc.	L00931	Fort Worth	120	01/23/14
Throughout TX	Furmanite America, Inc.	L06554	Port Lavaca	07	01/23/14
Throughout TX	Radiation Technology, Inc.	L04633	Austin	29	01/29/14

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Tomball	Center for Cardiovascular Medicine, P.A. dba Lone Star Heart and Vascular Center	L06523	Tomball	01	01/17/14
Waco	Baylor University	L00343	Waco	31	01/17/14
Waco	Texas Oncology, P.A. Cancer Care and Research Center	L05940	Waco	04	01/22/14
Weatherford	Weatherford Texas Hospital Company, L.L.C. dba Weatherford Regional Medical Center	L02973	Weatherford	30	01/31/14
Webster	Cardiovascular Associates of Clear Lake, P.A.	L05549	Webster	12	01/29/14

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Livingston	Memorial Hospital of Polk County dba Memorial Medical Center Livingston	L05552	Livingston	13	01/28/14
Palestine	East Texas Physicians Alliance, L.L.P.	L05583	Palestine	08	01/17/14
Throughout TX	TSI Laboratories, Inc.	L04767	Victoria	13	01/29/14
Tyler	The University of Texas Health Science Center at Tyler	L04117	Tyler	52	01/29/14

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Mount Vernon	East Texas Medical Center Mount Vernon	L06386	Mount Vernon	01	01/31/14
Pampa	Hunting Titan, Ltd.	L04920	Pampa	25	01/27/14
Sherman	Cardinal Health 414, L.L.C. dba Cardinal Health Nuclear Pharmacy Services	L05461	Sherman	17	01/21/14
Throughout TX	FMC Technologies, Inc.	L06469	Houston	01	01/21/14

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing- Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201400580
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: February 6, 2014

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Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking - Texas Success Initiative (Public Universities; Community, Technical and State Colleges; and Other Affected Stakeholders Only)

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to address potential changes in the way institutions determine when a student is ready to perform entry-level freshman coursework in various subjects. The Texas Success Initiative ("TSI") statute (Texas Education Code, §51.3062(k)) and Coordinating Board rules require institutions to determine when an under-

prepared student is ready to perform entry-level freshman coursework in math, reading, and writing. Once a student has been determined to have met the TSI obligation for an area by an institution of higher education as defined in §61.003, other institutions must honor that designation.

The New Mathways Project (NMP), an initiative launched by the Charles A. Dana Center at The University of Texas at Austin and the Texas Association of Community Colleges, provides differentiated pathways through developmental education into introductory college-level math courses for students who do not meet the state TSI college readiness threshold. Because the NMP establishes two different pathways for readiness in College Algebra (MATH 1314) and for readiness in Contemporary Math (MATH 1332) or Statistics (MATH 1342), institutions have expressed concerns about how to characterize the readiness levels of students pursuing MATH 1332/1342 and asked Coordinating Board staff to consider options for designating different levels of readiness for math.

For such a designation to be operational, a rule change, at a minimum, is necessary, both to account for the two definitions of readiness as well as to allow for re-entry into developmental education if a student were to change to a degree plan requiring different pre-college math skills. Rules adjustments of this nature would also have implications for curricular alignment and transfer opportunities at both the community college and university level.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents of public universities, community, technical, and state colleges of higher education as well as the Charles A. Dana Center and the Texas Association of Community Colleges soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus.

From this effort, 37 individuals responded (out of approximately 126 affected institutions) and expressed an interest to participate or nominated someone from their institution to participate on the negotiated rulemaking committee for TSI. The positions held by the volunteers and nominees includes Provosts; Vice Presidents, Chancellors, and Provosts; Directors; Deans; Department Chairs; and Professors. This indicates that the probable willingness and authority of the affected interests to negotiate in good faith is also high, and that there is a good probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for TSI:

1) Public Universities;

2) Public Community Colleges;

3) Public Technical Colleges;

4) Public State Colleges;

5) Charles A. Dana Center;

6) Texas Association of Community Colleges; and

7) Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 26 individuals to the negotiating rulemaking committee for TSI to represent affected parties and the agency:

Public Community Colleges

Mike Midgley, Vice President of Instruction, Austin Community College District

Aaron Graczyk, Dean of Planning, Institutional Effectiveness and Research, Brazosport College

Charles Cook, Associate Vice Chancellor of Academic Affairs, Houston Community College System

Paul Hoffman, Director of Student Development, McLennan Community College

Patrick Lee, Chair of Mathematics, Palo Alto College

Laurel Williamson, Deputy Chancellor and President, San Jacinto College

Mario Morin, Faculty, Department of Mathematics, South Texas College

Thomas Awtry, Divisional Dean on Southeast Campus, Tarrant County College-Southeast Campus

Mark Smith, Vice President for Educational Services, Temple College

Jamie Ashby, Director of Institutional Research and Effectiveness, Texarkana College

Public Technical Colleges

Kyle Smith, Vice President Student Learning, Texas State Technical College-West Texas

Public Universities

Betty Stewart, Provost and Vice President for Academic Affairs, Midwestern State University

Jennifer Edwards, Assistant Vice President for Student Success and Multicultural Initiatives, Tarleton State University

Sharon Haigler, Program Coordinator, Academic Success Center, Texas A&M University

James Hallmark, Vice Chancellor for Academic Affairs, Texas A&M University System

John Robinson, Jr., Executive Director of Student Academic Enhancement Services, Texas Southern University

Gary Harris, Professor of Mathematics and Statistics, Texas Tech University

Ann Wheeler, Assistant Professor of Mathematics, Texas Woman's University

Cassandre G. Alvarado, Director of Special Initiatives in Enrollment and Graduation Management, The University of Texas at Austin

Lawrence Williams, Vice Provost for University College and Professor in Department of Mathematics, The University of Texas at San Antonio

Virgil Pierce, Associate Professor in Department of Mathematics, The University of Texas Pan American

Jeffrey Cass, Provost and Vice Chancellor for Academic Affairs, University of Houston Victoria

Sarina Phillips, Associate Vice President of Academic Affairs and Undergraduate Studies, Texas A&M University-Central Texas

Charles A. Dana Center - Uri Treisman, Executive Director

Texas Association of Community Colleges (Texas Success Center) - Angela Oriano, Director of Student Success Center

Texas Higher Education Coordinating Board - Suzanne Morales-Vale, Director Adult and Developmental Education

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

* Name and contact information of the person submitting the application;

* Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

* Name and contact information of the person being nominated for membership; and

* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for TSI. Comments and applications for membership of the committee must be submitted by March 3, 2014 to:

Linda Battles, Associate Commissioner/Chief of Staff, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Linda.Battles@thecb.state.tx.us.

TRD-201400653
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 11, 2014

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Texas Department of Insurance

Company Licensing

Application to change the name of SCOR GLOBAL LIFE RE INSURANCE COMPANY OF TEXAS to SCOR GLOBAL LIFE REINSURANCE COMPANY OF DELAWARE, a foreign life, accident and/or health company. The home office is in Wilmington, Delaware.

Application to change the name of AMERICAN FUJI FIRE AND MARINE INSURANCE COMPANY to ASHMERE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Long Grove, Illinois.

Application to change the name of UNITED GENERAL TITLE INSURANCE COMPANY to FIRST AMERICAN TITLE GUARANTY COMPANY, a foreign title company. The home office is in Santa Ana, California.

Application to change the name of J.M.I.C. LIFE INSURANCE COMPANY to SHELTERPOINT INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Deerfield Beach, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201400675
Norma Garcia
Chief Clerk
Texas Department of Insurance
Filed: February 12, 2014

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Texas Department of Licensing and Regulation

Public Notice - Revised Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held November 21, 2013, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to adopt the initial penalty matrix for the Used Automotive Parts Recyclers program.

The Commission adopted the initial penalty matrix for the Used Automotive Parts Recyclers program, which was transferred to the Department by Acts of the 81st Legislature, Senate Bill 1095, Regular Session (2009).

The first draft of the penalty matrix was presented to the Used Automotive Parts Recyclers Advisory Board on October 12, 2011. A number of changes were made after discussing violation classification and penalty amounts. An edited penalty matrix was provided to the Advisory Board on October 23, 2013, in which additional changes were made. The final draft was presented to the Commission on November 21, 2013, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.state.tx.us. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

TRD-201400582
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 6, 2014

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Public Notice - Revised Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held September 20, 2013, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to adopt the initial penalty matrix for the Licensed Breeders program.

On September 20, 2013, the Commission was presented with a draft of the penalty matrix for the Licensed Breeders program. The Department's Enforcement staff described to the Commission the lengthy process involved in developing the penalty matrix for the Licensed

Breeders program. Staff also expounded on the various categories and classes of violations, penalties, and license sanctions that will aid the prosecutors when assessing possible violations and penalties against a licensed breeder. The Licensed Breeders Advisory Board recommended adoption of the penalty matrix at their meeting on July 30, 2013.

The Commission adopted the initial penalty matrix for the Licensed Breeders program, which was established by Acts of the 82nd Legislature, House Bill 1451, Regular Session (2011) which created Chapter 802 of the Texas Occupations Code.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.state.tx.us. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

TRD-201400597
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 10, 2014

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Public Utility Commission of Texas

Notice of Application for a Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 4, 2014, for an amendment to certificated service area for a service area exception within Oldham and Potter Counties.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Oldham and Potter Counties. Docket Number 42225.

The Application: Sharyland Utilities, L.P. filed a joint application for a service area boundary exception to allow Sharyland to provide service to a specific customer located within the certificated service areas of Southwestern Public Service Company (SPS) and Rita Blanca Electric Cooperative (RBEC). SPS and RBEC have provided affidavits of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than February 28, 2014, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42225.

TRD-201400579
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2014

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Notice of Application for Sale, Transfer, or Merger and for Amendment to Certificate of Convenience and Necessity

Notice is given to the public of an application for an amendment to a certificate of convenience and necessity and for sale, transfer, or merger filed with the Public Utility Commission of Texas on January 31, 2014, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §§14.001, 14.101, 51.010, 52.002, and 54.051 - 54.054 (Vernon 2007 & Supp. 2013) (PURA).

Docket Style and Number: Joint Application of Brazos Telephone Cooperative, Inc. and Brazos Telecommunications, Inc. for Approval of Sale, Transfer, or Merger and for Amendment to Certificate of Convenience and Necessity, Docket Number 42210.

The Application: On January 31, 2014, Brazos Telephone Cooperative, Inc. (the Cooperative) and Brazos Telecommunications, Inc. (BTI) filed a joint application to relinquish the Certificate of Convenience and Necessity (CCN) of BTI and amend the CCN of the Cooperative to include the exchanges formerly included in the CCN of BTI. As a result of the merger between the companies, BTI, a wholly owned subsidiary of the Cooperative, merged into the Cooperative effective December 31, 2013, with the Cooperative being the remaining entity. The Cooperative holds CCN No. 40007 and BTI holds CCN No. 40101. Applicants request that BTI's CCN No. 40101 be relinquished. The BTI customers will now become members of and receive service from the Cooperative. No customer rates or services will be changed as a result of this merger.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42210.

TRD-201400546
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2014

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Notice of Application for Sale, Transfer, or Merger and for Amendment to Certificate of Convenience and Necessity

Notice is given to the public of an application for an amendment to a certificate of convenience and necessity and for sale, transfer, or merger filed with the Public Utility Commission of Texas on February 3, 2014, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §§14.001, 14.101, 51.010, 52.002, and 54.051 - 54.054 (Vernon 2007 & Supp. 2013) (PURA).

Docket Style and Number: Application of Livingston Telephone Company for Approval of Sale, Transfer, or Merger and for Amendment to Certificate of Convenience and Necessity, Docket Number 42219.

The Application: On February 3, 2014, Livingston Telephone Company (Livingston) filed an application for approval of a transaction involving USConnect Acquisitions I, Inc. (Acquisitions Sub). Specifically, on December 31, 2013, Livingston was merged with Acquisitions Sub, a Delaware corporation and wholly-owned subsidiary of USConnect Holdings, Inc. (USConnect). Upon the date of the merger the existence of Acquisitions Sub ceased and Livingston became a wholly-owned subsidiary of USConnect, but remains a separate operating business. Livingston holds CCN No. 40052. No customer rates, tariffs or services will be changed as a result of this merger.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42219.

TRD-201400547
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2014

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 6, 2014, for a service provider certificate of operating authority (SPCOA), pursuant to Chapter 54, Subchapter D of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Galveston County Emergency Communication District for a Service Provider Certificate of Operating Authority, Docket Number 42233.

Applicant intends to provide 9-1-1 database services.

Applicant seeks to provide service in certain exchanges served by AT&T Texas and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than February 28, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42233.

TRD-201400643
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 10, 2014

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The Town of Pecos City, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

Current Project: Town of Pecos City; TxDOT CSJ No.: 1406PECOS.

Scope: Provide engineering/design services to:

1. construct hangar

2. replace perimeter fence

The DBE goal is 9%. The TxDOT Project Manager is Robert Johnson.

The following is a listing of proposed projects at the Pecos Municipal Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following: rehabilitate and mark Runways 14/32 and 9/27; rehabilitate and mark taxiways; rehabilitate apron and hangar access taxiways; pave entrance road; and install PAPI 2 Runway 9-27 at the Pecos Municipal Airport.

The Town of Pecos City reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at http://www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Pecos Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than March 18, 2014, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Robert Johnson, Project Manager.

TRD-201400637

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 10, 2014

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Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, March 18, 2014 at 10:00 a.m. at 118 East Riverside Drive, First Floor ENV Conference Room, in Austin, Texas to receive public comments on the proposed updates to the 2014 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2014 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5038, and on the department's website at: http://www.txdot.gov/public_involvement/utp.htm.

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division, at (512) 486-5038 not later than Monday, March 17, 2014, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the updates to the 2014 UTP to Marc D. Williams, Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2014 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, March 24, 2014.

TRD-201400638
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 10, 2014

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 39 (2014) is cited as follows: 39 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 "39 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 39 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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