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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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-1180-GA

Requestor:

The Honorable Royce West

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a charitable organization formed under section 281.0565 of the Health and Safety Code is a political corporation or subdivision of the State of Texas for purposes of Article III, section 52 of the Texas Constitution (RQ-1180-GA)

Briefs requested by February 20, 2014

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

TRD-201400533
Katherine Cary
General Counsel
Office of the Attorney General
Filed: February 4, 2014

♦ ♦ ♦

Requests for Opinions

RQ-1181-GA

Requestor:

The Honorable Geanie W. Morrison

Chair, Committee on Elections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether section 87.041 of the Local Government Code or the Texas Constitution requires a county commissioners court to fill an office vacancy due to the resign-to-run requirement (RQ-1181-GA)

Briefs requested by February 24, 2014

RQ-1182-GA

Requestor:

The Honorable Herb Hancock

Karnes County Attorney

210 West Calvert

Karnes City, Texas 78118

Re: Whether a taxing unit may reserve mineral interests on property that is acquired through tax foreclosure and then resold pursuant to section 34.05 of the Tax Code (RQ-1182-GA)

Briefs requested by February 24, 2014

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

TRD-201400539
Katherine Cary
General Counsel
Office of the Attorney General
Filed: February 5, 2014

♦ ♦ ♦

Opinions

Opinion No. GA-1040

The Honorable Ryan Guillen

Chair, Committee on Culture, Recreation & Tourism

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: The authority of a county appraisal district to place excess funds in a capital improvement fund or to spend excess funds on a one-time, lump-sum payment to its employees (RQ-1143-GA)

S U M M A R Y

An expenditure an appraisal district has committed during the fiscal year to meet or secure an obligation is an expenditure that is obligated to be spent under subsection 6.06(j) of the Tax Code.

Only "payments made or due to be made by the taxing units" should be included in the excess-funds calculation and returned or credited back to the taxing units as required by subsection 6.06(j).

Excess funds must be returned or credited to the participating taxing units as required by subsection 6.06(j). The fact that a particular line item is not "prepared in the proposed budget" by the June 15 deadline is not by itself fatal to the expenditure. The budget process in section 6.06 does not prevent amendments to the proposed budget after the public hearing process and before the budget is finally approved.

A proposed salary increase is likely not unconstitutional under Texas Constitution article III, section 53 if it operates prospectively from the time of its proper authorization.

An appraisal district's participating taxing units may utilize section 6.10 of the Tax Code to disapprove the amendment of a budget by an appraisal district board.

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

TRD-201400486
Katherine Cary
General Counsel
Office of the Attorney General
Filed: February 4, 2014

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER F. PHARMACY SERVICES

DIVISION 2. ADMINISTRATION

1 TAC §354.1832

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §354.1832, concerning Medicaid fee-for-service (FFS) pharmacy Prior Authorization Procedures.

Background and Justification

The Medicaid Vendor Drug Program processes claims for outpatient prescription drugs for Medicaid clients in the fee-for-service program, manages the list of drugs covered by Medicaid (e.g., the formulary), and determines which drugs are designated as preferred and non-preferred. Preferred drugs are placed on the preferred drug list (PDL) and do not require prior authorization. Health care practitioners must request prior authorization for non-preferred drugs. HHSC proposes the amendment to address circumstances when a drug's status is redesignated from preferred to non-preferred, and it may be administratively more efficient to deem the approved prior authorization for a particular client for a certain period of time, or for an indefinite period.

The proposed amended rule allows HHSC, under limited circumstances, to exercise discretion to waive the normal prior authorization requirement for non-preferred drugs. Such a waiver would be subject to certain clinical considerations, including health and safety factors and guidance from the Pharmaceutical and Therapeutics Committee.

Section-by-Section Summary

Proposed amended §354.1832(a) clarifies that prior authorization submission procedures are only available on HHSC's website.

Proposed amended §354.1832(b) allows HHSC to waive the prior authorization requirements based on clinical considerations, cost considerations, or guidance from the Pharmaceutical and Therapeutics Committee when requiring prior authorization could adversely impact the health or safety of a Medicaid client.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposal is in effect, there will not be a fiscal impact to state or local governments. There is no anticipated negative impact on local employment.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro-businesses to comply with the proposal as they will not be required to alter their business practices as a result of the amended rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the proposal is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed amended rule is that HHSC will have the discretion, under limited circumstances, to allow Medicaid clients to continue taking a drug when not doing so could adversely impact their health or safety.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Susan Gibson, Program Coordinator in the Vendor Drug Program Medicaid/CHIP Division, 4900 N. Lamar, Austin, Texas 78751; by fax to (512)-730-7483; or by e-mail to susan.gibson@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for February 18, 2014, from 9:00 a.m. to 10:00 a.m. (central time) at the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, spe-

cial assistance, or accommodations should contact Leigh Van Kirk at (512) 462-6284.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1832. Prior Authorization Procedures.

(a) Requests for prior authorization. Except as provided in subsection (b) of this section, a health care practitioner who prescribes a drug that is not included on the Preferred Drug List (PDL) for a Medicaid recipient must request prior authorization of the drug to HHSC or its designee. Specific procedures for the submission of requests for prior authorization will be available [~~both~~] on HHSC's [~~Internet~~] web site [~~and in printed form~~]. A health care practitioner may request a printed copy of the procedures and forms from HHSC.

(b) New Medicaid recipients. The PDL-related prior authorization requirement of this section does not apply if the prescription for the non-preferred drug is for [~~to~~] a newly enrolled Medicaid recipient, until the 31st calendar day after the date of the [~~determination of the~~] recipient's Medicaid eligibility determination.

(c) Special Considerations. When HHSC determines based on clinical considerations, cost considerations, or guidance from the Pharmaceutical and Therapeutics (P&T) Committee that the prior authorization requirement could adversely impact Medicaid recipients' health or safety and it may be administratively more efficient to deem the approved prior authorization for a particular client for a certain period of time, or for an indefinite period.

(d) [~~(c)~~] Disposition of requests for prior authorization. HHSC or its designee will notify the requesting practitioner of the approval or disapproval of the request within 24 hours of the receipt of the request.

(e) [~~(d)~~] Emergency requests for prior authorization. HHSC will authorize up to a 72-hour supply of a product subject to prior authorization if:

(1) The prescribing practitioner notifies HHSC of an emergency need for the product when submitting the request for prior authorization; and

(2) HHSC or its designee is unable to provide its approval or disapproval within 24 hours following the receipt of the request.

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 3, 2014.

TRD-201400418
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8066

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8066, concerning Hospital-Specific Limit Methodology.

Background and Justification

The hospital-specific limit (HSL) is the maximum payment amount that a hospital may receive in reimbursement for the uncompensated cost of providing Medicaid-allowable services to individuals who are Medicaid-enrolled or uninsured. Section 355.8066 describes the methodology used to calculate the HSL for each Medicaid hospital participating in either the Disproportionate Share Hospital (DSH) program, described in §355.8065, or in the Uncompensated Care (UC) program under the Texas Healthcare Transformation and Quality Improvement Program, described in §355.8201.

As part of the state-federal partnership in administering the Medicaid program, the Centers for Medicare and Medicaid Services (CMS) issues guidance in the form of letters to State Medicaid Directors, Informational Bulletins, and Frequently Asked Questions to communicate with states and other stakeholders regarding operational issues related to Medicaid. CMS guidance, contained in a document entitled "Additional Information on the DSH Reporting and Audit Requirements" (http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Financing-and-Reimbursement/Downloads/AdditionalInformationontheDSHReporting.pdf), directs states to offset both Medicaid and third-party revenue associated with a Medicaid-eligible day against costs in the calculation of the HSL. In compliance with CMS direction, HHSC began offsetting third-party revenue associated with a Medicaid-eligible day when calculating a hospital's HSL in federal fiscal year 2011.

In 2012, some hospitals negatively impacted by the revised methodology initiated efforts to reverse CMS' position on the treatment of third-party payments in the HSL calculation or to minimize the negative impact to their DSH payments. In 2013, the Legislature enacted Senate Bill (S.B.) 7, 83rd Legislature, Regular Session, 2013, which amended the Human Resources Code by adding §32.0284: "[f]or purposes of calculating the hospital-specific limit used to determine a hospital's uncompensated care payment under a supplemental hospital payment program, the commission shall ensure that to the extent a third-party commercial payment exceeds the Medicaid allowable cost for a service provided to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment." The Legislature apparently determined that a change in state law was necessary because state law did not already authorize HHSC to exclude third-party commercial payments in the HSL calculation.

S.B. 7 also included the following instruction: "[i]f before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay

implementing that provision until the waiver or authorization is granted." By this language, the Legislature authorized HHSC to determine whether federal approval of the bill's limitation on use of third-party commercial payments in the HSL calculation is necessary. S.B. 7 was effective September 1, 2013.

The methodology described in §32.0284 of the Human Resources Code is inconsistent with the guidance provided by CMS in the document entitled "Additional Information on the DSH Reporting and Audit Requirements." For that reason, HHSC determined that in order to ensure that federal matching funds will continue to be available for payments to hospitals participating in the DSH and UC programs, it is necessary to obtain federal approval to implement the methodology.

On January 13, 2014, HHSC submitted a State Plan amendment (SPA) to CMS requesting authorization for this change in the calculation of HSLs. Under the Social Security Act, CMS has 90 days to consider and approve or disapprove a SPA; if CMS does not act by the 90th day, the SPA is automatically approved. CMS has yet to approve or disapprove the January 13, 2014 SPA.

In order to ensure that the change in state law enacted in S.B. 7 can be implemented, HHSC must also amend its administrative rules to conform to that change. For that reason, HHSC proposes to amend §355.8066 by adding subsection (c)(1)(B)(i)(III) to indicate that, contingent upon the approval of a corresponding Medicaid SPA by CMS, to the extent that third-party commercial payment exceeds the Medicaid allowable cost of a service provided to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment for purposes of calculating the HSL. The amended rule describes an alternate methodology in the event the SPA is not approved by CMS. Should that occur, HHSC intends to implement the methodology in a manner consistent with the CMS guidance, which is that the full amount of the third-party commercial payment will be considered a medical assistance payment and will be included in the HSL calculation.

By proposing both methodologies - that described in §32.0284 and that currently directed by CMS - HHSC intends to minimize any delay in payment of DSH and UC funds that might otherwise result if CMS disapproves the SPA.

Section-by-Section Summary

The proposed amendment to §355.8066:

- Revises subsection (b)(8) which defines "Hospital-specific limit" to indicate that the calculation of the hospital-specific limit must be consistent with federal law as determined by the Secretary of the United States Department of Health and Human Services and CMS.

- Adds new subsection (b)(11) which defines "Medicaid allowable cost" as the allowable charge for a claim multiplied by the applicable ratio of cost-to-charges for the cost reporting period.

- Adds new subsection (b)(19)(A) which defines "Inpatient ratio of cost-to-charges" as a ratio that covers all applicable hospital costs and charges relating to inpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

- Adds new subsection (b)(19)(B) which defines "Outpatient ratio of cost-to-charges" as a ratio that covers all applicable hospital costs and charges relating to outpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

- Revises subsection (c)(1)(B)(i) to indicate that HHSC will request from its Medicaid contractors the inpatient and outpatient charge and payment data for claims for services provided to Medicaid-enrolled individuals that are adjudicated during the data year.

- Revises subsection (c)(1)(B)(i)(I) to clarify that the data HHSC will request from its Medicaid contractors includes, but is not limited to, the categories listed in the subclause.

- Adds new subsection (c)(1)(B)(i)(I)(-d-) to indicate that HHSC will request data associated with claims for which the hospital received payment from a third-party payor for a Medicaid-enrolled patient.

- Revises subsection (c)(1)(B)(i)(II)(-a-) to indicate that HHSC will exclude charges and payments for claims for services that do not meet the definition of "medical assistance" contained in §1905 of the Social Security Act.

- Adds new subsection (c)(1)(B)(i)(III) to indicate that, contingent upon the approval of a corresponding Medicaid State Plan amendment by CMS that contains the specific policies prescribed by subclause (III), to the extent that third-party commercial payment exceeds the Medicaid allowable cost for a service provided to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment. If the State Plan amendment is not approved by CMS, the payment is considered a medical assistance payment and HHSC will include the entire payment amount in the calculation described in subsection (c)(1)(D)(ii)(I).

- Revises subsection (c)(1)(D)(ii)(I) to indicate that HHSC will reduce the total hospital cost by total payments from all payor sources for inpatient and outpatient claims, except as limited by subsection (c)(1)(B)(i)(III).

The proposed rule also includes numbering revisions to make the rule more readable and understandable.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that if CMS approves the pending SPA, for the first five years the proposed amendment is in effect, revenues to the state from the federal share of DSH and/or UC payments relating to state-owned hospitals will increase by $1,181,668 for state fiscal year (SFY) 2014; $1,275,047 for SFY 2015, $1,273,950 for SFY 2016, $1,273,950 for SFY 2017 and $1,273,950 for SFY 2018. If CMS disapproves the pending SPA, for the first five years the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the proposed section.

Under either outcome, Ms. Rymal also determined that local governments will not incur additional costs as the result of implementing this proposal. The decision to fund an intergovernmental transfer (IGT) in support of the DSH and/or uncompensated care (UC) program is solely within the discretion of the public entity and subject to the availability of local public funds.

If CMS approves the pending SPA, local governments that own and operate a public hospital that qualifies for and receives DSH and/or UC payments may see increases or decreases in their HSLs and potential DSH and UC payments as a result of the proposed amendment. The nature of the impact is dependent

upon the hospital's ratio of third-party commercial payments for Medicaid-enrolled patients to its Medicaid shortfall and uncompensated uninsured costs as compared to the average such ratio among all DSH and/or UC hospitals. Public hospitals with a greater than average ratio will experience an increase in their HSLs and potential DSH and UC payments while public hospitals with a lower than average ratio will experience a decrease in their HSLs and potential DSH and UC payments.

Ms. Rymal also determined there are no anticipated costs to persons required to comply with this rule as proposed.

HHSC has determined there will be no impact on local employment.

Small Business and Micro-Business Impact Analysis

Ms. Rymal also determined there will not be an adverse impact to any small business or micro-business. HHSC's research did not identify any hospital in Texas meeting the definition of a small business or micro-business.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, if CMS approves the pending SPA, for each year of the first five years the amended section is in effect, the public benefit expected as a result of enforcing the amended section is that HHSC's methodology will be in compliance with §32.0284 of the Human Resources Code. If CMS disapproves the SPA, the public benefit expected as a result of enforcing the alternate methodology is that the amendment is more detailed and transparent. The public benefit of the contingency language is that regardless of CMS' action on the pending SPA, payments to hospitals participating in the DSH and UC programs will not be delayed by further rulemaking processes.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Hearing

The HHSC Council meeting on February 28, 2014, will function as a public hearing to receive public comment on this proposed amendment. The HHSC Council meeting will be held in the Brown-Heatly Building Public Hearing Room at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact the External Relations Division by calling (512) 487-3300 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Public Comment

Written comments on the proposal may be submitted to Pam McDonald in the Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, by fax to (512) 491-1436, or by e-mail to pam.mcdonald@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8066. Hospital-Specific Limit Methodology.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate a hospital-specific limit for each Medicaid hospital participating in either the Disproportionate Share Hospital (DSH) program, described in §355.8065 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology), or in the Texas Healthcare Transformation and Quality Improvement Program (the waiver), described in §355.8201 of this title (relating to Waiver Payments to Hospitals).

(b) Definitions.

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payor.

(2) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(3) Data year--A 12-month period that is two years before the program year from which HHSC will compile data to determine DSH or uncompensated-care waiver program qualification and payment.

(4) Disproportionate share hospital (DSH)--A hospital identified by HHSC that meets the DSH program conditions of participation and that serves a disproportionate share of Medicaid or indigent patients.

(5) DSH survey--The HHSC data collection tool completed by each DSH hospital and used by HHSC to calculate the interim and final hospital-specific limit, as described in this section, and to estimate the hospital's DSH payments for the program year, as described in §355.8065 of this title. A hospital may be required to complete multiple surveys due to different data requirements between the interim and final hospital-specific limit calculations.

(6) Dually eligible patient--A patient who is simultaneously enrolled in Medicare and Medicaid.

(7) HHSC--The Texas Health and Human Services Commission or its designee.

(8) Hospital-specific limit--The maximum payment amount that a hospital may receive in reimbursement for the cost of providing Medicaid-allowable services to individuals who are Medicaid eligible or uninsured. The term does not apply to payment for costs of providing services to non-Medicaid-eligible individuals who have third-party coverage; costs associated with pharmacies, clinics, and physicians; or costs associated with Delivery System Reform Incentive Payment projects. The calculation of the hospital-specific limit must be consistent with federal law as determined by the Secretary of the United States Department of Health and Human Services and CMS.

(A) Interim hospital-specific limit--Applies to payments that will be made during the program year and is calculated as described in subsection (c)(1) of this section using cost and payment data from the data year.

(B) Final hospital-specific limit--Applies to payments made during a prior program year and is calculated as described in subsection (c)(2) of this section using actual cost and payment data from that period.

(9) Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(10) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness, defined in §1905(i) of the Social Security Act.

(11) Medicaid allowable cost--The allowable charge for a claim multiplied by the applicable ratio of cost-to-charges from subsection (b)(19) of this section for the cost reporting period described in subsection (c)(1)(C)(i) of this section.

(12) [~~(11)~~] Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(13) [~~(12)~~] Medicaid cost-to-charge ratio (inpatient and outpatient)--A Medicaid cost report-derived cost center ratio calculated for each ancillary cost center that covers all applicable hospital costs and charges relating to inpatient and outpatient care for that cost center. This ratio is used in calculating the hospital-specific limit and does not distinguish between payor types such as Medicare, Medicaid, or private pay.

(14) [~~(13)~~] Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(15) [~~(14)~~] Medicaid hospital--A hospital meeting the qualifications set forth in §354.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medicaid program.

(16) [~~(15)~~] Non-DSH survey--The HHSC data collection tool completed by non-DSH hospitals and used by HHSC to calculate the interim and final hospital-specific limit, as described in this section, and to calculate uncompensated care waiver payments for the program year, as described in §355.8201 of this title. A hospital may be required to complete multiple surveys due to different data requirements between the interim and final hospital-specific limit calculations.

(17) [~~(16)~~] Outpatient charges--Amount of gross outpatient charges related to the applicable data year and used in the calculation of the hospital specific limit.

(18) [~~(17)~~] Program year--The 12-month period beginning October 1 and ending September 30. The period corresponds to the waiver demonstration year.

(19) Ratio of cost-to-charges.

(A) Inpatient ratio of cost-to-charges--A ratio that covers all applicable hospital costs and charges relating to inpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(B) Outpatient ratio of cost-to-charges--A ratio that covers all applicable hospital costs and charges relating to outpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(20) [~~(18)~~] The waiver--The Texas Healthcare Transformation and Quality Improvement Program, a Medicaid demonstration waiver under §1115 of the Social Security Act that was approved by CMS on December 12, 2011. Pertinent to this section, the waiver establishes a funding pool to assist hospitals with uncompensated-care costs.

(21) [~~(19)~~] Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payor.

(22) [~~(20)~~] Total state and local payments--Total amount of state and local payments that a hospital received for inpatient care during the data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, and Kidney Health Care. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(23) [~~(21)~~] Uncompensated-care waiver payments--Payments to hospitals participating in the waiver that are intended to defray the uncompensated costs of eligible services provided to eligible individuals.

(24) [~~(22)~~] Uninsured cost--The cost to a hospital of providing inpatient and outpatient hospital services to uninsured patients as defined by CMS.

(c) Calculating a hospital-specific limit. Using information from each hospital's DSH or non-DSH survey, Medicaid cost report and from HHSC's Medicaid contractors, HHSC will determine the hospital's interim hospital-specific limit in compliance with paragraph (1) of this subsection. The interim hospital-specific limit will be used for both DSH and uncompensated care waiver interim payment determinations. Final hospital-specific limits will be determined in compliance with paragraph (2) of this subsection.

(1) Interim Hospital-Specific Limit.

(A) Uninsured charges and payments.

(i) Each hospital will report in its survey its inpatient and outpatient charges for services that would be covered by Medicaid that were provided to uninsured patients discharged during the data year. In addition to the charges in the previous sentence, for DSH calculation purposes only, an IMD may report charges for Medicaid-allowable services that were provided during the data year to Medicaid-eligible and uninsured patients ages 21 through 64.

(ii) Each hospital will report in its survey all payments received during the data year, regardless of when the service was provided, for services that would be covered by Medicaid and were provided to uninsured patients.

(I) For purposes of this paragraph, a payment received is any payment from an uninsured patient or from a third party (other than an insurer) on the patient's behalf, including payments received for emergency health services furnished to undocumented aliens under §1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, except as described in subclause (II) of this clause.

(II) State and local payments to hospitals for indigent care are not included as payments made by or on behalf of uninsured patients.

(B) Medicaid charges and payments.

(i) HHSC will request from its Medicaid contractors the inpatient and outpatient [~~Medicaid~~] charge and payment data for claims for services provided to Medicaid-enrolled individuals that are adjudicated during the data year [~~for all active Medicaid participating hospitals. There are circumstances, including the following, in which HHSC will request modifications to the adjudicated data~~].

(I) The requested data [~~HHSC~~] will include, but is not limited to [~~as appropriate~~], charges and payments for:

(-a-) claims associated with the care of dually eligible patients, including Medicare charges and payments;

(-b-) claims or portions of claims that were not paid because they exceeded the spell-of-illness limitation; [~~and~~]

(-c-) outpatient claims associated with the Women's Health Program; and[~~.~~]

(-d-) claims for which the hospital received payment from a third-party payor for a Medicaid-enrolled patient.

(II) HHSC will exclude charges and payments for:

(-a-) claims for services that do not meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act. Examples include [~~not covered by Medicaid, including~~]:

(-1-) claims for the Children's Health Insurance Program; and

(-2-) inpatient claims associated with the Women's Health Program; and

(-b-) claims submitted after the 95-day filing deadline.

(III) Contingent upon the approval of a corresponding Medicaid State Plan amendment by CMS that contains the specific policies prescribed by this subclause, to the extent that third-party commercial payment exceeds the Medicaid allowable cost for a service provided to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment. If such an amendment is not approved by CMS, the payment is considered a medical assistance payment and HHSC will include the entire payment amount in the calculation described in subparagraph (D)(ii)(I) of this paragraph.

(ii) HHSC will request from its Medicaid contractors the inpatient and outpatient Medicaid cost settlement payment or recoupment amounts attributable to the cost report period determined in subparagraph (C)(i) of this paragraph.

(iii) HHSC will notify hospitals following HHSC's receipt of the requested data from the Medicaid contractors. A hospital's right to request a review of data it believes is incorrect or incomplete is addressed in subsection (e) of this section.

(iv) Each hospital will report on the survey the inpatient and outpatient Medicaid days, charges and payment data for out-of-state claims adjudicated during the data year.

(v) HHSC may apply an adjustment factor to Medicaid payment data to more accurately approximate Medicaid payments following a rebasing or other change in reimbursement rates under other sections of this division.

(C) Calculation of in-state and out-of-state Medicaid and uninsured total costs for the data year.

(i) Cost report period for data used to calculate cost-per-day amounts and cost-to-charge ratios. HHSC will use information from the Medicaid cost report for the hospital's fiscal year that ends during the calendar year that falls two years before the end of the program year for the calculations described in clauses (ii)(I) and (iii)(I) of this subparagraph. For example, for program year 2013, the cost report year is the provider's fiscal year that ends between January 1, 2011, and December 31, 2011.

(I) For hospitals that do not have a full year cost report that meets this criteria, a partial year cost report for the hospital's fiscal year that ends during the calendar year that falls two years before the end of the program year will be used if the cost report covers a period greater than or equal to six months in length.

(II) The partial year cost report will not be prorated. If the provider's cost report that ends during this time period is less than six months in length, the most recent full year cost report will be used.

(ii) Determining inpatient routine costs.

(I) Medicaid inpatient cost per day for routine cost centers. Using data from the Medicaid cost report, HHSC will divide the allowable inpatient costs by the inpatient days for each routine cost center to determine a Medicaid inpatient cost per day for each routine cost center.

(II) Inpatient routine cost center cost. For each Medicaid payor type and the uninsured, HHSC will multiply the Medicaid inpatient cost per day for each routine cost center from subclause (I) of this clause times the number of inpatient days for each routine cost center from the data year to determine the inpatient routine cost for each cost center.

(III) Total inpatient routine cost. For each Medicaid payor type and the uninsured, HHSC will sum the inpatient routine costs for the various routine cost centers from subclause (II) of this clause to determine the total inpatient routine cost.

(iii) Determining inpatient and outpatient ancillary costs.

(I) Inpatient and outpatient Medicaid cost-to-charge ratio for ancillary cost centers. Using data from the Medicaid cost report, HHSC will divide the allowable ancillary cost by the sum of the inpatient and outpatient charges for each ancillary cost center to determine a Medicaid cost-to-charge ratio for each ancillary cost center.

(II) Inpatient and outpatient ancillary cost center cost. For each Medicaid payor type and the uninsured, HHSC will multiply the cost-to-charge ratio for each ancillary cost center from subclause (I) of this clause by the ancillary charges for inpatient claims and the ancillary charges for outpatient claims from the data year to

determine the inpatient and outpatient ancillary cost for each cost center.

(III) Total inpatient and outpatient ancillary cost. For each Medicaid payor type and the uninsured, HHSC will sum the ancillary inpatient and outpatient costs for the various ancillary cost centers from subclause (II) of this clause to determine the total ancillary cost.

(iv) Determining total Medicaid and uninsured cost. For each Medicaid payor type and the uninsured, HHSC will sum the result of clause (ii)(III) of this subparagraph and the result of clause (iii)(III) of this subparagraph plus organ acquisition costs to determine the total cost.

(D) Calculation of the interim hospital-specific limit.

(i) Total hospital cost. HHSC will sum the total cost by Medicaid payor type and the uninsured from subparagraph (C)(iv) of this paragraph to determine the total hospital cost for Medicaid and the uninsured.

(ii) Interim hospital-specific limit.

(I) HHSC will reduce the total hospital cost under clause (i) of this subparagraph by total payments from all payor sources for inpatient and outpatient claims, except as limited by subparagraph (B)(i)(III) of this paragraph, and including but not limited to, graduate medical services and out-of-state payments.

(II) HHSC will not reduce the total hospital cost under clause (i) of this subparagraph by supplemental payments (including upper payment limit payments), or uncompensated-care waiver payments for the data year to determine the interim hospital-specific limit. HHSC may reduce the total hospital cost by supplemental payments or uncompensated-care waiver payments (excluding payments associated with pharmacies, clinics, and physicians) attributed to the hospital for the program year if necessary to prevent total interim payments to a hospital for the program year from exceeding the interim hospital-specific limit for that program year.

(E) Inflation adjustment.

(i) HHSC will trend each hospital's interim hospital-specific limit using the inflation update factor.

(ii) HHSC will trend each hospital's-specific limit from the midpoint of the data year to the midpoint of the program year.

(2) Final hospital-specific limit.

(A) HHSC will calculate the individual components of a hospital's final hospital-specific limit using the calculation set out in paragraph (1)(A) - (D) of this subsection, except that HHSC will:

(i) use information from the hospital's Medicaid cost report(s) that cover the program year and from cost settlement payment or recoupment amounts attributable to the program year for the calculations described in paragraphs (1)(C)(ii)(I) and (1)(C)(iii)(I) of this subsection. If a hospital has two or more Medicaid cost reports that cover the program year, the data from each cost report will be pro-rated based on the number of months from each cost report period that fall within the program year;

(ii) include supplemental payments (including upper payment limit payments) and uncompensated-care waiver payments (excluding payments associated with pharmacies, clinics, and physicians) attributable to the hospital for the program year when calculating the total payments to be subtracted from total costs as described in paragraph (1)(D)(ii) of this subsection;

(iii) use the hospital's actual charges and payments for services described in paragraph (1)(A) and (B) of this subsection provided to Medicaid-eligible and uninsured patients during the program year; and

(iv) include charges and payments for claims submitted after the 95-day filing deadline for Medicaid-allowable services provided during the program year unless such claims were submitted after the Medicare filing deadline.

(B) For payments to a hospital under the DSH program, the final hospital-specific limit will be calculated at the time of the independent audit conducted under §355.8065(o) of this title.

(d) Due date for DSH or non-DSH survey.

(1) HHSC Rate Analysis must receive a hospital's completed survey no later than 30 calendar days from the date of HHSC's written request to the hospital for the completion of the survey, unless an extension is granted as described in paragraph (2) of this subsection.

(2) HHSC Rate Analysis will extend this deadline provided that HHSC receives a written request for the extension by hand delivery, U.S. mail, or special mail delivery no later than 30 calendar days from the date of the request for the completion of the survey.

(3) The extension gives the requester a total of 45 calendar days from the date of the written request for completion of the survey.

(4) If a deadline described in paragraph (1) or (3) of this subsection is a weekend day, national holiday, or state holiday, then the deadline for submission of the completed survey is the next business day.

(5) HHSC will not accept a survey or request for an extension that is not received by the stated deadline. A hospital whose survey or request for extension is not received by the stated deadline will be ineligible for DSH or uncompensated-care waiver payments for that program year.

(e) Verification and right to request a review of data. This subsection applies to calculations under this section beginning with calculations for program year 2014.

(1) Claim adjudication. Medicaid participating hospitals are responsible for resolving disputes regarding adjudication of Medicaid claims directly with the appropriate Medicaid contractors as claims are adjudicated. The review of data described under paragraph (2) of this subsection is not the appropriate venue for resolving disputes regarding adjudication of claims.

(2) Request for review of data.

(A) HHSC will pre-populate certain fields in the DSH or non-DSH survey, including data from its Medicaid contractors.

(i) A hospital may request that HHSC review any data in the hospital's DSH or non-DSH survey that is pre-populated by HHSC.

(ii) A hospital may not request that HHSC review self-reported data included in the DSH or non-DSH survey by the hospital.

(B) A hospital must submit a written request for review and all supporting documentation to HHSC's Director of Hospital Rate Analysis within 30 days following the distribution of the pre-populated DSH or non-DSH survey to the hospital by HHSC. The request must allege the specific data omissions or errors that, if corrected, would result in a more accurate HSL.

(3) HHSC's review.

(A) HHSC will review the data that is the subject of a hospital's request. The review is:

(i) limited to the hospital's allegations that data is incomplete or incorrect;

(ii) supported by documentation submitted by the hospital or by the Medicaid contractor;

(iii) solely a data review; and

(iv) not an adversarial hearing.

(B) HHSC will notify the hospital of the results of the review.

(i) If changes to the Medicaid data are made as a result of the review process, HHSC will use the corrected data for the HSL calculations described in this section and for other purposes described in §355.8065 and §355.8201 of this title.

(ii) If no changes are made, HHSC will use the Medicaid data from the Medicaid contractors.

(C) HHSC will not consider requests for review submitted after the deadline specified in paragraph (2)(B) of this subsection.

(D) HHSC will not consider requests for review of the following calculations that rely on the Medicaid data and other information described in this subsection:

(i) the hospital-specific limit calculated as described in this section;

(ii) DSH program qualification or payment amounts calculated as described in §355.8065 of this title;

(iii) uncompensated-care payment amounts calculated as described in §355.8201 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 3, 2014.

TRD-201400431
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 424-6900

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

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 366, concerning Medicaid Eligibility for Women, Children, Youth, and Needy Families, to restore assets tests to the Medically Needy program, amend terminology to align the rules with federal laws and regulations and current HHSC policy and processes, and implement federally-required changes to the manner in which redeterminations are processed.

BACKGROUND AND JUSTIFICATION

HHSC proposes to amend §366.303 and §366.311, concerning Pregnant Women's Medicaid; §§366.503, 366.511, 366.521, and 366.527, concerning Children's Medicaid; §366.603 and §366.615, concerning Medicaid for Transitioning Foster Care Youth; §§366.703, 366.711, 366.723, and 366.735, concerning Medicaid for Parents and Caretaker Relatives Program; §§366.803, 366.807, 366.811, 366.821, 366.823, 366.827, and 366.839, concerning Medically Needy Program; §366.1003 and §366.1015, concerning Former Foster Care Children's Program; and §§366.1103, 366.1105, 366.1107, 366.1109, 366.1111, and 366.1113, concerning Modified Adjusted Gross Income Methodology; and proposes new §§366.843, 366.845, and 366.847, concerning Medically Needy Program.

The proposed amendments to definitions and terminology in Chapter 366 align the rules with federal laws and regulations and current HHSC policy and processes.

The proposed rules implement federally required changes to the manner in which HHSC processes redeterminations. Recipients who fail to provide missing information during the renewal process may now submit missing information within 90 days, rather than 30 days, after the date of termination before having to submit a new application. *See* 42 C.F.R. §435.916(a)(3)(iii).

The proposed rules restore assets tests that were used before January 1, 2014, in determining eligibility for the Medically Needy Program. The federal government has indicated that states have the option under federal law of continuing assets and resource tests for this program. *See* 42 C.F.R. §435.603(j)(6).

SECTION-BY-SECTION SUMMARY

Throughout Chapter 366, the definitions of the terms "continuous coverage" and "household composition" are amended to align with federal law and regulations and current HHSC policy and processes. In addition, the term "household" is changed to "applicant" or "recipient" throughout Chapter 366.

Subchapter C (relating to Pregnant Women's Medicaid)

Section 366.303 defines key terms for the subchapter. The proposed amendments amend the definitions to align the rules with federal laws and regulations and current HHSC policy and processes.

Section 366.311 describes application processing. The proposed amendments make nonsubstantive changes to align terminology with definitions in previous sections.

Subchapter E (relating to Children's Medicaid)

Section 366.503 defines key terms for the subchapter. The proposed amendments amend the definitions to align the rules with federal laws and regulations and current HHSC policy and processes.

Section 366.511 describes application processing. The proposed amendments allow a recipient to submit missing information required for a redetermination up to 90 days after the termination date before having to submit a new application, as required under 42 CFR §435.916(a)(3)(iii).

Section 366.521 describes HHSC process if an applicant volunteers to receive child support and medical support services provided by the Office of the Attorney General. The proposed amendments make nonsubstantive changes to align terminology with definitions in previous sections.

Section 366.527 establishes the Medicaid eligibility effective date for Children's Medicaid. The proposed amendments make

nonsubstantive changes to align terminology with definitions in previous sections.

Subchapter F (relating to Medicaid for Transitioning Foster Care Youth)

Section 366.603 defines key terms for the subchapter. The proposed amendments amend the definitions to align the rules with federal laws and regulations and current HHSC policy and processes.

Section 366.615 describes application processing. The proposed amendments allow a recipient to submit missing information required for a redetermination up to 90 days after the termination date before having to submit a new application.

Subchapter G (relating to Medicaid for Parents and Caretaker Relatives Program)

Section 366.703 defines key terms for the subchapter. The proposed amendments amend the definitions to align the rules with federal laws and regulations and current HHSC policy and processes.

Section 366.711 describes application processing. The proposed amendments allow a recipient to submit missing information required for a redetermination up to 90 days after the termination date before having to submit a new application.

Section 366.723 establishes income eligibility limits and applies the methodology of Subchapter K (relating to Modified Adjusted Gross Income Methodology) of this chapter to the Parents and Caretaker Relatives Medicaid Program. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 366.735 provides that a household is eligible for four months post-Medicaid eligibility in certain circumstances. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Subchapter H (relating to Medically Needy Program)

Section 366.803 defines key terms for the subchapter. The proposed amendments amend the definitions to align the rules with federal laws and regulations and current HHSC policy and processes.

Section 366.807 describes the group eligible for coverage under the Medically Needy Program. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 366.811 describes application processing. The proposed amendments allow a recipient to submit missing information required for a redetermination up to 90 days after the termination date before having to submit a new application.

Section 366.821 establishes child support and medical support requirements for the Medically Needy program. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 366.823 establishes income limits and applies the methodology of Subchapter K (relating to Modified Adjusted Gross Income Methodology) of this chapter to the Medically Needy Program. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 366.827 establishes the Medicaid eligibility effective date for the Medically Needy Program. The proposed amendments make a correction to the terminology used in determining eligibility for this program and to the citation of the applicable section in which the calculation methodology is described. Current language in this section requires that "MAGI-countable income" be used to determine eligibility for the Medically Needy Program, but the rules should indicate that "household income" be used for this determination.

Section 366.839 requires a recipient to report certain changes to HHSC. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Three new sections are proposed. New §366.843 allows HHSC to count the resources of an applicant or recipient in determining eligibility. New §366.845 describes the manner in which the value of a vehicle is considered in determining countable resources for purposes of an eligibility determination. New §366.847 describes the types of resources that are exempt in calculating countable resources for purposes of an eligibility determination. The language in these three sections was in this subchapter prior to January 1, 2014; the rules that took effect on that date repealed the provisions. HHSC is re-implementing the application of an assets test in the Medically Needy Program as federal law permits us to do. See 42 C.F.R. §435.603(j)(6).

Subchapter J (relating to Former Foster Care Children's Program)

Section 366.1003 defines key terms for the subchapter. The proposed amendments amend the definitions to align the rules with federal laws and regulations and current HHSC policy and processes.

Section 366.1015 describes application processing. The proposed amendments allow a recipient to submit missing information required for a redetermination up to 90 days after the termination date before having to submit a new application.

Subchapter K (relating to Modified Adjusted Gross Income Methodology)

Section 366.1103 defines key terms for the subchapter. The proposed amendments amend the definitions to align the rules with federal laws and regulations and current HHSC policy and processes.

Section 366.1105 establishes the modified adjusted gross income methodology. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 366.1107 describes the manner in which each individual's household composition is determined for an income eligibility determination. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 366.1109 describes the calculation of individual income. The proposed amendments provide that assets tests do not apply in eligibility calculations, except in the case of the Medically Needy Program. The amendments also make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 366.1111 describes circumstances under which individual income is counted or excluded from the calculation of household income. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 366.1113 describes the manner in which household income is calculated for individuals. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendments and new sections are in effect, there may be implications relating to costs of state government. The proposed amendments restore assets tests in determining eligibility for the Medically Needy Program that were used before January 1, 2014. However, because HHSC included assets tests in the eligibility determination process until December 31, 2013, there is insufficient data to project the possible fiscal impact expected for the period from January 1, 2014, through April 30, 2014.

There may be additional costs for aligning the rules to federally required changes, such as possible changes to staffing levels or additional system changes. There is insufficient data to estimate these potential impacts.

Ms. Rymal also determined there are no anticipated implications relating to costs or revenues of local governments. There are no anticipated economic costs to persons who are required to comply with the proposed rules as there is no requirement to alter current business practices.

There is no anticipated negative impact on local employment.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no effect on small businesses or micro-businesses to comply with these amendments as proposed. The rules proposed impact publicly funded health and human service programs and, therefore do not impact small businesses or micro-businesses.

PUBLIC BENEFIT

Stephanie Muth, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the sections are in effect, the public will benefit from the amendments to the rule because Medicaid and CHIP program rules will align with federal and state policy, as well as clarify terms utilized throughout the rules.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Amanda Austin, Health and Human Services Commission, Office of Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751 or by email to Amanda.Austin@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing is scheduled on March 5, 2014, from 1:00 p.m. to 3:00 p.m. in the Winters Building, Public Hearing Room, 701 West 51st Street, Austin, Texas 78756.

SUBCHAPTER C. PREGNANT WOMEN'S MEDICAID

1 TAC §366.303, §366.311

LEGAL AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.303. Definitions.

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

(1) Applicant--A person seeking assistance under Pregnant Women's Medicaid who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) CFR--Code of Federal Regulations.

(4) Child--An adoptive, step, or natural child who is under 19 years of age.

(5) Continuous coverage--Uninterrupted eligibility for the extent of the certification period regardless of any changes in circumstances, unless:[.]

(A) the recipient's pregnancy ends;

(B) the recipient dies;

(C) the recipient disenrolls voluntarily;

(D) the recipient changes state residence;

(E) the state has erred in the eligibility determination; or

(F) the recipient or the recipient's representative has committed fraud, abuse, or perjury.

(6) Eligible group--A category of people who are eligible for Pregnant Women's Medicaid.

(7) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

(8) HHSC--The Texas Health and Human Services Commission or its designee.

(9) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household." [~~whose information is used to establish family size and calculate income.~~]

(10) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(11) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(12) Recipient--A person receiving Pregnant Women's Medicaid services.

(13) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(14) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.dads.state.tx.us/handbooks/TexasWorks.

(15) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(16) U.S.C.--United States Code.

§366.311. Application Processing.

(a) HHSC processes Pregnant Women's Medicaid applications received electronically, by paper, or by telephone.

(b) HHSC allows any office of a state health and human services agency to accept an initial application.

(c) HHSC contracts with third parties to accept applications from hospital districts (including state-owned teaching hospitals), federally qualified health centers, and county health departments.

(d) HHSC may conduct an interview with an initial applicant.

(e) HHSC reopens a denied initial application, so long as the applicant [~~household~~] complies with the missed requirements within 60 days after the date the application was submitted. HHSC otherwise requires the applicant [~~household~~] to file a new application.

(f) HHSC may reopen an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the three-month prior period.

(g) For an applicant who is potentially eligible but unable to provide proof of eligibility, HHSC:

(1) postpones verifications and provides Medicaid coverage to ensure access to medical care within 30 days after the application date;

(2) continues the coverage of an applicant who provides postponed verification by the 30th day after the application date; and

(3) denies the coverage of an applicant who fails to meet the 30-day deadline.

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 3, 2014.

TRD-201400435
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 424-6900

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SUBCHAPTER E. CHILDREN'S MEDICAID

1 TAC §§366.503, 366.511, 366.521, 366.527

LEGAL AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.503. Definitions.

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

(1) Applicant--A person seeking assistance under Children's Medicaid who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) Caretaker--An adult who is present in the home, who supervises and cares for a child, and who meets relationship requirements in §366.519(b) of this subchapter (relating to Relationship and Domicile).

(4) CFR--Code of Federal Regulations.

(5) Child--An adoptive, step, or natural child who is under 19 years of age.

(6) Continuous coverage--Uninterrupted eligibility for the extent of the certification period regardless of any changes in circumstances, unless:[-]

(A) the recipient attains the maximum age for that specific program;

(B) the recipient dies;

(C) the recipient disenrolls voluntarily;

(D) the recipient changes state residence;

(E) the state has erred in the eligibility determination; or

(F) the recipient or the recipient's representative has committed fraud, abuse, or perjury.

(7) Eligible group--A category of people who are eligible for Children's Medicaid.

(8) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

(9) HHSC--The Texas Health and Human Services Commission or its designee.

(10) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household." [~~whose information is used to establish family size and calculate income.~~]

(11) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(12) Newborn--A child from birth through 12 months of age.

(13) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(14) Recipient--A person receiving Children's Medicaid services, including a person who is renewing eligibility for Children's Medicaid.

(15) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(16) Texas Health Steps--Federally mandated Medicaid services that provide medical and dental check-ups, diagnosis, and treatment to eligible clients from birth through age 20. Federally, this program is known as the Early Periodic Screening, Diagnostic, and Treatment (EPSDT) Program.

(17) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.dads.state.tx.us/handbooks/TexasWorks.

(18) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(19) U.S.C.--United States Code.

§366.511. Application Processing.

(a) HHSC processes Children's Medicaid applications received electronically, by paper, or by telephone.

(b) HHSC allows any office of a state health and human services agency to accept an initial application.

(c) HHSC contracts with third parties to accept applications from hospital districts (including state-owned teaching hospitals), federally qualified health centers, and county health departments.

(d) HHSC may conduct an interview with an initial applicant.

(e) HHSC reopens a denied initial application, so long as the applicant [~~household~~] complies with the missed requirements within 60 days after the date the application was submitted. HHSC otherwise requires the applicant [~~household~~] to file a new application.

(f) HHSC reconsiders the eligibility of a recipient who is terminated for failure to submit a renewal form or necessary information [~~reopens a denied renewal application~~], so long as the recipient [~~household~~] complies with the missed requirements within 90 [~~30~~] days after the date of termination [~~last benefit month~~]. HHSC otherwise requires the recipient [~~household~~] to file a new application.

(g) HHSC may reopen an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the three-month prior period.

§366.521. Child Support and Medical Support.

If an applicant or recipient [~~a household applying only~~] for Children's Medicaid volunteers to receive services provided by the Office of Attorney General of Texas (OAG), HHSC will collect absent parent information and refer the child's case to the OAG.

§366.527. Medicaid Eligibility Effective Date.

HHSC determines the Medicaid eligibility effective date for an applicant as follows:

(1) Medicaid coverage begins on the earliest day of the application month on which the applicant meets all eligibility criteria.

(2) Retroactive coverage may begin as early as three months before the application month, except that a newborn's coverage begins no earlier than the child's date of birth.

(3) A recipient is continuously eligible for Medicaid for six months or through the month of the recipient's 19th birthday, whichever is earlier. A recipient who is a newborn has continuous eligibility through the month of his or her first birthday. If the applicant [~~household~~] is eligible in the application or process month, the child is eligible for continuous coverage beginning the first month the applicant [~~household~~] meets the eligibility criteria.

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

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SUBCHAPTER F. MEDICAID FOR TRANSITIONING FOSTER CARE YOUTH

1 TAC §366.603, §366.615

LEGAL AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.603. Definitions.

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

(1) Applicant--A person seeking assistance under the Medicaid for Transitioning Foster Care Youth Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) CFR--Code of Federal Regulations.

(4) Child--An adoptive, step, or natural child who is under age 19.

(5) Eligible group--A category of people who are eligible for MTFCY.

(6) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

(7) HHSC--The Texas Health and Human Services Commission or its designee.

(8) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household." [~~whose information is used to establish family size and calculate income.~~]

(9) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(10) MTFCY--The Medicaid for Transitioning Foster Care Youth Program.

(11) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(12) Recipient--A person receiving MTFCY services.

(13) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(14) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(15) U.S.C.--United States Code.

§366.615. Application Processing.

(a) HHSC processes applications received electronically, by paper, or by telephone.

(b) HHSC reopens a denied initial application, so long as the applicant complies with the missed requirements within 60 days after the date the application was submitted. HHSC otherwise requires the applicant to file a new application.

(c) HHSC reconsiders the eligibility of a recipient who is terminated for failure to submit a renewal form or necessary information [~~reopens a denied renewal application~~], so long as the recipient complies with the missed requirements within 90 [~~30~~] days after the date of termination [~~last benefit month~~]. HHSC otherwise requires the recipient to file a new application.

(d) HHSC reopens an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the prior three-month period.

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

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SUBCHAPTER G. MEDICAID FOR PARENTS AND CARETAKER RELATIVES PROGRAM

1 TAC §§366.703, 366.711, 366.723, 366.735

LEGAL AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.703. Definitions.

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

(1) Applicant--A person seeking assistance under the Medicaid for Parents and Caretaker Relatives Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) Caretaker--A person who supervises and cares for a dependent child and who meets relationship requirements in §366.719(c) of this subchapter (relating to Relationship and Domicile).

(4) CFR--Code of Federal Regulations.

(5) Dependent child--A child who is:

(A) either:

(i) under the age of 18; or

(ii) 18 and a full-time student in secondary school or equivalent vocational or technical training, if before attaining age 19 the child may reasonably be expected to complete such school or training; and

(B) is deprived of parental support by reason of the death, absence from the home, physical or mental incapacity, or unemployment of at least one parent.

(6) Eligible group--A category of people who are eligible for the Medicaid for Parents and Caretaker Relatives Program.

(7) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

(8) HHSC--The Texas Health and Human Services Commission or its designee.

(9) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household." [~~whose information is used to establish family size and calculate income.~~]

(10) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(11) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(12) Recipient--A person receiving benefits under the Medicaid for Parents and Caretaker Relatives Program, including a person who is renewing eligibility for the Medicaid for Parents and Caretaker Relatives Program.

(13) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(14) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(15) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(16) U.S.C.--United States Code.

§366.711. Application Processing.

(a) HHSC processes Medicaid for Parents and Caretaker Relatives Program applications received electronically, by paper, or by telephone.

(b) HHSC allows any office of a state health and human services agency to accept an initial application.

(c) HHSC contracts with third parties to accept applications from hospital districts (including state-owned teaching hospitals), federally qualified health centers, and county health departments.

(d) HHSC requires an interview with an initial applicant.

(e) HHSC reopens a denied initial application, so long as the applicant [~~household~~] complies with the missed requirements within 60 days after the date the application was submitted. HHSC otherwise requires the applicant [~~household~~] to file a new application.

(f) HHSC reconsiders the eligibility of a recipient who is terminated for failure to submit a renewal form or necessary information [~~reopens a denied application~~], so long as the recipient [~~household~~] complies with the missed requirements within 90 [~~30~~] days after the date of termination [~~last benefit month~~]. HHSC otherwise requires the recipient [~~household~~] to file a new application.

(g) HHSC may reopen an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the three-month prior period.

§366.723. Income Eligibility.

(a) HHSC determines income eligibility for the Medicaid for Parents and Caretaker Relatives Program after application of the methodology in Subchapter K of this chapter (relating to Modified Adjusted Gross Income Methodology).

(b) To be eligible for the Medicaid for Parents and Caretaker Relatives Program, an applicant or recipient must have household income for the applicable household [~~family~~] size that is equal to or less than the amount determined by HHSC and listed in the *Texas Works Handbook.*

§366.735. Four Months Post-Medicaid Eligibility.

A recipient [~~household~~] is eligible for four months post-Medicaid coverage, as provided by §1931 of the Social Security Act (42 U.S.C. §1396u-1), if the recipient [~~household~~] received Medicaid under §1931 of the Social Security Act (42 U.S.C. §1396u-1) and then was denied Medicaid because of receipt of child support or spousal support.

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SUBCHAPTER H. MEDICALLY NEEDY PROGRAM

1 TAC §§366.803, 366.807, 366.811, 366.821, 366.823, 366.827, 366.839, 366.843, 366.845, 366.847

LEGAL AUTHORITY

The amendments and new rules are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments and new rules affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.803. Definitions.

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

(1) Applicant--A person seeking assistance under the Medically Needy Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) Caretaker--A person who supervises and cares for a child. A caretaker must be related to the child.

(4) Child--An adoptive, step, or natural child who is under age 19.

(5) CFR--Code of Federal Regulations.

(6) Eligible group--A category of people who are eligible for the Medically Needy Program.

(7) HHSC--The Texas Health and Human Services Commission or its designee.

(8) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household." [~~whose information is used to establish family size and calculate income.~~]

(9) MAGI--Modified adjusted gross income.

(10) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(11) Medically Needy (MN) Program--A program HHSC administers that provides Medicaid benefits to pregnant women and children whose income is too high to qualify for other Medicaid programs and who have high medical expenses.

(12) Newborn--A child from birth through 12 months of age.

(13) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(14) Provider--A health care practitioner, institution, or other entity that is enrolled with the state Medicaid claims administrator to provide Medicaid services in Texas and is authorized to submit claims for payment or reimbursement of medical assistance.

(15) Recipient--A person receiving Medically Needy Program services.

(16) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(17) Spend down--The amount of income that an applicant must apply toward incurred medical bills before the applicant can be certified for the Medically Needy Program.

(18) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Assistance Nutrition Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The Texas Works Handbook is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(19) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(20) U.S.C.--United States Code.

§366.807. Eligible Groups.

To qualify for Medically Needy Program benefits, an applicant must:

(1) be:

(A) a pregnant woman; or

(B) a child under 19 years of age; and

(2) have household [~~countable~~] income that meets the applicable income limit in §366.823 of this subchapter (relating to Income Limits) after application of the methodology in Subchapter K of this chapter (relating to Modified Adjusted Gross Income Methodology).

§366.811. Application Processing.

(a) HHSC processes Medically Needy Program applications received electronically, by paper, or by telephone.

(b) HHSC allows any office of a state health and human services agency to accept an initial application.

(c) HHSC contracts with third parties to accept applications from hospital districts (including state-owned teaching hospitals), federally qualified health centers, and county health departments.

(d) HHSC may conduct an interview with an initial applicant.

(e) HHSC reopens a denied initial application, so long as the applicant [~~household~~] complies with the missed requirements within 60 days after the date the application was submitted. HHSC otherwise requires the applicant [~~household~~] to file a new application.

(f) HHSC reconsiders the eligibility of a recipient who is terminated for failure to submit a renewal form or necessary information [~~reopens a denied renewal application~~], so long as the recipient [~~household~~] complies with the missed requirements within 90 [~~30~~] days after the date of termination [~~last benefit month~~]. HHSC otherwise requires the recipient [~~household~~] to file a new application.

(g) HHSC may reopen an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the three-month prior period.

(h) For a pregnant applicant who is potentially eligible but unable to provide proof of eligibility, HHSC:

(1) postpones verifications and provides Medicaid coverage to ensure access to medical care within 30 days after the application date;

(2) continues the coverage of women who provide postponed verifications by the 30th day after the application date; and

(3) denies the coverage of those who fail to meet the 30-day deadline.

(i) There are no conditions limiting the designation of an authorized representative.

§366.821. Child Support and Medical Support.

(a) Pregnant women must provide the name and last known address of the legal or biological father, or both, of unborn children.

(b) An applicant who is [~~A household applying only for~~] a child under 19 years of age is not required to cooperate to find absent parents to obtain child or medical support.

§366.823. Income Limits.

(a) To be eligible for the Medically Needy Program, an applicant or recipient must meet the applicable Medically Needy Income Limit (MNIL) as provided in the following table after application of the methodology in Subchapter K of this chapter (relating to Modified Adjusted Gross Income Methodology):

Figure: 1 TAC §366.823(a) (No change.)

(b) An applicant whose household [~~MAGI-countable~~] income, as calculated under §366.1113 [~~§366.1109~~] of this chapter (relating to Calculation of Household [~~MAGI-Countable~~] Income), exceeds the applicable MNIL may, in accordance with 42 CFR §435.831, spend down the excess amount of income to pay unpaid medical bills and qualify for the Medically Needy Program with spend down.

§366.827. Medicaid Eligibility Effective Date.

HHSC determines Medicaid eligibility dates for an applicant as follows:

(1) Medicaid coverage begins on the earliest day of the application month on which the applicant meets all eligibility criteria.

(2) Retroactive coverage may begin as early as three months before the application month.

(3) The Medicaid coverage of an applicant whose household [~~MAGI-countable~~] income, as calculated under §366.1113 [~~§366.1109~~] of this chapter (relating to Calculation of Household [~~MAGI-Countable~~] Income), exceeds the Medically Needy Income Limits (MNIL) may spend down the excess amount of income to pay unpaid medical bills and qualify for Medicaid. Medicaid begins on the earliest day of the month of potential eligibility on which spend down requirements are met.

§366.839. Requirement to Report Changes.

(a) A recipient must report the following changes within 10 days after the recipient [~~household~~] learns of a change:

(1) in income, including the source of income and the amount of [~~MAGI-countable~~] income;

(2) in household composition, including new household members and household members who leave the home;

(3) of address;

(4) to medical insurance;

(5) in information relating to an absent parent (such as a new job or residence address); and

(6) in circumstances, other than employment, that affects benefits.

(b) A recipient who is pregnant must report the termination of pregnancy.

§366.843. Resources.

(a) In determining eligibility, HHSC counts the resources of the applicant or recipient and all members of the applicant's or recipient's household composition. For those who are subject to this subchapter (relating to the Medically Needy Program):

(1) the resources of any household composition member who is not the parent or spouse of the applicant or recipient are not counted; and

(2) the resources of an alien's sponsor and the sponsor's spouse are counted to the extent allowed by federal law in the case of an applicant or recipient 19 years of age and older who is an alien or has a sponsored alien in his or her household composition.

(b) HHSC does not count resources in determining eligibility for pregnant women.

(c) HHSC considers the value of a nonliquid resource, except for a vehicle, to be its equity value. HHSC determines the equity value by subtracting any money owed on the resource and any reasonable cost associated with selling or transferring the resource from the fair market value.

(d) An applicant or recipient meets the resources eligibility requirement if the applicant or recipient's countable resources are at or below:

(1) $3,000 for an applicant or recipient who lives in the same physical residence with an individual who is aged or disabled and meets relationship requirements, even if the aged or disabled member is not part of the applicant or recipient's household composition; or

(2) $2,000 for all other applicants or recipients.

(e) An applicant, if otherwise eligible, is not denied Medically Needy Program services because the applicant transferred resources to qualify for Medicaid.

§366.845. Vehicles.

(a) HHSC considers the value of a vehicle to be its fair market value.

(b) HHSC exempts the value of the highest valued countable vehicle from countable resources.

(c) HHSC exempts the value of a vehicle from countable resources, if:

(1) it is income producing;

(2) it is used for a disabled household member;

(3) its equity value is equal to or less than $1,500;

(4) it is used for long distance travel for employment;

(5) it is used as the applicant or recipient's home; or

(6) it is necessary to carry fuel or water anticipated to be the primary source of fuel or water for the applicant or recipient during the certification period.

(d) HHSC exempts for each adult member of the household composition up to $4,650 of the value of any vehicle not exempt under subsection (b) of this section. HHSC exempts any other licensed vehicle a minor (under 18 years of age) drives to work, training, school, or to seek employment if the fair market value (FMV) is less than $4,650. HHSC counts the FMV in excess of $4,650 as a resource.

§366.847. Exempt Resources.

HHSC exempts the following from countable resources:

(1) funds in a retirement account (even if accessible, so long as the funds remain in the account);

(2) balances in the Texas Guaranteed Tuition Plan (formerly called the Texas Tomorrow Fund) even if accessible, so long as the funds remain in the account;

(3) crime victim's compensation payments;

(4) earned income tax credit (EIC) payments to applicants the month of receipt and the following month, and to recipients the month of receipt and the following 11 months, unless there is a break in certification of more than 30 days, in which case any remaining portion of the EIC payment is counted as a resource;

(5) payments or allowances made under any federal law for the purpose of energy assistance;

(6) federal disaster payments and comparable disaster assistance provided by states, local governments, and disaster assistance organizations if the applicant or recipient is subject to legal penalties if the funds are not used as intended;

(7) transitional living allowances;

(8) any resource federal law excludes;

(9) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(10) the cash value of life insurance policies;

(11) an amount up to $7,500 per person of prepaid burial insurance (or of a prepaid funeral plan);

(12) loans, if the circumstances satisfy HHSC that there exists an understanding the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;

(13) personal possessions HHSC determines are essential for daily living, such as clothing, jewelry, furniture, livestock, and farm equipment;

(14) burial plots;

(15) the homestead and surrounding real property, including:

(A) any structure, including a houseboat or a motor home, the applicant or recipient uses as its primary residence;

(B) surrounding real property divided by a public right-of-way (such as a street or road) but not divided by real property owned by others; and

(C) the homestead if it is temporarily unoccupied due to employment, training for future employment, illness, casualty, or natural disaster, as long as the household intends to return;

(16) income-producing property (any real or personal property that generates income) that:

(A) is essential to a household composition member's employment or self-employment (such as tools of a trade, farm machinery, stock, and inventory), including:

(i) during temporary periods of unemployment if the household composition member expects to return to work; and

(ii) for farmers or fishers, the value of the land or equipment for one year after the date the self-employment ceases;

(B) annually produces income consistent with a fair market value comparable in the community (as determined by HHSC through sources such as local realtors, tax assessors, and the Small Business Administration), even if used only on a seasonal basis such as rental property; or

(C) is that portion of the property that is necessary for the maintenance or use of a vehicle exempted as income-producing or as necessary for transporting a physically disabled household member;

(17) real property HHSC determines the applicant or recipient is making a good faith effort to sell;

(18) resources HHSC determines are not accessible to the applicant or recipient;

(19) funds from educational assistance payments (but only during the quarter, semester, or applicable period the payment is intended to cover);

(20) equity value of resources that are not legally available (inaccessible) to the household;

(21) a nonliquid resource if its equity is less than or equal to $1,500;

(22) a One-Time Temporary Assistance for Needy Families (OTTANF) payment for the month of receipt and any remaining OTTANF benefits the month after receipt;

(23) a TANF One-Time Grandparent payment;

(24) reimbursements earmarked and used for replacing or repairing an exempt resource;

(25) for an applicant or recipient who lives at the same physical address as a sponsored alien, the resources of a sponsor and the sponsor's spouse to the extent allowed by federal law;

(26) resources of residents in shelters for battered women and children if:

(A) resources are jointly owned by the member of the household composition in the shelter and household composition members of the former physical living address; and

(B) shelter resident's access to the value of the resource depends on the agreement of a joint owner who still lives in the resident's former physical living address;

(27) resources of a recipient of Supplemental Security Income living in the home; and

(28) liquid resources resulting from the earnings of a certified child who is attending school full time, or less than full time and employed less than 30 hours per week.

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

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SUBCHAPTER J. FORMER FOSTER CARE CHILDREN'S PROGRAM

1 TAC §366.1003, §366.1015

LEGAL AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.1003. Definitions.

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

(1) Applicant--A person seeking assistance under the Former Foster Care Children Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) CFR--Code of Federal Regulations.

(4) Child--An adoptive, step, or natural child under age 19.

(5) Eligible group--A category of people who are eligible for the Former Foster Care Children's Program.

(6) HHSC--The Texas Health and Human Services Commission or its designee.

(7) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household." [~~whose information is used to establish family size and calculate income.~~]

(8) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(9) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(10) Recipient--A person receiving Former Foster Care Children's Program services, including a person who is renewing eligibility for the Former Foster Care Children's Program.

(11) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(12) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.dads.state.tx.us/handbooks/TexasWorks.

(13) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(14) U.S.C.--United States Code.

§366.1015. Application Processing.

(a) HHSC processes Former Foster Care Children's Program applications received electronically, by paper, or by telephone.

(b) HHSC reopens a denied initial application, so long as the applicant complies with the missed requirements within 90 days after

the date the application was submitted. HHSC otherwise requires the applicant to file a new application.

(c) HHSC reconsiders the eligibility of a recipient who is terminated for failure to submit a renewal form or necessary information [~~reopens a denied renewal application~~], so long as the recipient complies with the missed requirements within 90 [~~30~~] days after the date of termination [~~last benefit month~~]. HHSC otherwise requires the recipient to file a new application.

(d) HHSC reopens an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the prior three-month period.

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 3, 2014.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER K. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §§366.1103, 366.1105, 366.1107, 366.1109, 366.1111, 366.1113

LEGAL AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.1103. Definitions.

In this subchapter, words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A person seeking assistance from a Medicaid program to which this subchapter applies who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Child--An adoptive, step, or natural child who is under age 19.

[~~(3) Family size--The number of persons counted as members of an individual's household composition.~~]

(3) [~~(4)~~] Federal Poverty Level (FPL)--The income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

(4) [~~(5)~~] HHSC--The Texas Health and Human Services Commission or its designee.

(5) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household."

(6) Household income--The sum of the individual income of every individual within an applicant's or recipient's household composition, from which is subtracted the standard income disregard.

(7) Household size--The number of individuals in an applicant's or recipient's household composition, plus the number of unborn children if applicable, referenced in 42 CFR §435.603(b) as "family size."

(8) Individual income--The sum of income received by the individuals in a household composition, from which is subtracted expenses, in compliance with 42 CFR §435.603(e), referenced as "MAGI-based income."

(9) [~~(6)~~] MAGI--Modified adjusted gross income.

(10) [~~(7)~~] Non-custodial parent--A parent who does not have custody of a child pursuant to a court order, or binding agreement of separation or divorce.

(11) [~~(8)~~] Parent--An individual who is the adoptive, step, or natural parent of a child.

(12) [~~(9)~~] Recipient--A person receiving Medicaid program services, including a person who is renewing eligibility for a Medicaid program subject to this subchapter.

(13) [~~(10)~~] Sibling--An individual under age 19 who is an adoptive, step, or natural sibling of a child.

(14) [~~(11)~~] Spend down--The amount of income that an applicant must apply toward incurred medical bills before the applicant can be certified for the Medically Needy Program.

(15) Standard income disregard--An income disregard equal to five percentage points of FPL for the applicable household size.

(16) [~~(12)~~] Tax dependent--An individual who expects to be claimed as a dependent on a federal income tax return for the taxable year in which Medicaid eligibility is requested.

(17) [~~(13)~~] Taxpayer--An individual, or a married couple, who expects:

(A) to file a federal income tax return for the taxable year in which Medicaid eligibility is requested;

(B) if married, to file a joint federal income tax return for the taxable year in which Medicaid eligibility is requested;

(C) that no other taxpayer will be able to claim him, her, or them as a tax dependent on a federal income tax return for the taxable year in which Medicaid eligibility is requested; or

(D) to claim a personal exemption deduction on his or her federal income tax return for one or more applicants, who may or may not include himself or herself and his or her spouse.

(18) [~~(14)~~] Taxable year--The 12-month period between January and December that an individual uses to report income for federal income tax purposes.

§366.1105. Methodology.

(a) In general, HHSC determines income eligibility for a Medicaid Program subject to this subchapter by:

(1) determining the applicant's or recipient's household composition in accordance with §366.1107 of this subchapter (relating to Determination of Household Composition);

(2) calculating the individual [~~MAGI-countable~~] income of each person in the applicant's or recipient's household composition in accordance with §366.1109 of this subchapter (relating to Calculation of Individual [~~MAGI-Countable~~] Income);

(3) determining if the individual [~~MAGI-countable~~] income of each individual in the applicant's or recipient's household composition is included in the calculation of household income in accordance with §366.1111 of this subchapter (relating to Determination Regarding Including an Individual's Income in the Household Income); and

(4) calculating the applicant's or recipient's household income in accordance with §366.1113 of this subchapter (relating to Calculation of Household Income).

(b) To be eligible for a Medicaid Program, the applicant's or recipient's household income must be less than or equal to the Federal Poverty Level of the applicable Medicaid Program.

§366.1107. Determination of Household Composition.

(a) To determine household composition, an individual is designated as:

(1) a taxpayer;

(2) a tax dependent who does not meet any exceptions;

(3) a tax dependent who meets one or more of the exceptions set out in 42 CFR 435.603(f)(2); or

(4) not a taxpayer or tax dependent.

(b) If the individual is a taxpayer, the following individuals are included in the taxpayer's household composition:

(1) the taxpayer;

(2) the taxpayer's spouse, if the taxpayer and the spouse live together;

(3) the taxpayer's spouse, if the taxpayer and spouse file a joint federal income tax return; and

(4) any individual the taxpayer expects to claim as a tax dependent for the taxable year in which Medicaid eligibility is requested.

(c) If the individual is a tax dependent, the following individuals are included in the tax dependent's household composition:

(1) the tax dependent;

(2) the household composition of the taxpayer [~~taxpayer's household~~] claiming the tax dependent; and

(3) the tax dependent's spouse, if the tax dependent and the spouse live together.

(d) The rules in subsection (e) of this section apply to a tax dependent who:

(1) is not the taxpayer's spouse or the taxpayer's child;

(2) is a child who lives with both parents who did not file a joint federal income tax return and was claimed by one parent; or

(3) is a child who is claimed as a tax dependent only by a non-custodial parent.

(e) The household composition of an individual who is not a taxpayer or a tax dependent includes:

(1) the individual's spouse;

(2) the individual's children; and

(3) if a child, the individual's parents and siblings.

(f) A spouse is included in an individual's household composition if living together or filing a joint federal income tax return.

(g) Subsection (c) of this section applies to an individual who is both a tax dependent and taxpayer.

(h) An unborn child is included in the household composition of:

(1) a pregnant woman; and

(2) a child included [~~living~~] in the household composition of [~~with~~] a pregnant woman.

§366.1109. Calculation of Individual [~~MAGI-Countable~~] Income.

(a) HHSC calculates individual [~~MAGI-countable~~] income in accordance with Internal Revenue Code §36B(d)(2)(B), with adjustments for lump sum payments, certain income of American Indians/Alaskan Natives, and scholarships, awards, and fellowship grants used for education purposes.

(b) Assets tests do not apply to groups subject to the provisions of this subchapter, except for those subject to Subchapter H of this chapter (relating to Medically Needy Program). HHSC may collect information on assets and resources from Medicaid program applicants and recipients during the eligibility determination process.

§366.1111. Determination Regarding Inclusion of Individual [~~Including an Individual's~~] Income in the Household Income.

(a) Individual [~~An individual's~~] income is counted as part of the household income unless:

(1) the individual is a child who is included in the household composition of a parent and is not required to file a federal income tax return for the taxable year in which Medicaid eligibility is requested; or

(2) the individual is a tax dependent and is not required to file a federal income tax return for the taxable year in which Medicaid eligibility is requested.

(b) Individual income [~~Income of an individual~~] described in subsection (a)(1) of this section is excluded from the household income of each individual in the household composition as defined in §366.1107 of this subchapter (relating to Determination of Household Composition).

(c) Individual income [~~Income of an individual~~] described in subsection (a)(2) of this section is excluded from the household income of the taxpayer.

§366.1113. Calculation of Household Income.

(a) For each applicant or recipient, the household income is:

(1) the sum of the individual [~~MAGI-countable~~] income (as calculated under §366.1109 of this subchapter (relating to Calculation of Individual [~~MAGI-Countable~~] Income)) for each individual in the

applicant's or recipient's household composition (as determined under §366.1107 of this subchapter (relating to Determination of Household Composition)); and

(2) less a standard [~~an~~] income disregard equal to five percentage points of the Federal Poverty Level for the applicable household [~~family~~] size, as permitted by 42 CFR §435.603(d)(4).

(b) For an applicant or recipient for the Medically Needy Program under Subchapter H of this chapter (relating to Medically Needy Program), the household income is:

(1) the sum of the individual [~~MAGI-countable~~] income (as calculated under §366.1109 of this subchapter for the following individuals in the applicant's or recipient's household composition (as determined under §366.1107 of this subchapter):

(A) the applicant or recipient;

(B) the applicant's or recipient's parents; and

(C) the applicant's or recipient's spouse;

(2) less a standard [~~an~~] income disregard equal to five percentage points of the Federal Poverty Level for the applicable household [~~family~~] size, as permitted by 42 CFR §435.603(d)(4); and

(3) additional deductions allowed for spend down.

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

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 424-6900

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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 370, concerning the Children's Health Insurance Program (CHIP), to amend terminology to align the rules with federal laws and regulations and current HHSC policy and processes, to implement federally required changes to CHIP waiting period exceptions, and to allow each CHIP recipient to select a health care managed care organization and dental managed care organization.

BACKGROUND AND JUSTIFICATION

HHSC proposes to amend §370.4, concerning Definitions, §370.20, concerning Application Availability and File Date, §370.46, concerning Waiting Period, §370.303, concerning Completion of Enrollment, §370.325, concerning Cost-Sharing Cap, §370.803, concerning Definitions, §370.805, concerning Methodology, §370.807, concerning Determination of Household, §370.809, concerning Calculation of MAGI-Countable Income, §370.811, concerning Determination Regarding Inclusion of Individual Income in Household Income, and §370.813, concerning Calculation of Household Income.

The proposed amendments to definitions and terminology in Chapter 370 align the rules with federal laws and regulations and current HHSC policy and processes.

The proposed rules implement federally required changes to CHIP waiting period exceptions. Under certain circumstances, a child who was covered by a health benefits plan within 90 days before the date of application may be exempt from a waiting period. The proposed rules amend the current rules to clarify that the 90-day waiting period does not apply when a change in employment results in a child's loss of employer-sponsored insurance or when the child's eligibility and enrollment in Medicaid or another insurance affordability program is terminated. In addition to current waiting period exemptions, the proposed rules add the following exemptions as required under 42 CFR §457.805: the employer stopped offering coverage of dependents (or any coverage) under an employer-sponsored health insurance plan; the loss of health insurance coverage as a result of the death of a parent; the cost of family coverage that includes the child exceeded 9.5 percent, instead of the current 10 percent, of household income; the premium paid by the family for coverage of the child under the group health plan exceeds 5 percent of household income; and the child has special health care needs.

The proposed rules align existing rules with current agency practice to permit the selection of a health care managed care organization and dental managed care organization for each CHIP recipient, rather than one single health care managed care organization and dental care organization for all CHIP recipients in a household.

SECTION-BY-SECTION SUMMARY

Subchapter A (relating to Program Administration)

Section 370.4 defines key terms for the chapter. The proposed amendments amend the definitions to align the rules with federal laws and regulations and current HHSC policy and processes.

Subchapter B (relating to Application Screening, Referral, Processing, Renewal, and Disenrollment)

Section 370.20 establishes the file date for applications received over the telephone or Internet. The proposed amendments remove the requirement to additionally provide a written signature by the final due date to align with federal rules relating to telephonic signatures.

Section 370.46 describes the circumstances under which there may be a waiting period prior to the start of CHIP coverage. Under certain circumstances, a child who was covered by a health benefits plan within 90 days before the date of application may be exempt from a waiting period. The proposed rules amend the current rules to clarify that the 90-day waiting period does not apply when a change in employment results in a child's loss of employer-sponsored insurance or when the child's eligibility and enrollment in Medicaid or another insurance affordability program is terminated. In addition to current waiting period exemptions, the proposed rules add the following exemptions as required under 42 CFR §457.805: the employer stopped offering coverage of dependents (or any coverage) under an employer-sponsored health insurance plan; the loss of health insurance coverage as a result of the death of a parent; the cost of family coverage that includes the child exceeded 9.5 percent, instead of the current 10 percent, of household income; the premium paid by the family for coverage of the child under the group health plan exceeds

5 percent of household income; and the child has special health care needs.

Subchapter C (relating to Enrollment, Renewal, Disenrollment, and Cost Sharing)

Section 370.303 describes the steps that must be completed during the CHIP enrollment process. The proposed amendments allow each eligible CHIP recipient to select a health care managed care organization (MCO) and dental MCO, rather than requiring that one health care MCO and one dental MCO be selected for all of the eligible CHIP children in a household.

Section 370.325 describes the calculation of the cost-sharing cap for CHIP recipients. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Subchapter I (relating to Modified Adjusted Gross Income Methodology)

Section 370.803 defines key terms for the subchapter. The proposed amendments amend the definitions to align the rules with federal laws and regulations and current HHSC policy and processes.

Section 370.805 describes the modified adjusted gross income methodology. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 370.807 describes the manner in which each individual's household composition is determined for an income eligibility determination. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 370.809 describes the calculation of individual income. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 370.811 describes circumstances under which individual income is counted or excluded from the calculation of household income. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 370.813 describes the manner in which household income is calculated for individuals. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendments are in effect there will be a fiscal impact to state government. The proposed amendment to §370.46 to implement federally required changes to CHIP waiting period exemptions is expected to generate costs to the state. However, since these are new requirements, there is insufficient data available to estimate the potential fiscal impact.

There may be additional costs for changing to the MAGI methodology, such as possible changes to staffing levels or additional systems changes. There is insufficient data to estimate these potential impacts.

Ms. Rymal also determined that there are no anticipated implications relating to costs or revenues of local governments.

There are no anticipated economic costs to persons who are required to comply with the proposed rules as there is no requirement to alter current business practices.

There is no anticipated negative impact on local employment.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no effect on small businesses or micro-businesses to comply with these amendments as proposed. The rules proposed impact publicly funded health and human service programs and, therefore do not impact small businesses or micro-businesses.

PUBLIC BENEFIT

Stephanie Muth, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the sections are in effect, the public will benefit from the amendments to the rules because Medicaid and CHIP program rules will align with federal and state policy, as well as clarify terms utilized throughout the rules.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Amanda Austin, Health and Human Services Commission, Office of Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751 or by email to Amanda.Austin@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing is scheduled on March 5, 2014, from 1:00 p.m. to 3:00 p.m. in the Winters Building, Public Hearing Room, 701 West 51st Street, Austin, Texas 78756.

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §370.4

LEGAL AUTHORITY

The amendment is proposed under Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§370.4. Definitions.

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

(1) Action--

(A) In the context of an eligibility or disenrollment determination by HHSC or its designee, action is defined as:

(i) denial of Children's Health Insurance Program (CHIP) eligibility;

(ii) disenrollment from CHIP; or

(iii) the failure of HHSC or its designee to act within 45 days on an applicant's request for CHIP eligibility determination.

(B) "Action" does not include expiration of a time-limited service.

(2) Acute care--Preventive care, primary care, and other medical or behavioral health care provided for a condition having a relatively short duration.

(3) Acute care hospital--A hospital that provides acute care services.

(4) Adverse determination--A determination by a managed care organization (MCO) that the health care services or dental services furnished, or proposed to be furnished, to a patient are not medically necessary or appropriate.

(5) Agreement or Contract--The formal, written, and legally enforceable contract and amendments thereto between HHSC and an MCO.

(6) Alien--A person who is not a native born or naturalized citizen of the United States of America.

(7) Allowable revenue--All managed care revenue received by the MCO pursuant to the contract during the contract period, including retroactive adjustments made by HHSC. This would include any revenue earned on CHIP managed care funds such as investment income, earned interest, or third party administrator earnings from services to delegated networks.

(8) Appeal--The formal process by which a member or his or her representative requests a review of the MCO's action.

(9) Applicant--An individual who applies for health and dental care coverage on behalf of the child. An applicant can only be:

(A) a child's parent, whether biological or adoptive;

(B) a child's grandparent, relative or other adult who provides care for the child;

(C) a minor not living with an adult applying for himself/herself;

(D) a child's step-parent; or

(E) a taxpayer who expects to claim the child on a federal income tax return for the taxable year in which CHIP eligibility is requested

(10) Application--The standardized, written document that an applicant must complete to apply for health and dental care coverage through CHIP.

(11) Behavioral health service--A covered service for the treatment of mental, emotional, or chemical dependency disorders.

(12) Capitation rate--A fixed, predetermined fee paid by HHSC to the MCO each month, in accordance with the contract, for each enrolled member in exchange for which the MCO arranges for or provides a defined set of covered services to the member, regardless of the amount of covered services used by the enrolled member.

(13) Child--An adoptive, step, or natural child who is under the age of 19.

(14) Children's Health Insurance Program or CHIP or Program--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.) the Texas Health and Safety Code, Chapters 62 (relating to Child Health Plan For Certain Low-Income Children) and 63 (relating to Health Benefits Plan for Certain Children).

(15) CHIP Dental Services--The dental services provided through a dental MCO to a CHIP member.

(16) Claims processing entity--The MCO or its subcontractor that processes claims for CHIP.

(17) CMS--The Centers for Medicare and Medicaid Services, which is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid and CHIP.

(18) HHSC--The Texas Health and Human Services Commission.

(19) Complainant--A member, or a treating provider or other individual designated to act on behalf of the member, who files a complaint.

(20) Complaint--Any dissatisfaction, expressed by a complainant, orally or in writing, to the MCO, with any aspect of the MCO's operation, including dissatisfaction with plan administration; procedures related to review or appeal of an adverse determination, as set forth in Texas Insurance Code, Chapter 843, Subchapter G (relating to Dispute Resolution); the denial, reduction, or termination of a service for reasons not related to medical necessity; the way a service is provided; or disenrollment decisions. The term does not include misinformation that is resolved promptly by supplying the appropriate information or clearing up the misunderstanding to the satisfaction of the member.

(21) Cost Sharing--Any enrollment fees or co-payments the member is responsible for paying.

(22) Covered service--A health care service or a dental service or item that the MCO must arrange to provide and pay for on a member's behalf under the terms of the contract executed between the MCO and HHSC. This includes all covered services and benefits identified in the Texas CHIP State Plan, and all value-added services approved by HHSC.

(23) Cultural competency--The ability of individuals and systems to provide services effectively to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of the individuals and protects and preserves their dignity.

(24) Day--Calendar day, unless otherwise specified.

(25) Default enrollment--The process established by HHSC to assign a CHIP managed care enrollee to an MCO when the enrollee has not selected an MCO.

(26) Dental contractor--A dental MCO that is under contract with HHSC for the delivery of dental services.

(27) Dental home--A provider who has contracted with a dental MCO to serve as a dental home to a member and who is responsible for providing routine preventive, diagnostic, urgent, therapeutic, initial, and primary care to patients, maintaining the continuity of patient care, and initiating referral for care. Provider types that can serve as dental homes are federally qualified health centers and individuals who are general dentists or pediatric dentists.

(28) Dental managed care organization (dental MCO)--A dental indemnity insurance provider or dental health maintenance organization licensed or approved by the Texas Department of Insurance.

(29) Dental service--The routine preventive, diagnostic, urgent, therapeutic, initial, and primary care provided to a member and included within the scope of HHSC's agreement with a dental contractor. For purposes of this chapter, "dental service" does not include dental devices for craniofacial anomalies; treatment rendered in a hospital, urgent care center, or ambulatory surgical center setting for craniofacial anomalies; or emergency services provided in a hospital, urgent care center, or ambulatory surgical center setting involving dental trauma. These types of emergency services are treated as health care services in this chapter.

(30) Designee--A contractor of HHSC authorized to act on behalf of HHSC under this chapter.

(31) Disability--A physical or mental impairment that substantially limits one or more of an individual's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, socializing, or working.

(32) Eligible provider--A network provider who provides medical services to a member or a non-network provider who agrees with an MCO to see a member for an agreed-upon rate on a case-by-case basis.

(33) Enrollment--The process by which a child determined to be eligible for CHIP is enrolled in a CHIP MCO serving the service area in which the child resides.

(34) Exclusive provider benefit plan (EPBP)--An MCO that complies with 28 TAC §§3.9201 - 3.9212 (relating to the Texas Department of Insurance's requirements for EPBPs), and contracts with HHSC to provide CHIP coverage.

(35) Experience rebate--The portion of the MCO's net income before taxes that is returned to the State in accordance with the MCO's contract with HHSC.

(36) Federal Poverty Level (FPL)--The income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(37) Health care managed care organization (health care MCO)--An entity that is licensed or approved by the Texas Department of Insurance to operate as a health maintenance organization or to issue an EPBP.

(38) Health care services--The acute care, behavioral health care, and health-related services that an enrolled population might reasonably require in order to be maintained in good health, including, at a minimum, emergency services and inpatient and outpatient services.

(39) Health maintenance organization (HMO)--An organization that holds a certificate of authority from the Texas Department of Insurance to operate as an HMO under Chapter 843 of the Texas Insurance Code, or a certified Approved Non-Profit Health Corporation formed in compliance with Chapter 844 of the Texas Insurance Code (relating to Certification of Certain Nonprofit Health Corporations).

(40) Hospital--A licensed public or private institution as defined in the Texas Health and Safety Code at Chapter 241 (relating to Hospitals), or Chapter 261 (relating to Municipal Hospitals).

(41) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household." [~~whose information is used to establish family size and calculate income.~~]

(42) Main dental home provider--See definition of "dental home" in this section.

(43) Main dentist--See definition of "dental home" in this section.

(44) Managed care--A health care delivery system or dental services delivery system in which the overall care of a patient is coordinated by or through a single provider or organization.

(45) Managed care organization (MCO)--A dental MCO or a health care MCO.

(46) Marketing--Any communication from an MCO to a client who is not enrolled with the MCO that can reasonably be interpreted as intended to influence the client's decision to enroll, not to enroll, or to disenroll from a particular MCO.

(47) Marketing materials--Materials that are produced in any medium by or on behalf of the MCO that can reasonably be interpreted as intending to market to potential members. Materials relating to the prevention, diagnosis or treatment of a medical or dental condition are not marketing materials.

(48) Medical home--A primary care provider (PCP) or specialty care provider who has accepted the responsibility for providing accessible, continuous, comprehensive, and coordinated care to members participating in an MCO contracted with HHSC.

(49) Medically necessary health care services--Means:

(A) Dental services and non-behavioral health services that are:

(i) reasonable and necessary to prevent illnesses or medical conditions, or provide early screening, interventions, or treatments for conditions that cause suffering or pain, cause physical deformity or limitations in function, threaten to cause or worsen a disability, cause illness or infirmity of a member, or endanger life;

(ii) provided at appropriate facilities and at the appropriate levels of care for the treatment of a member's health conditions;

(iii) consistent with health care practice guidelines and standards that are endorsed by professionally recognized health care organizations or governmental agencies;

(iv) consistent with the member's diagnoses;

(v) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;

(vi) not experimental or investigative; and

(vii) not primarily for the convenience of the member or provider.

(B) Behavioral health services that:

(i) are reasonable and necessary for the diagnosis or treatment of a mental health or chemical dependency disorder, or to im-

prove, maintain, or prevent deterioration of functioning resulting from such a disorder;

(ii) are in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(iii) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(iv) are the most appropriate level or supply of service that can safely be provided;

(v) could not be omitted without adversely affecting the member's mental and/or physical health or the quality of care rendered;

(vi) are not experimental or investigative; and

(vii) are not primarily for the convenience of the member or provider.

(50) Member education program--A planned program of education:

(A) concerning access to health care services or dental services through the MCO and about specific health or dental topics;

(B) that is approved by HHSC; and

(C) that is provided to members through a variety of mechanisms that must include, at a minimum, written materials and face-to-face or audiovisual communications.

(51) Member materials--All written materials produced or authorized by the MCO and distributed to members or potential members containing information concerning the managed care program. Member materials include member ID cards, member handbooks, provider directories, and marketing materials.

(52) Member--A child enrolled in a CHIP MCO.

(53) Participating MCO--An MCO that has a contract with HHSC to provide services to members.

(54) Primary care provider (PCP)--A physician or other provider who has agreed with the health care MCO to provide a medical home to members and who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

(55) Provider--A credentialed and licensed individual, facility, agency, institution, organization or other entity, and its employees and subcontractors, that has a contract with the MCO for the delivery of covered services to the MCO's members.

(56) Provider education program--Program of education about the CHIP managed care program and about specific health or dental care issues presented by the MCO to its providers through written materials and training events.

(57) Provider network or network--All providers that have contracted with the MCO for the CHIP program.

(58) Quality improvement--A system to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(59) Recipient--An individual receiving CHIP services, including a person who is renewing eligibility for CHIP.

(60) Risk--The potential for loss as a result of expenses and costs of the MCO exceeding payments made by HHSC under the contract.

(61) Service area--The counties included in any HHSC-defined service area as applicable to each MCO.

(62) Qualified Alien--An alien who, at the time of application, satisfies the criteria established under 8 U.S.C. §1641(b).

(63) Significant traditional provider (STP)--A provider identified by HHSC as having provided a significant level of care to the target population.

(64) SSI--Supplemental Security Income.

(65) State Fiscal Year--The 12-month period beginning September 1 of each calendar year and ending August 31 of the following calendar year.

(66) State Plan--The plan permitted under federal law and approved by CMS that allows the state to implement the CHIP program.

(67) Value-added service--A service provided by an MCO that is in addition to the covered services included within the scope of the CHIP State Plan and the MCO's contract with HHSC.

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

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Steve Aragon
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SUBCHAPTER B. APPLICATION SCREENING, REFERRAL, PROCESSING, RENEWAL, AND DISENROLLMENT

DIVISION 1. APPLICATION PROCESSES

1 TAC §370.20

LEGAL AUTHORITY

The amendment is proposed under Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§370.20. Application Availability and File Date.

(a) The application may be obtained via the following methods:

(1) in writing using an Application obtained via telephone, an internet request, or other means;

(2) by computer using printable Applications or an online application process available over the Internet;

(3) by telephone through the State's toll-free telephone number or through TDD; or

(4) in person, by visiting an HHSC authorized agent.

(b) Establishing a file date

(1) For applications received via fax or mail, the file date is the date HHSC, DADS or an HHSC agent receives an application that contains, at a minimum, the applicant's name, address, and signature. An HHSC agent means HHSC's designee or an HHSC contractor that is authorized to receive applications for HHSC.

(2) For applications received via telephone or internet, the file date is the date that the name and address of the applicant is provided to HHSC[, ~~as long as the applicant provides a written signature by the final due 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.

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DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §370.46

LEGAL AUTHORITY

The amendment is proposed under Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§370.46. Waiting Period.

(a) The waiting period is a delay in the start of health care coverage that:

(1) applies to a child who was covered by a health benefits plan at any time during the 90 days before the date of application for coverage; and

(2) extends for a period of 90-days after the last date on which the applicant was covered under a health benefits plan.

(b) Health Insurance, for purposes of this section, is not workers compensation or personal injury protection under an automobile insurance policy.

(c) The 90-day waiting period specified in subsection (a) of this section does not apply to a child under the following circumstances:

(1) The child lost health insurance coverage because:

(A) A change in employment resulted in the child's loss of employer-sponsored insurance (other than through full payment of the premium by the parent under COBRA). [~~The employment of a member of the household was terminated due to:~~]

~~*[(i)* a layoff;]~~

~~*[(ii)* a reduction-in-force; or]~~

~~*[(iii)* a business closure;]~~

(B) The employer stopped offering coverage of dependents (or any coverage) under an employer-sponsored health insurance plan;

(C) [~~(B)~~] Insurance benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) terminated;

(D) [~~(C)~~] The marital status of a parent of the child has changed;

(E) The child's parent dies;

(F) [~~(D)~~] The child's [~~Medicaid~~] eligibility and enrollment in Medicaid or another insurance affordability program was terminated; or [~~because:~~]

~~*[(i)* the household income exceeds allowable amounts for Medicaid eligibility; or]~~

~~*[(ii)* the child reached an age for which Medicaid benefits are no longer available; or]~~

(G) [~~(E)~~] Other circumstances similar to those described in this subparagraph that result in an involuntary loss of insurance coverage;

(2) The child had health insurance coverage provided by ERS, or CHIP in another state;

(3) The cost of family coverage that includes the child exceeds 9.5 [~~child's health insurance coverage costs more than 10~~] percent of the household income;

(4) The child has access to group-based health insurance coverage and will participate in the premium payment reimbursement program administered by HHSC; [~~or~~]

(5) The premium paid by the family for coverage of the child under the group health plan exceeded 5 percent of the household income;

(6) The child has special health care needs; or

(7) [~~(5)~~] HHSC grants an exception to the waiting period under subsection (d) of this section.

(d) HHSC may grant an exception to the 90-day waiting period prescribed by this section if it determines good cause exists to grant an exception and either:

(1) An Applicant requests an exception:

(A) Prior to submission of an Application;

(B) At the time of Application; or

(C) As part of a request for review or reconsideration of a denial of eligibility under §370.52 of this subchapter (relating to Disposition of a Request for Review) or §370.54 of this subchapter (relating to Temporary Enrollment Pending Disposition of Review or Reconsideration); or

(2) HHSC reaches a determination that good cause exists based either on information provided by an Applicant or information otherwise obtained by HHSC.

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

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SUBCHAPTER C. ENROLLMENT, RENEWAL, DISENROLLMENT, AND COST SHARING

DIVISION 1. ENROLLMENT AND DISENROLLMENT

1 TAC §370.303

LEGAL AUTHORITY

The amendment is proposed under Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§370.303. Completion of Enrollment.

(a) To complete CHIP enrollment an applicant must:

(1) select and indicate on the enrollment form, a [~~single~~] health care managed care organization (MCO) and a [~~single~~] dental MCO for [~~to cover~~] all eligible children[~~, regardless of the number of eligible children in the household~~];

(2) select a primary care provider (PCP) and a dental home, and place the names on the enrollment form;

(3) indicate if an eligible child has special health care needs based on criteria in the member guide; and

(4) sign and return the enrollment form.

(b) An applicant may select a PCP, dental home, health care MCO, and dental MCO by mail, telephone, or facsimile. Unless the applicant is a perinate receiving expedited enrollment in accordance with §370.401 of this chapter (relating to Perinates), he or she will have 30 calendar days from the date the enrollment packet is mailed to choose a health care MCO, dental MCO, PCP, and dental home. If the applicant does not choose a health care MCO, dental MCO, PCP, or dental home within the time period established by HHSC, HHSC or its designee will assign one using the default assignment methodologies described in this section.

(c) PCP assignment. If an applicant has not selected a PCP, the health care MCO will assign one using an algorithm that considers:

(1) the applicant's established history with a PCP, as demonstrated by the health care MCO's encounter history with the provider in the preceding year;

(2) the geographic proximity of the applicant's home address to the PCP;

(3) whether the provider serves as a PCP to other members of the applicant's household;

(4) limitations on default assignment, such as PCP restrictions on age, gender, and capacity; and

(5) other criteria approved by HHSC.

(d) Dental home assignment. If an applicant has not selected a dental home, the dental MCO will assign one using an algorithm that considers:

(1) the applicant's established history with a dental home, as demonstrated by the dental MCO's encounter history with the provider in the preceding year;

(2) the geographic proximity of the applicant's home address to the dental home;

(3) whether the provider serves as the dental home to other members of the applicant's household;

(4) limitations on default assignment, such as dental home restrictions on age and capacity; and

(5) other criteria approved by HHSC.

(e) MCO assignment. If a beneficiary has not selected a health care MCO or dental MCO, HHSC or its administrative services contractor will assign one using an algorithm that considers the beneficiary's history with a PCP or dental home when possible. If this is not possible, HHSC or its administrative services contractor will equitably distribute beneficiaries among qualified MCOs, using an algorithm that considers one or more of the following factors:

(1) whether other members of the beneficiary's household are enrolled in the MCO;

(2) MCO performance;

(3) the greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments);

(4) capitation rates;

(5) market share; and

(6) other criteria determined by HHSC.

(f) Modified default enrollment process. HHSC has the option to implement a modified default enrollment process for MCOs when contracting with a new MCO or implementing managed care in a new service area, or when it has placed an MCO on full or partial enrollment suspension.

(g) Request to change dental home or PCP. There is no limit on the number of times a member can request to change his or her dental home or PCP. A member can request a change in writing or by calling the MCO's toll-free member hotline.

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. COST-SHARING REQUIREMENTS

1 TAC §370.325

LEGAL AUTHORITY

The amendment is proposed under Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§370.325. Cost-Sharing Cap.

(a) The aggregate annual Children's Health Insurance Program (CHIP) cost-sharing cap is based on household [~~a household's MAGI-countable~~] income (as defined in §370.803 of this chapter (relating to Definitions)), established at the time of eligibility determination, as a percentage of the Federal Poverty Level (FPL). The aggregate annual CHIP cost-sharing cap is established in the Texas CHIP State Plan and approved by the Centers for Medicare and Medicaid Services (CMS). The aggregate annual CHIP cost-sharing cap will not exceed 5 percent of the [~~a household's total~~] annual household income as required under federal law and federal regulations (see Social Security Act §2103(e)(3)(B) and §42 C.F.R. 457.560(a)). The applicant is responsible for tracking CHIP cost-sharing expenditures for the household on the form provided by HHSC or its designee and advising HHSC's designee when the CHIP cost-sharing cap is reached. HHSC or its designee is responsible for:

(1) computing the aggregate annual CHIP cost-sharing cap for the household and informing the applicant of the amount at enrollment;

(2) providing the applicant with a form for keeping track of each CHIP member's co-payments and enrollment fee payment;

(3) notifying the affected dental MCO and health care MCO within two business days of receiving notice from the applicant that a household has reached the aggregate annual CHIP cost-sharing cap; and

(4) informing HHSC that an applicant is owed a refund in the form of a warrant issued by the State Comptroller's Office, if the applicant notifies HHSC's designee that the household has exceeded its aggregate annual CHIP cost-sharing cap and an enrollment fee has been received from the household that is in excess of the CHIP cost-sharing cap.

(b) On notification by HHSC's designee that a household has reached its aggregate annual CHIP cost-sharing cap, an MCO will issue a new MCO Member Identification Card reflecting the absence of a co-payment requirement.

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

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SUBCHAPTER I. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §§370.803, 370.805, 370.807, 370.809, 370.811, 370.813

LEGAL AUTHORITY

The amendments are proposed under Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§370.803. Definitions.

In this subchapter, words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--An individual who applies for health and dental care coverage on behalf of the child. An applicant can only be:

(A) a child's parent, whether biological or adoptive;

(B) a child's grandparent, relative, or other adult who provides care for the child;

(C) a minor not living with an adult applying for himself/herself;

(D) a child's step-parent; or

(E) a taxpayer who expects to claim the child on a federal income tax return for the taxable year in which CHIP eligibility is requested.

(2) Child--An adoptive, step, or natural child who is under age 19.

[~~(3) Family size--The number of persons counted as members of an individual's household composition.~~]

(3) [~~(4)~~] Federal Poverty Income Level (FPL)--The income guidelines issued annually and published in the *Federal Register* by the U.S. Department of Health and Human Services.

(4) [~~(5)~~] HHSC--The Texas Health and Human Services Commission.

(5) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household."

(6) Household income--The sum of the individual income of every individual within an applicant's or recipient's household composition, from which is subtracted the standard income disregard.

(7) Household size--The number of individuals in an applicant's or recipient's household composition, plus the number of unborn children if applicable, referenced in 42 CFR §435.603(b) as "family size."

(8) Individual income--The sum of certain income received by individuals in a household composition, from which is subtracted certain expenses, referenced in 42 CFR §435.603(e) as "MAGI-based income."

(9) [~~(6)~~] MAGI--Modified adjusted gross income.

(10) [~~(7)~~] Non-custodial parent--A parent who does not have custody of a child pursuant to a court order, or binding agreement of separation or divorce.

(11) [~~(8)~~] Parent--An individual who is the adoptive, step, or natural parent of a child.

(12) [~~(9)~~] Recipient--An individual receiving CHIP services, including a person who is renewing eligibility for CHIP.

(13) [~~(10)~~] Sibling--An individual under age 19 who is an adoptive, step, or natural sibling of a child.

(14) Standard income disregard--An income disregard equal to five percentage points of FPL for the applicable household size.

(15) [~~(11)~~] Tax dependent--An individual who expects to be claimed as a dependent on a federal income tax return for the taxable year in which CHIP eligibility is requested.

(16) [~~(12)~~] Taxpayer--An individual, or a married couple, who expects:

(A) to file a federal income tax return for the taxable year in which CHIP eligibility is requested;

(B) if married, to file a joint federal income tax return for the taxable year in which CHIP eligibility is requested;

(C) that no other taxpayer will be able to claim him, her, or them as a tax dependent on a federal income tax return for the taxable year in which CHIP eligibility is requested; or

(D) to claim a personal exemption deduction on his or her federal income tax return for one or more applicants, who may or may not include himself or herself and his or her spouse.

(17) [~~(13)~~] Taxable year--The 12-month period between January and December that an individual uses to report income for federal income tax purposes.

§370.805. Methodology.

(a) HHSC determines income eligibility for CHIP by:

(1) determining the applicant's or recipient's household composition in accordance with §370.807 of this subchapter (relating to Determination of Household Composition);

(2) calculating the individual [~~MAGI-countable~~] income of each person in the applicant's or recipient's household composition in accordance with §370.809 of this subchapter (relating to Calculation of Individual [~~MAGI-Countable~~] Income);

(3) determining if the individual [~~MAGI-countable~~] income of each individual in the applicant's or recipient's household composition is included in the calculation of household income in accordance with §370.811 of this subchapter (relating to Determination Regarding Inclusion of Individual Income in the Household Income); and

(4) calculating the applicant's or recipient's household income in accordance with §370.813 of this subchapter (relating to Calculation of Household Income).

(b) To be eligible for CHIP, the applicant's or recipient's household income must be less than or equal to 200% of the Federal Poverty Level (FPL) for a family of the size involved.

§370.807. Determination of Household Composition.

(a) To determine household composition, an individual is designated as:

(1) a taxpayer;

(2) a tax dependent who does not meet any exceptions;

(3) a tax dependent who meets one or more of the exceptions; or

(4) not a taxpayer or tax dependent.

(b) If the individual is a taxpayer, the following individuals are included in the taxpayer's household composition:

(1) the taxpayer;

(2) the taxpayer's spouse, if the taxpayer and the spouse live together;

(3) the taxpayer's spouse, if the taxpayer and spouse file a joint federal income tax return; and

(4) any individual the taxpayer expects to claim as a tax dependent for the taxable year in which CHIP eligibility is requested.

(c) If the individual is a tax dependent, the following individuals are included in the tax dependent's household composition:

(1) the tax dependent;

(2) the taxpayer's household claiming the tax dependent; and

(3) the tax dependent's spouse, if the tax dependent and the spouse live together.

(d) The rules in subsection (e) of this section apply to a tax dependent who:

(1) is not the taxpayer's spouse or the taxpayer's child;

(2) is a child who lives with both parents whose parents did not file a joint federal income tax return and was claimed as a tax dependent by one parent; or

(3) is a child who is claimed as a tax dependent by a non-custodial parent pursuant to 42 CFR §435.603(f)(2).

(e) The household composition of an individual who is not a taxpayer or a tax dependent includes:

(1) the individual;

(2) the individual's spouse;

(3) the individual's children; and

(4) if the individual is a child, the individual's parents and siblings.

(f) A spouse is included in an individual's household composition if living together or filing a joint federal income tax return.

(g) Subsection (c) of this section applies to an individual who is both a tax dependent and taxpayer.

(h) For an applicant under §370.401 of this chapter (relating to Perinates), an unborn child is included in the household composition.

§370.809. Calculation of Individual [~~MAGI-Countable~~] Income.

(a) HHSC calculates individual [~~MAGI-countable~~] income in accordance with Internal Revenue Code §36B(d)(2)(B), with adjustments for lump sum payments, certain income of American Indians/Alaskan Natives, and scholarships, awards, and fellowship grants used for education purposes.

(b) Assets tests do not apply to groups subject to the provisions of this subchapter. HHSC may collect information on assets and resources from Medicaid program applicants and recipients during the eligibility determination process.

§370.811. Determination Regarding Inclusion of Individual Income in the Household Income.

(a) Individual [~~An individual's~~] income is counted as part of the household income unless:

(1) the individual is a child who is included in the household composition of a parent and is not required to file a federal income tax return for the taxable year in which CHIP eligibility is requested; or

(2) the individual is a tax dependent and is not required to file a federal income tax return for the taxable year in which CHIP eligibility is requested.

(b) Individual income [~~Income for an individual~~] described in subsection (a)(1) of this section is excluded from the household income of each individual in the household composition as defined in §370.807 of this subchapter (relating to Determination of Household Composition).

(c) Individual income [~~Income for an individual~~] described in subsection (a)(2) of this section is excluded from the household income of the taxpayer.

§370.813. Calculation of Household Income.

For each applicant, the household income is:

(1) the sum of the individual [~~MAGI-countable~~] income for each individual in the applicant's household composition as defined in §370.809 of this subchapter (relating to Calculation of Individual [~~MAGI-Countable~~] Income) and §370.811 of this subchapter (relating to Determination Regarding Inclusion of Individual [~~Including an Individual's~~] Income in the Household Income); and

(2) less a standard [~~an~~] income disregard equal to five percentage points of the Federal Poverty Level (FPL) for the applicable household [~~family~~] size, as permitted by 42 CFR §435.603(d)(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 375. REFUGEE CASH ASSISTANCE AND MEDICAL ASSISTANCE PROGRAMS

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 375, concerning Refugee Cash Assistance and Medical Assistance Programs, to restore assets tests to Refugee Medical Assistance and to amend terminology to align the rules with federal laws and regulations and current HHSC policy and processes.

BACKGROUND AND JUSTIFICATION

HHSC proposes to amend §375.515, concerning the income considerations for Refugee Medical Assistance (RMA) eligibility, §375.603, concerning Definitions, §375.605, concerning Methodology, §375.609, concerning Calculation of MAGI-Countable Income, §375.611, concerning Determination Regarding Inclusion of an Individual's Income in the Household Income, and §375.613, concerning Calculation of Household Income.

The proposed amendments to definitions and terminology in Chapter 375 align the rules with federal laws and regulations and current HHSC policy and processes.

The proposed rules restore asset tests that were used before January 1, 2014, in determining eligibility for the Refugee Medical Assistance program. The federal government has indicated that states have the option under federal law of continuing assets and resource tests for this program.

SECTION-BY-SECTION SUMMARY

Subchapter E (relating to Refugee Medical Assistance)

Section 375.515 describes income considerations in determining eligibility for Refugee Medical Assistance. Under the proposed amendments, HHSC will consider the resources of an applicant in determining eligibility for Refugee Medical Assistance, as described in Subchapter H of Chapter 366 (relating to Medicaid Eligibility for Women, Children, Youth, and Needy Program).

Subchapter F (relating to Modified Adjusted Gross Income Methodology)

Section 375.603 defines key terms for the subchapter. The proposed amendments amend the definitions to align the rules with federal laws and regulations and current HHSC policy and processes.

Section 375.605 describes the Modified Adjusted Gross Income methodology. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 375.609 describes the calculation of individual income and the manner in which assets information is collected and used in the eligibility determination process. The proposed amendments delete text providing that assets tests do not apply in eligibility determinations. The amendments also make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 375.611 describes circumstances under which individual income is counted or excluded from the calculation of household income. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

Section 375.613 describes the manner in which household income is calculated for individuals. The proposed amendments make nonsubstantive changes to align terminology with the definitions in previous sections.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the rule is in effect, there may be implications relating to costs of state government. The proposed amendments restore assets tests in determining eligibility for the Refugee Medical Assistance program that were used before January 1, 2014. However, because HHSC included assets tests in the eligibility determination process until December 31, 2013, there is insufficient data to project the possible fiscal impact expected for the period from January 1, 2014, through April 30, 2014.

HHSC does not anticipate the need for additional staff or system changes as a result of these rules. There are no anticipated implications relating to costs or revenues of local governments. There are no anticipated economic costs to persons required to comply with the proposed rules as they will not be required to alter current business practices. There is no anticipated effect on employment in a local economy.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Rymal has determined that there will be no effect on small businesses or micro-businesses to comply with these amendments as proposed. The rules proposed impact publicly funded health and human service programs and, therefore, do not impact small businesses or micro-businesses.

PUBLIC BENEFIT

Stephanie Muth, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the section is in effect, the public will benefit from the amendments to the rules because the Medicaid and CHIP program rules will align with federal and state policy, as well as clarify terms utilized throughout the rules.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Amanda Austin, Health and Human Services Commission, Office of Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751 or by email to Amanda.Austin@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing is scheduled on March 5, 2014, from 1:00 p.m. to 3:00 p.m. in the Winters Building, Public Hearing Room, 701 West 51st Street, Austin, Texas 78756.

SUBCHAPTER E. REFUGEE MEDICAL ASSISTANCE

1 TAC §375.515

LEGAL AUTHORITY

The amendment is proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and the Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§375.515. What are the income and resource considerations for Refugee Medical Assistance (RMA) eligibility?

(a) RMA follows the income considerations described in Subchapter F of this chapter (relating to Modified Adjusted Gross Income Methodology) and resource considerations in Chapter 366, Subchapter H of this title (relating to Medically Needy Program). The following are disregarded when determining RMA eligibility:

(1) any in-kind services and shelter provided to an applicant by a non-spousal sponsor or local resettlement agency; and

(2) any cash assistance payments provided to an applicant.

(b) HHSC bases eligibility for RMA on the applicant's income on the date of application. HHSC does not average income prospectively over the application processing period when determining income eligibility.

(c) Applicants whose household income exceeds 200% of the Federal Poverty Level on the date of application are eligible if deducting incurred medical expenses puts the income under that level.

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 3, 2014.

TRD-201400448
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 424-6900

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SUBCHAPTER F. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §§375.603, 375.605, 375.609, 375.611, 375.613

LEGAL AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and the Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§375.603. Definitions.

In this subchapter, words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A person applying for assistance from the Refugee Medical Assistance program.

(2) Child--An adoptive, step, or natural child who is under age 19.

~~[(3) Family size--The number of persons counted as members of an individual's household composition.]~~

(3) [~~(4)~~] Federal Poverty Level (FPL)--The income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(4) [~~(5)~~] HHSC--The Texas Health and Human Services Commission or its designee.

(5) [~~(6)~~] Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household." [~~whose information is used to establish family size and calculate income.~~]

(6) Household income--The sum of the individual income of every individual within an applicant's or recipient's household composition, from which is subtracted the standard income disregard.

(7) Household size--The number of individuals in an applicant's or recipient's household composition, plus the number of unborn children if applicable, referenced in 42 CFR §435.603(b) as "family size."

(8) Individual income--The sum of certain income received by individuals in a household composition, from which is subtracted certain expenses, referenced in 42 CFR §435.603(e) as "MAGI-based income."

(9) [~~(7)~~] MAGI--Modified adjusted gross income.

(10) [~~(8)~~] Non-custodial parent--A parent who does not have custody of a child pursuant to a court order, or binding agreement of separation or divorce.

(11) [~~(9)~~] Parent--An individual who is the adoptive, step, or natural parent of a child.

(12) [~~(10)~~] Recipient--An individual receiving RMA services.

(13) [~~(11)~~] RMA--The Refugee Medical Assistance program.

(14) [~~(12)~~] Sibling--An individual under age 19 who is an adoptive, step, or natural sibling of a child.

(15) Standard income disregard--An income disregard equal to five percentage points of FPL for the applicable household size.

(16) [~~(13)~~] Tax dependent--An individual who expects to be claimed as a dependent on a federal income tax return for the taxable year in which RMA eligibility is requested.

(17) [~~(14)~~] Taxpayer--An individual, or a married couple, who expects:

(A) to file a federal income tax return for the taxable year in which RMA eligibility is requested;

(B) if married, to file a joint federal income tax return for the taxable year in which RMA eligibility is requested;

(C) that no other taxpayer will be able to claim him, her, or them as a tax dependent on a federal income tax return for the taxable year in which RMA eligibility is requested; or

(D) to claim a personal exemption deduction on his or her federal income tax return for one or more applicants, who may or may not include himself or herself and his or her spouse.

(18) [~~(15)~~] Taxable year--The 12-month period between January and December that an individual uses to report income for federal income tax purposes.

(19) [~~(16)~~] VOLAG--Voluntary Resettlement Agency.

§375.605. Methodology.

(a) In general, HHSC determines income eligibility for RMA subject to this subchapter by:

(1) determining the applicant's or recipient's household composition in accordance with §375.607 of this subchapter (relating to Determination of Household Composition);

(2) calculating the individual [~~MAGI-countable~~] income for each person in the applicant's or recipient's household composition in accordance with §375.609 of this subchapter (relating to Calculation of Individual [~~MAGI-Countable~~] Income);

(3) determining if the individual [~~MAGI-countable~~] income of each individual in the applicant's or recipient's household composition is included in the calculation of household income in accordance with §375.611 of this subchapter (relating to Determination Regarding Inclusion of Individual [~~an Individual's~~] Income in the Household Income); and

(4) calculating the applicant's or recipient's household income in accordance with §375.613 of this subchapter (relating to Calculation of Household Income).

(b) To be eligible for RMA, the applicant's or recipient's household income must be less than or equal to 200% of the Federal Poverty Level.

§375.609. Calculation of Individual [~~MAGI-Countable~~] Income.

[~~(a)~~] HHSC calculates individual [~~MAGI-countable~~] income in accordance with Internal Revenue Code §36B(d)(2)(B), with adjustments for lump sum payments, certain income of American Indians/Alaskan Natives, and scholarships, awards, and fellowship grants used for education.

~~[(b) Assets tests do not apply to groups subject to the provisions of this subchapter. HHSC may collect information on assets and resources from Medicaid program applicants and recipients during the eligibility determination process.]~~

§375.611. Determination Regarding Inclusion of Individual [~~an Individual's~~] Income in the Household Income.

(a) Individual [~~An individual's~~] income is counted as part of the household income unless:

(1) the individual is a child who is included in the household composition of a parent and is not required to file a federal income tax return for the taxable year in which RMA eligibility is requested; or

(2) the individual is a tax dependent and is not required to file a federal income tax return for the taxable year in which RMA eligibility is requested.

(b) Individual income [~~Income for an individual~~] described in subsection (a)(1) of this section is excluded from the household income of each individual in the household composition as defined in §375.607 of this subchapter (relating to Determination of Household Composition).

(c) Individual income [~~Income for an individual~~] described in subsection (a)(2) of this section is excluded from the household income of the taxpayer.

§375.613. Calculation of Household Income.

For each applicant, the household income is:

(1) the sum of the individual [~~MAGI-countable~~] income for each individual in the applicant's household composition as defined in §375.609 of this subchapter (relating to Calculation of Individual [~~MAGI-Countable~~] Income) and §375.611 of this subchapter (relating to Determination Regarding Inclusion of Individual [~~an Individual's~~] Income in the Household Income);

(2) less cash assistance payments received from the applicant's VOLAG and income of the VOLAG or sponsor as available to the applicant's household composition; and

(3) less a standard [~~an~~] income disregard equal to five percentage points of the Federal Poverty Level for the applicable household [~~family~~] size.

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 3, 2014.

TRD-201400449
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 424-6900

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TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 35. A GUIDE TO PROGRAMS AND SERVICES

13 TAC §35.1

The Texas Commission on the Arts (Commission) proposes an amendment to §35.1, concerning a Guide to Programs and Services.

The purpose of the amendment is to be consistent with changes to programs and services of the Commission as revised May 2014.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government as a result of enforcing the rule as proposed.

Mr. Gibbs 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 the rule will be an updated rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There will be no effect to small or micro businesses.

Comments on the proposal may be submitted to Dana Swann, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days upon publication of this proposal in the *Texas Register.*

The amendment is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§35.1. A Guide to Programs and Services.

The Commission adopts by reference a Guide to Programs and Services (revised May 2014 [~~September 2011~~]). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at www.arts.state.tx.us.

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 3, 2014.

TRD-201400429
Gary Gibbs
Executive Director
Texas Commission on the Arts
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 936-6564

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER C. LICENSE AND PERMIT ACTION

16 TAC §33.31

The Texas Alcoholic Beverage Commission (commission) proposes amendments to §33.31, relating to Voluntary Suspension

or Cancellation of a License or Permit and Reinstatement, to conform it to the requirements of Alcoholic Beverage Code §11.44 as amended by Senate Bill 409, 83rd Legislature, Regular Session and to clarify procedures related to involuntary inactivation involving either voluntary or involuntary suspensions.

Senate Bill 409 amended Alcoholic Beverage Code §11.44 to create an exception to the general prohibition against the commission issuing a license or permit for a location when an action to suspend or cancel the current license or permit at that location is pending. The exception applies when the current licensee or permittee at that location has been finally evicted from the premises under a final, nonappealable court judgment.

Section 33.31 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the rule continues to exist but that it should be amended to address procedures related to and consequences of both voluntary and involuntary administrative inactivation. In addition, the rule should be amended to reflect the prohibition in Alcoholic Beverage Code §102.32 on voluntary suspensions and cancellations where the license or permit holder is delinquent in the payment of an account for liquor under that code section.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the agency's rules will conform to statutory requirements and commission procedures will be more transparent.

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

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Wednesday, March 5, 2014, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 11.44 and 102.32 and Government Code §2001.039.

§33.31. Administrative Inactivation, [~~Voluntary Suspension or Cancellation of a License or Permit and~~] Reinstatement and Renewal of a License or Permit.

(a) This section implements Alcoholic Beverage Code §11.44 and §102.32(d-1), and clarifies procedures related to administrative inactivation involving either voluntary or involuntary suspensions.

(b) Administrative inactivation refers to the placing of a license or permit in administrative suspense under this section and without a due process hearing. During administrative inactivation (whether voluntary or involuntary), the license or permit holder may not engage in any authorized activities allowed under that license or permit. The term of the license or permit will not be tolled during administrative inactivation but will expire on the date indicated on the face of the license or permit.

(c) Unless otherwise disqualified or provided for by this section, the commission may, without a hearing, administratively inactivate and place in administrative suspense a license or permit upon receipt of an affidavit by the landlord, on a form prescribed by the administrator, that the premises has been abandoned by the licensee or permittee and that the licensee or permittee no longer has any interest in the premises.

(d) The commission may without a hearing administratively inactivate and place in administrative suspense a license or permit if the commission receives a final, non-appealable court judgment of eviction concerning against a permitted or licensed premises that is subject to a pending or unexpired suspension order or for which a cancellation or suspension action has been initiated.

(e) The commission may, without a hearing, administratively inactivate and place in administrative suspense a license or permit if the license or permit holder is delinquent in the payment of an account for liquor under Code §102.32 and either subsection (c) or (d) of this section applies. The Commission may not accept the voluntary cancellation or suspension of a license or permit or allow a license or permit to be renewed or transferred if the license or permit holder is delinquent in the payment of an account for liquor under §102.32 of the Texas Alcoholic Beverage Code.

(f) The commission may, but is not required to, administratively inactivate and place in voluntary suspense a license or permit if no administrative action is pending against the license or permit and either:

(1) the actual license or permit is submitted by the license or permit holder; or

(2) a sworn statement is submitted by the license or permit holder stating that the actual license or permit is unavailable for surrender and why.

(g) If a license or permit has been placed in voluntary administrative inactivation and the license or permit has not expired then the license or permit may be reinstated to active status, but only if the same requirements and qualifications as an applicant for an original license or permit are met. If a license or permit is reinstated under this subsection, the license or permit fee for the remainder of the license or permit term during which it was placed in administrative inactive status is not required.

(h) A license or permit may be renewed while on administrative inactivation only if, prior to the expiration date of the license or permit, a completed renewal with required supporting documents and all necessary state fees and surcharges is filed in accordance with all applicable sections of the code and rules. Otherwise the license or permit will expire at the end of its existing term.

(i) The effective date of the administrative inactivation of a license or permit or its voluntary cancellation will be the date the statement or other document required by this section is received in the licensing division or any other date mutually agreed to by the parties.

~~[(a) The commission may without a hearing inactivate and place in suspense a license or permit.]~~

~~[(1) This may be accomplished by submission of an affidavit from the landlord or landlord's representative, in a form prescribed by the administrator, indicating that the premises have been abandoned and the permittee or licensee no longer has any interest in the premises; or]~~

~~[(2) by submission of the actual license or permit; or]~~

~~[(3) by a sworn statement submitted by the licensee or permittee requesting the license or permit to be placed in suspense, including a statement that the license or permit is lost or the permittee or licensee is unable to surrender it.]~~

~~[(b) Any time after a permit or license has been activated and placed in voluntary suspense and before it expires, a permit or license may be reinstated if the necessary qualifications and requirements are met. A reinstatement application must meet the same requirements and qualifications as an applicant for an original permit or license except the permit or license fee for the remainder of the permit or license year is not required.]~~

~~[(c) A license or permit may be renewed while placed in suspense if, prior to expiration, a completed renewal with required supporting documents and all necessary state fees and surcharges is filed in accordance with all applicable sections of the code or rules.]~~

~~[(d) If no administrative action is pending against the permit or license, a license or permit may be voluntarily cancelled upon receipt of:]~~

~~[(1) the original permit or license, submitted to the commission, signed by the permittee or licensee on the reverse side with the notation voluntary cancellation and the date; or]~~

~~[(2) a sworn statement by the licensee or permittee stating that the license or permit is lost or unavailable to surrender and requesting the license or permit to be voluntarily cancelled.]~~

~~[(e) The effective date of the license and/or permit placed in voluntary suspense or voluntarily cancelled will be the date the statement or other document is received in the licensing division or any other date agreed to by the parties.]~~

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 January 29, 2014.

TRD-201400372
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 206-3489

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER SS. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.2261, §21.2264

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.2261 and §21.2264 concerning Waiver Programs for Certain Nonresident Persons.

Specifically, in §21.2261, definitions are being deleted for terms that are not relevant to the waiver programs for which the Coordinating Board has specific rulemaking authority. A definition for "continuation award" is added since the term is relevant to new requirements for certain waiver students receiving continuation awards, beginning fall 2014. A grade point average (GPA) requirement for graduate and undergraduate students was introduced by Senate Bill 1210, passed by the 83rd Legislature. It does not apply to programs that allow nonresidents to pay the resident rate. Therefore, the GPA provision does not apply to the competitive scholarship waiver (which allows recipients to pay the resident rate), but does apply to the program for general academic teaching institutions located within 100 miles of the Texas border (which allows schools to reduce nonresident rates to an amount equal to $30 above the resident rate). The removal of irrelevant definitions and inclusion of new definitions caused subsequent definitions to be renumbered.

Subsection (b) of §21.2264, which deals with the 100-mile waiver program, is amended to indicate persons attending institutions other than community colleges must meet Selective Service Registration requirements to qualify for an award, in keeping with Texas Education Code, §51.9095. (The Selective Service Registration requirement applies to persons receiving state revenues, and community college tuition and fees are local, not state, revenues.) Section 21.2264(b)(2) lists the program's new Senate Bill 1210 GPA requirement.

New subsection (e) of §21.2264 describes the hardship provisions required by Senate Bill 1210 that are relevant to the 100-mile waiver program. Institutions must adopt a policy to allow students who failed to meet the GPA requirement to receive awards if their failure was due to the hardship conditions listed in Senate Bill 1210.

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

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the agency's ability to better meet the needs of the student recipient. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, Assistant Commissioner, Business and Support Services, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted

for 30 days following publication of the proposal in the *Texas Register.*

The amendments to these sections are proposed under Texas Education Code, §54.0601, which provides the Coordinating Board with the authority to adopt rules consistent with §54.0601 and necessary to implement the section.

The amendments affect Texas Education Code, §54.0601.

§21.2261. Definitions.

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

~~[(1) Census date--The date in an academic term for which an institution is required to certify a person's enrollment in the institution for the purposes of determining formula funding for the institution.]~~

~~[(2) Child--Unless otherwise indicated, a person who is the biological or adopted child, or who is claimed as a dependent on a federal income tax return filed for the preceding year or who will be claimed as a dependent on a federal income tax return for the current year.]~~

(1) [~~(3)~~] Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Texas Higher Education Coordinating Board.

(2) Continuation Award--An exemption from tuition awarded to a student in keeping with §21.2264 of this title (relating to General Academic Teaching Institutions Located within 100 Miles of the Texas Border) who has received the exemption in a previous semester.

(3) [~~(4)~~] Coordinating Board or Board--The Texas Higher Education Coordinating Board.

~~[(5) Dependent--A person who:]~~

~~[(A) is less than 18 years of age and has not been emancipated by marriage or court order; or]~~

~~[(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986.]~~

~~[(6) Financial need--An economic situation that exists for a student when the cost of attendance at an institution of higher education is greater than the resources the family has available for paying for college. In determining a student's financial need an institution must compare the financial resources available to the student to the institution's cost of attendance.]~~

(4) [~~(7)~~] General Academic Teaching Institution--As the term is defined in Texas Education Code, §61.003.

(5) [~~(8)~~] Institution or institution of higher education--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(6) [~~(9)~~] Nonresident tuition--The amount of tuition paid by a person who does not qualify as a Texas resident under Subchapter B, Chapter 54, Texas Education Code.

~~[(10) Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term would not otherwise include a step-parent.]~~

~~[(11) Public technical institute or college--The Lamar Institute of Technology or any campus of the Texas State Technical College System.]~~

~~[(12) Remain Continuously Enrolled--Continue to enroll for the fall and spring terms of an academic year. Summer enrollment is not a requirement.]~~

(7) [~~(13)~~] Resident tuition--The amount of tuition paid by a person who qualifies as a Texas resident under Texas Education Code, Chapter 54, Subchapter B.

(8) [~~(14)~~] Waiver--A program authorized by Texas statutes that allows a nonresident student to enroll in an institution of higher education and pay a reduced amount of nonresident tuition.

§21.2264. General Academic Teaching Institutions Located within 100 Miles of the Texas Border.

(a) (No change.)

(b) Eligible Persons. Any nonresident person attending an eligible institution may receive a waiver under this section if the person:[~~.~~]

(1) unless attending a public community college (for which tuition is local revenue), also meets Selective Service registration requirements or is exempt; and

(2) if receiving a continuation award in fall 2014 or later, is meeting the institution's grade point average requirement for making satisfactory academic progress towards a degree or certificate in accordance with the institution's policy regarding eligibility for financial aid, unless granted a hardship waiver by the institution in accordance with subsection (e) of this section.

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

(e) Hardship Provisions. Each institution is required to adopt a policy to allow a student who fails to maintain a grade point average as required by subsection (b)(2) of this section to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(1) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(3) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(4) any other cause considered acceptable by the institution.

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 3, 2014.

TRD-201400421
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2014
For further information, please call: (512) 427-6114

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

19 TAC §21.2271, §21.2273

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.2271 and §21.2273, concerning the Exemption Program for Dependent Children of Persons Who are Members of Armed Forces Deployed on Combat Duty.

Specifically, changes to §21.2271 introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014. The new provisions, which included a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding, were introduced by Senate Bill 1210, passed by the 83rd Legislature, Regular Session. The inclusion of new definitions for "continuation award" and "excess hours" caused subsequent definitions to be renumbered.

Section 21.2273 is amended to include two subsections. In §21.2273(a), basic eligibility requirements are listed, including a new paragraph (4), which is to meet Selective Service Registration requirements established through Texas Education Code, §51.9095. Section 21.2273(b) adds the Senate Bill 1210 requirements regarding grade point average and number of completed hours.

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

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the agency's ability to better meet the needs of the student recipient. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments to these sections are proposed under Texas Education Code, §54.2031(i), which provides the Coordinating Board with the authority to adopt rules consistent with §54.2031 and necessary to implement the section.

The amendments affect Texas Education Code, §54.2031.

§21.2271. Definitions.

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

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

(2) Continuation Award--An exemption from tuition awarded to a student in keeping with this subchapter who has received the exemption in a previous semester.

(3) [~~(2)~~] Dependent Child--A person who is a stepchild, biological or adopted child of a person and is claimed as a dependent for federal income tax purposes in the previous tax year or will be claimed as a dependent for federal income tax purposes for the current year.

(4) Excess Hours--In accordance with Texas Education Code, §54.014, for undergraduates - hours in excess of 30 more than those required for completion of the baccalaureate degree program in which the student is enrolled.

(5) [~~(3)~~] Entitled to pay resident tuition--A person is entitled to pay the resident tuition rate if he or she is a nonresident but is entitled, through a waiver authorized through the Texas Education Code, Chapter 54, Subchapter D to pay the resident tuition rate. Waivers for members of the Armed Forces are located in Texas Education Code, §54.241 (formerly §54.058).

(6) [~~(4)~~] Texas Resident--A person who meets the requirements outlined in Texas Education Code, Chapter 54, Subchapter B, §54.052, to pay the resident tuition rate and therefore be classified as a resident of Texas for higher education purposes.

§21.2273. Eligibility Requirements.

(a) To qualify for an exemption under this subchapter, a person must:

(1) submit satisfactory evidence to the institution that the applicant qualifies for the exemption;

(2) not have received the exemption for more than 150 semester credit hours, including the hours for which the student is currently enrolled; [~~and~~]

(3) not be in default on a loan made or guaranteed for educational purposes by the State of Texas; and[~~,~~]

(4) unless attending a public community college (for which tuition is local revenue), provide the institution proof that the person meets Selective Service registration requirements or is exempt.

(b) If receiving a continuation award in fall 2014 or later, a person receiving a continuation award, at the beginning of the term or semester in which the award is received must also:

(1) be meeting the institution's grade point average requirement for making satisfactory academic progress towards a degree or certificate in accordance with the institution's policy regarding eligibility for financial aid, unless granted a hardship waiver by the institution in keeping with §21.2276 of this title (relating to Hardship Provisions); and

(2) if classified as a resident undergraduate student and enrolled in a baccalaureate degree, have not completed a number of semester credit hours that is considered to be excessive under Texas Education Code, §54.014, unless granted a hardship waiver by the institution on a showing of good cause in keeping with §21.2276 of this title. In determining the number of hours an undergraduate has completed, semester credit hours completed include transfer credit hours that count towards the person's undergraduate degree or certificate requirements, but exclude:

(A) hours earned exclusively by examination;

(B) hours earned for a course for which the person received credit toward the person's high school academic requirements; and

(C) hours earned for developmental courses that the institution required the person to take under Texas Education Code, §51.3062, or under the former provisions of Texas Education Code, §51.306.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2014
For further information, please call: (512) 427-6114

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19 TAC §21.2276

The Texas Higher Education Coordinating Board proposes new §21.2276, concerning the Exemption Program for Dependent Children of Persons Who are Members of Armed Forces Deployed on Combat Duty.

Specifically, this new section adds language to implement legislative changes mandated by the 83rd Legislature through the passage of Senate Bill 1210. This new section outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program grade point average requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for special consideration. Such circumstances include illness, caring for another person, military deployment or other just causes acceptable to the institution. In addition, in keeping with Senate Bill 1210, the new section indicates institutions may, on a showing of good cause, allow an undergraduate to receive the exemption although he or she has completed a number of hours considered excessive under §21.2273(b)(2) of this title (relating to Eligibility Requirements).

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

Mr. Weaver has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the agency's ability to better meet the needs of the student recipient. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The new section is proposed under Texas Education Code, §54.2031(i), which provides the Coordinating Board with the authority to adopt rules consistent with §54.2031 and necessary to implement the section.

The new section affects Texas Education Code, §54.2031.

§21.2276. Hardship Provisions.

(a) Each institution is required to adopt a policy to allow a student who fails to maintain a grade point average as required by §21.2273(b)(1) of this title (relating to Eligibility Requirements) to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(1) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(3) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(4) any other cause considered acceptable by the institution.

(b) An institution may, on a showing of good cause, permit an undergraduate to receive an exemption or waiver although he or she has completed a number of semester credit hours that is considered excessive under §21.2273(b)(2) of this title.

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

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General Counsel
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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.26

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §22.26, concerning the Tuition Equalization Grant (TEG) Program.

Specifically, §22.26(g) deals with prorating grants for students with only a few hours left before graduation. Although such students may receive TEG awards, the size of their awards is restricted by their number of hours to graduation. Section 22.26(g)(1) is revised to remove redundant language regarding the fact that TEG awards to undergraduate students may not exceed a student's financial need and to remove an outdated effective date. Old §22.26(g)(1)(B) is deleted and §22.26(g)(1)(A) is amended to indicate an undergraduate enrolled for 9 or more hours may receive a full grant, since a three-quarter-time enroll-

ment is the basic requirement for receiving a TEG. Subsequent subsections are renumbered accordingly.

In addition, §22.26(g)(2) is revised to remove redundant language regarding the fact that TEG awards to graduate students may not exceed the student's financial need. Old §22.26(g)(2)(B) is deleted and §22.26(g)(2)(A) is amended to indicate a graduate enrolled for 7 or more hours may receive a full grant. Section 22.26(g)(2)(C) and (D) are amended to reflect the levels of enrollment and percentages of full award amounts appropriate for graduates with limited hours left to graduation. Subsequent subsections are renumbered accordingly.

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

Dan Weaver has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the institutions' ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The amendment is proposed under Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the Tuition Equalization Grant (TEG) Program.

The amendment affects Texas Education Code, §§61.221 - 61.230.

§22.26. Award Amounts and Uses.

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

(g) Prorated Awards.

(1) Awards to undergraduate students enrolling in fewer than the required number of hours in a given semester due to fewer hours needed for graduation [~~or to students whose need is insufficient to allow a full award~~] shall[~~, beginning no later than with awards for fall, 2011,~~] be prorated based on the following schedule:

(A) If enrolled for the equivalent of 9 [~~12~~] or more hours in a regular semester or 75% or more of the normal full-time enrollment of the undergraduate student's program of study--100% of the maximum award;

[~~(B) If enrolled for the equivalent of 9-11 hours in a regular semester--75% of the maximum award;~~]

(B) [~~(C)~~] If enrolled for the equivalent of 6-8 hours in a regular semester--50% of the maximum award; and

(C) [~~(D)~~] If enrolled for the equivalent of fewer than 6 hours in a regular semester--25% of the maximum award.

(2) Awards to graduate students enrolling in fewer than the required number of hours in a given semester due to fewer hours needed for graduation [~~or to students whose need is insufficient to allow a full award~~] shall be prorated based on the following schedule:

(A) If enrolled for the equivalent of 7 [~~9~~] or more hours in a regular semester or 75% or more of the normal full-time enrollment of the graduate student's program of study--100% of the maximum award;

[~~(B) If enrolled for the equivalent of 6-8 hours in a regular semester or 75 percent of the normal full-time enrollment of the student's program of study--75% of the maximum award;~~]

(B) [~~(C)~~] If enrolled for the equivalent of 5-6 [~~4.5~~] hours in a regular semester or 50 percent of the normal full-time enrollment of the student's program of study--50% of the maximum award; and

(C) [~~(D)~~] If enrolled for fewer than 5 [~~4.5~~] hours in a regular semester or less than 50 percent of the normal full-time enrollment of the student's program of study--25% of the maximum award.

(3) (No change.)

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §§22.518, 22.519, 22.521 - 22.523

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.518, 22.519, and 22.521 - 22.523, concerning the Exemption for Firefighters Enrolled in Fire Science Courses.

Specifically, the statement of purpose in §22.518 is amended to refer to "eligible" organized volunteer fire departments. Senate Bill 220, passed by the 83rd Legislature, Regular Session, changed the criteria for identifying eligible volunteer fire departments. A definition that explains the new requirement for eligibility is included in §22.519.

In §22.519, definitions are added to explain what is meant by an "eligible" volunteer fire department as mentioned earlier and to introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014. The new provisions, which included a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding, were introduced by Senate Bill 1210, passed by the 83rd Legislature, Regular Session. The inclusion of new definitions for "continuation award," "eligible organized volunteer fire department," and "excess hours" caused subsequent definitions to be renumbered.

Amendments to §22.521(b) accomplish two things. The deleted language removes provisions that were added to Texas Educa-

tion Code (TEC), §54.208, by the passage of House Bill 2013 in 2009. The firefighter exemption is now authorized under TEC, §54.353, and TEC, §54.208, was repealed by the passage of Senate Bill 220 (83rd Legislature, Regular Session). New wording in §22.521 indicates the grade point average (GPA) requirement for continuation awards received in fall 2014 or later may be overridden in accordance with §22.524(a) if the student's poor performance is due to hardship. Senate Bill 1210, passed by the 83rd Legislature, Regular Session, requires institutions to adopt provisions for allowing awards to undergraduate or graduate students failing to meet the GPA requirement due to hardship.

Amendments to §22.522 also accomplish two things. The deleted language removes provisions that were added to TEC, §54.208, by the passage of House Bill 2013 in 2009. The firefighter exemption is now authorized under TEC, §54.353, and TEC, §54.208, is now repealed. New wording in §22.522 indicates loss of eligibility for a continuation award in fall 2014 or later due to excess hours can be overridden for good causes shown in accordance with §22.524(b). Senate Bill 1210 requires institutions to adopt provisions for allowing awards to undergraduates who take excess hours due to hardship or other good cause.

Amendments to §22.523(c) reflect new language in Senate Bill 1210 that indicates the exemptions only apply to courses for which an institution of higher education receives formula funding.

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

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering this sections will be the agency's ability to better meet the needs of the student recipient. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments to §§22.518, 22.519, and 22.521 - 22.523 are proposed under Texas Education Code, §54.353, which provides the Coordinating Board with the authority to adopt rules consistent with §54.353 and necessary to implement the section.

The amendments affect Texas Education Code, §54.353.

§22.518. Authority and Purpose.

(a) (No change.)

(b) Purpose. The purpose of this program is to provide an exemption from tuition and laboratory fees to eligible persons employed as firefighters by a political subdivision of the state or who are active members of an eligible organized volunteer fire department in this state.

§22.519. Definitions.

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

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

(4) Continuation award--An exemption from tuition and fees awarded to a student in accordance with this subchapter who has received the exemption in a previous semester.

(5) Eligible organized volunteer fire department--An organized volunteer fire department participating in the Texas Emergency Services Retirement System or a retirement system established under the Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes).

(6) Excess hours--In accordance with Texas Education Code, §54.014, for undergraduates - hours in excess of 30 or more than those required for completion of the degree program in which the student is enrolled.

(7) [~~(4)~~] Fire Science Courses--Courses that fall within a designated fire science curriculum, as well as courses that are primarily related to fire service, emergency medicine, emergency management, or public administration.

(8) [~~(5)~~] Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(9) [~~(6)~~] Laboratory fees--Fees authorized through Texas Education Code, §54.501.

(10) [~~(7)~~] Program--The Exemption Program for Firefighters Enrolled in Fire Science Courses.

(11) [~~(8)~~] Tuition--Includes statutory tuition, designated tuition and Board-authorized tuition.

§22.521. Eligible Firefighters.

(a) (No change.)

(b) To receive an exemption in a subsequent semester the student must be in compliance with the institution's financial aid satisfactory academic progress requirements. If receiving a continuation award in fall 2014 or later, a student may be allowed to receive an award while holding a grade point average lower than the institution's financial aid academic progress requirements if he or she is granted an exception by the institution under §22.524 of this title (relating to Hardship Provisions). [~~This provision does not apply to a student who received an exemption under Texas Education Code, §54.208 before the 2009 fall semester as long as the student remains enrolled in the same degree or certificate program and is otherwise eligible to continue to receive the exemption under the statutory provisions that existed at that time.~~]

§22.522. Excess Hours.

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

(c) Unless granted a hardship exception under §22.524 of this title (relating to Hardship Provisions) an undergraduate student applying for a continuation exemption in fall 2014 or later and who has completed as of the beginning of the semester or term a number of semester credit hours that is considered to be excessive under Texas Education Code, §54.014, may not receive the exemption under this subchapter. [~~The provisions of subsection (a) and (b) of this section do not apply to a student who received an exemption under Texas Education Code, §54.208 before the 2009 fall semester as long as the student remains enrolled in the same degree or certificate program and is otherwise eligible to continue to receive the exemption under the statutory provisions that existed at that time.~~]

§22.523. Degree and Certificate Programs and Courses Eligible for the Exemption.

(a) (No change.)

(b) Courses eligible for the exemption will be identified by the institution.

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

(3) An exemption under this subchapter only applies to courses for which an institution receives formula funding.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §22.524

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §22.524, concerning the Exemption for Firefighters Enrolled in Fire Science Courses.

Specifically, the new section adds language to implement legislative changes mandated by the 83rd Legislature through the passage of Senate Bill 1210. This new section outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program grade point average requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for special consideration. Such circumstances include illness, caring for another person, military deployment or other just causes acceptable to the institution.

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

Mr. Weaver has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the agency's ability to better meet the needs of the student recipient. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The new section is proposed under Texas Education Code, §54.353, which provides the Coordinating Board with the authority to adopt rules consistent with Texas Education Code, §54.353, and necessary to implement the section.

The new section affects Texas Education Code, §54.353.

§22.524. Hardship Provisions.

(a) Each institution of higher education is required to adopt a policy to allow a student who fails to maintain a grade point average as required by §22.521 of this subchapter (relating to Eligible Firefighters) to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(1) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(3) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(4) any other cause considered acceptable by the institution.

(b) An institution may, on a showing of good cause, permit an undergraduate continuation award applicant to receive an exemption or waiver although he or she has completed a number of semester credit hours that is considered excessive under Texas Education Code, §54.014.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER U. EXEMPTION FOR PEACE OFFICERS ENROLLED IN LAW ENFORCEMENT OR CRIMINAL JUSTICE COURSES

19 TAC §§22.531, 22.533 - 22.535

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.531 and 22.533 - 22.535, concerning the Exemption for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses.

Specifically, definitions are added to §22.531 to introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014. The new provisions, which include a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding, were introduced by Senate Bill 1210, passed by the 83rd Legislature, Regular Session. The inclusion of new definitions for "continuation award" and "excess hours" caused subsequent definitions to be renumbered.

Section 22.533(3) is amended to indicate that the grade point average (GPA) requirement for continuation awards received in fall

2014 or later may be overridden in accordance with §22.538(a) of this title if the student's poor performance is due to hardship. Senate Bill 1210, passed by the 83rd Legislature, Regular Session, requires institutions to adopt provisions for allowing awards to undergraduate or graduate students failing to meet the GPA requirement due to hardship.

Amendments to §22.534(c) reflect new language in Senate Bill 1210 that indicates the Peace Officer exemption only applies to courses for which an institution of higher education receives formula funding. The meaning of the section is not changed, but the new language is more straightforward than the old.

Section 22.535 is amended to indicate that the loss of eligibility for a continuation award in fall 2014 or later due to excess hours can be overridden for good causes shown in accordance with §22.538(b). Senate Bill 1210 requires institutions to adopt provisions for allowing awards to undergraduates who take excess hours due to hardships or other good cause. The legislative citation for determining excess hours for undergraduates is also changed to reflect Texas Education Code, §54.014, the statute cited in Senate Bill 1210.

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

Mr. Weaver has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the agency's ability to better meet the needs of the student recipient. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The amendments to §§22.531 and 22.533 - 22.535 are proposed under Texas Education Code, §54.3531, which provides the Coordinating Board with the authority to adopt rules consistent with Texas Education Code, §54.3531, and necessary to implement the section.

The amendments affect Texas Education Code, §54.3531.

§22.531. Definitions.

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

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

(3) Continuation Award--An exemption from tuition and fees awarded to a student in accordance with this subchapter who has received the exemption in a previous semester.

(4) [~~(3)~~] Criminal Justice Courses--Courses determined by an institution to be a part of a criminal justice degree or certificate program.

(5) Excess Hours--In accordance with Texas Education Code, §54.014, for undergraduates, hours in excess of 30 more than those required for completion of the degree program in which the student is enrolled.

(6) [~~(4)~~] Governing Board--As defined in Texas Education Code, §61.003.

(7) [~~(5)~~] Institution of Higher Education or Institution--Any public institution of higher education as defined in Texas Education Code, §61.003.

(8) [~~(6)~~] Laboratory Fees--Fees authorized through Texas Education Code, §54.501.

(9) [~~(7)~~] Law Enforcement Courses--Courses determined by an institution to be a part of a law enforcement-related degree or certificate program.

(10) [~~(8)~~] Peace Officer--An individual employed as a peace officer by this state or a political subdivision of the state.

(11) [~~(9)~~] Program--The Exemption Program for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses.

(12) [~~(10)~~] Tuition--Includes statutory tuition, designated tuition and governing board-authorized tuition.

(13) [~~(11)~~] Undergraduate Student--A person classified by his or her institution as an undergraduate.

§22.533. Eligible Peace Officers.

To qualify, a Peace Officer must:

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

(3) be in compliance with the institution's financial aid satisfactory academic progress requirements, unless applying for a continuation exemption in fall 2014 or later and granted an exception under §22.538(a) of this title (relating to Hardship Provisions);

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

§22.534. Eligible Courses.

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

(c) Pursuant to Texas Education Code, §54.2002 [~~§54.545~~], the exemption only applies [~~does not apply~~] to courses that [~~do not~~] receive higher education [~~Texas Education Code §61.059~~] formula funding.

§22.535. Excess Hours.

A person who has reached the limit of undergraduate hours for which the state will provide formula funding as specified in the Texas Education Code, §54.014 [~~§61.0595(a)~~] (relating to Tuition for Repeated or Excessive Undergraduate Hours [~~Funding for Certain Excess Undergraduate Credit Hours~~]), is not eligible for the exemption described in this subchapter unless he or she is applying for a continuation award in fall 2014 or later and is granted an exception under §22.538(b) of this title (relating to Hardship Provisions).

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §22.538

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §22.538, concerning the Exemption for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses.

Specifically, the new section adds language to implement legislative changes mandated by the 83rd Legislature through the passage of Senate Bill 1210. This new section outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program academic progress requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for special consideration. Such circumstances include illness, caring for another person, military deployment or other just causes acceptable to the institution.

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

Mr. Weaver has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the agency's ability to better meet the needs of the student recipient. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The new section is proposed under Texas Education Code, §54.3531, which provides the Coordinating Board with the authority to adopt rules consistent with Texas Education Code, §54.3531, and necessary to implement the section.

The new section affects Texas Education Code, §54.3531.

§22.538. Hardship Provisions.

(a) Beginning with the fall term, 2014, each institution is required to adopt a policy to allow a student who fails to maintain a grade point average as required by §22.533 of this title (relating to Eligible Peace Officers) to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(1) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(3) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(4) any other cause considered acceptable by the institution.

(b) An institution may, on a showing of good cause, permit an undergraduate continuation award applicant to receive an exemption or waiver although he or she has completed a number of semester credit hours that is considered excessive under Texas Education Code, §54.014.

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

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For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 325. ORGANIZATION OF THE BOARD

22 TAC §325.1

The Texas Board of Physical Therapy Examiners proposes amendments to §325.1, regarding Elections. The amendments would move the election of officers until the second meeting attended by newly appointed board members.

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

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be an election process that gives new board members the opportunity to observe how the board functions prior to voting for board officers. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Jennifer Jones, Executive Assistant, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; email: jennifer@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

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

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

§325.1. Elections.

Elections of officers shall be held at the second [~~first~~] board meeting after new members are appointed. Officers will assume duties at the next board meeting. Vacancies of offices shall be filled by election at the next board meeting.

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

Filed with the Office of the Secretary of State on January 29, 2014.

TRD-201400330
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 305-6900

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CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.3

The Texas Board of Physical Therapy Examiners proposes amendments to §329.3, regarding Temporary Licensure for Examination Candidates. The amendments would clarify that a temporary license is issued to licensees who will be working in Texas under the supervision of a PT or PTA license by this board.

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

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be clearer information for those seeking temporary licensure. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Jennifer Jones, Executive Assistant, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; email: jennifer@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

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

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

§329.3. Temporary Licensure for Examination Candidates.

(a) Requirements. To be eligible for a temporary license, the applicant must:

(1) meet all requirements as stated in §329.1 of this title (relating to General Licensure Requirements and Procedures);

(2) register for the national physical therapy examination;

(3) submit temporary supervision affidavits as provided by the board; and

(4) submit fees for temporary licensure as set by the executive council.

(b) Eligibility. The board will issue a temporary license to work in Texas to an applicant who is taking the exam for the first time. An applicant who has received a license from another state is not eligible for temporary licensure. A candidate who has taken and failed the physical therapist examination is not eligible for temporary licensure as a physical therapist assistant.

(c) Duration. A temporary license is valid until the applicant receives the score report from the board, or until the last day of the third month after the month the license is issued, whichever occurs first. The coordinator may extend the temporary license for no more than 30 days to offset an unreasonable delay in reporting the examination results to the applicant.

(d) Failure of examination. If the applicant fails the exam, the temporary license is void and must be returned to the board when the notification of the failure is received.

(e) Supervision requirements. An applicant with a temporary PT license must have on-site supervision by a physical therapist with a permanent license to practice in Texas when providing physical therapy services. An applicant with a temporary PTA license must have on-site supervision by either a physical therapist or a physical therapist assistant with a permanent license to practice in Texas when providing physical therapy services.

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 January 29, 2014.

TRD-201400331
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 305-6900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER B. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

25 TAC §157.11

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §157.11, concerning Emergency Medical Services (EMS) provider licensing.

BACKGROUND AND PURPOSE

These amendments are necessary to comply with Health and Safety Code, Chapter 773, Subchapter C, which requires the department to issue EMS provider licenses in accordance with this chapter.

Senate Bill (SB) 8 and House Bill (HB) 3556, 83rd Legislature, Regular Session, 2013, amended Health and Safety Code, §773.0571, which requires applicants for an EMS provider license to have professional experience and qualifications, employ a medical director, and imposes a prohibition on applicants who have been excluded from participation in the State Medicare and Medicaid programs.

SB 8 and HB 3556 added Health and Safety Code, §773.05711, which requires a letter of credit and a surety bond for applicants that participate in the Medicaid managed care program operated under Government Code, Chapter 533, or in the medical assistance program operated under Human Resources Code, Chapter 32, or in the child health plan program operated under Health and Safety Code, Chapter 62.

SB 8 and HB 3556 added Health and Safety Code, §773.05712, which requires licensed EMS providers to declare an administrator of record, obtain a criminal history review and requires initial and continuing educational components for the providers' administrators.

HB 3556 added Health and Safety Code, §773.0573, requiring a letter of approval from a local governmental entity from the location of which the new EMS provider applicant plans to operate.

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). Section 157.11 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

Amendments to §157.11 signify a difference between requirements for new, initial applicants, and those EMS providers already licensed that are renewing or meeting current licensing requirements. These amendments stipulate that an EMS provider declare an administrator of record and further provide that the administrator shall be employed or otherwise compensated by no more than one EMS provider, must be an Emergency Medical Technician or other licensed health care professional, shall attain a criminal history review, and shall complete initial training and annual continuing education. These amendments require an EMS provider applicant to employ a medical director; provide evidence of professional experience such as having basic comprehension regarding the administrative licensing rules for EMS providers, and policies pertaining to budgeting and medical control. These amendments further require an applicant to provide a letter of approval from the local municipality or county, a letter of credit, a surety bond (if participating in Medicaid) and stipulate that the applicant may not be excluded from participation in the State Medicaid program. An amendment also prohibits an EMS provider from expanding operations to or stationing an EMS vehicle other than the municipality or county from which the provider obtained the letter of approval. Finally, amendments allow for exemptions for an EMS provider that is directly operated by a municipality, county, emergency services district, hospital, or EMS volunteer provider.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT AND COST TO PERSONS

Ms. Clack has also determined that there will be limited fiscal implications to EMS provider license applicants that qualify as small or micro-businesses as a result of enforcing and administering §157.11 as proposed. Costs may be incurred by an EMS provider due to statutory requirements that mandate initial training and continuing education for the administrator of record. Fees for surety bonds will be necessary for compliance with Medicaid participation. These fiscal implications are not expected to be substantial.

IMPACT ON LOCAL EMPLOYMENT

There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Clack has also determined that for each year of the first five years the section is in effect, the public will benefit from the adoption and enforcement of this section. The public benefit anticipated as a result of enforcing or administering this section is that the incidence of fraud, waste and abuse by licensed EMS providers will be significantly reduced.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. A "major environmental rule" is defined to mean a rule with 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 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, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Jane Guerrero, Office of EMS/Trauma Systems Coordination, Health Care and Quality Section, Division of Regulatory Services, Department of State Health Services, Mail Code 1876, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6700, or by email to Jane.Guerrero@dshs.state.tx.us. Comments will be accepted for 30 days following the publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed

by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by the Health and Safety Code, Chapter 773; and 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 rule implements Government Code, §2001.039.

The amendment affects Government Code, Chapter 531; and Health and Safety Code, Chapters 773 and 1001.

§157.11. Requirements for an EMS Provider License.

(a) (No change.)

(b) Application requirements for an Emergency Medical Services (EMS) Provider License.

(1) An applicant [~~Candidates~~] for an initial EMS provider license shall submit a completed application to the department.

(2) - (4) (No change.)

(5) An applicant for an EMS provider license that provides emergency prehospital care is exempt from payment of department licensing and authorization fees if the firm is staffed with at least 75% volunteer personnel, has no more than five full-time staff or equivalent, and if the firm is recognized as a [~~Section~~] §501(c)(3) nonprofit corporation by the Internal Revenue Service. An EMS provider who compensates a physician to provide medical supervision may be exempt from the payment of department licensing and authorization fees if all other requirements for fee exemption are met.

(6) Required documents [~~Documents~~] that shall accompany a license application.

(A) - (E) (No change.)

(F) Declaration of Administrator of record and any subsequently filed declaration of a new administrator shall declare the following.

(i) The administrator of record is not employed or otherwise compensated by another private for-profit EMS provider.

(ii) The administrator of record meets the qualifications required for an emergency medical technician certification or other health care professional license with a direct relationship to EMS and currently holds such certification or license issued by the State of Texas.

(iii) The administrator of record has submitted to a criminal history record check at the applicant's expense as directed in §157.37 of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds).

(iv) The administrator of record has completed an initial education course approved by the department on state and federal laws and rules that affect EMS.

(v) The applicant will assure that its administrator of record will complete the requirement of eight hours annual continuing education related to the state and federal laws and rules related to EMS.

(vi) An EMS provider that is directly operated by a governmental entity, is exempt from this subparagraph which includes a municipality, county, emergency services district, hospital, or EMS volunteer provider.

(vii) An EMS provider that held a license on September 1, 2013, and has an administrator of record who has at least eight years of experience providing EMS, the administrator of record is exempt from clauses (ii) and (iv) of this subparagraph.

(G) - (J) (No change.)

(K) Declaration of an employed medical director and a copy of the signed contract or agreement with a physician who is currently licensed in the State of Texas, in good standing with the Texas Medical Board, in compliance with Texas Medical Board rules [~~Rules~~], particularly regarding EMS [~~Emergency Medical Services~~] as outlined in 22 Texas Administrative Code, Part 9, Texas Medical Board, Chapter 197, and in compliance with Title 3 of the Texas Occupations Code.

(L) - (T) (No change.)

(U) The applicant shall provide documentation of the following, showing that the applicant, including its management staff possesses sufficient professional experience and qualifications related to EMS:

(i) an attestation that its management staff have read the Texas Emergency Healthcare Act and the department's EMS rules in this chapter;

(ii) proof of one year experience or education provided by a nationally recognized organization on emergency medical dispatch processes;

(iii) proof of one year experience or education provided by a nationally recognized organization concerning EMS billing processes;

(iv) proof of one year experience or education provided by a nationally recognized organization on medical control accountability; and

(v) proof of one year experience or education provided by a nationally recognized organization on quality improvement processes for EMS operations.

(V) A copy of a letter of credit for the obtaining or renewing of an EMS Providers license, issued by a federally insured bank or savings institution:

(i) in the amount of $100,000 for the initial license and for renewal of the license on the second anniversary of the date the initial license is issued;

(ii) in the amount of $75,000 for renewal of the license on the fourth anniversary of the date the initial license is issued;

(iii) in the amount of $50,000 for renewal of the license on the sixth anniversary of the date the initial license is issued;

(iv) in the amount of $25,000 for renewal of the license on the eighth anniversary of the date the initial license is issued;

(v) that shall include the names of all of the parties involved in the transaction;

(vi) that shall include the names of the persons or entity, who owns the EMS provider operation and to whom the bank is issuing the letter of credit;

(vii) that shall include the name of the person or entity, receiving the letter of credit; and

(viii) an EMS provider that is directly operated by a governmental entity is exempt from this subsection.

(W) A copy of the surety bond in the amount of $50,000 issued to and provided to the Health and Human Services Commission

by the applicant, participating in the medical assistance program operated under Human Resources Code, Chapter 32, the Medicaid managed care program operated under Government Code, Chapter 533, or the child health plan program operated under Health and Safety Code, Chapter 62. An EMS provider that is directly operated by a governmental entity is exempt from this subparagraph.

(X) Documentation evidencing applicant or management team has not been excluded from participation in the state Medicaid program;

(Y) A copy of a governmental entity letter of approval that shall:

(i) be from the governing body of the municipality in which the applicant is located and is applying to provide EMS;

(ii) be from the commissioner's court of the county in which the applicant is located and is applying to provide EMS, if the applicant is not located in a municipality;

(iii) include the attestation that the addition of another licensed EMS provider will not interfere with or adversely affect the provision of EMS by the licensed EMS providers operating in the municipality or county;

(iv) include the attestation that the addition of another licensed EMS provider will remedy an existing provider shortage that cannot be resolved through the use of the licensed EMS providers operating in the municipality or county; and

(v) include the attestation that the addition of another licensed EMS provider will not cause an oversupply of licensed EMS providers in the municipality or county.

(7) Paragraph (6)(Y) of this subsection does not apply to renewal of an EMS provider license or a municipality, county, emergency services district, hospital, or EMS volunteer provider organization in this state that applies for an EMS provider license.

(8) An EMS provider is prohibited from expanding operations to or stationing any EMS vehicles in a municipality or county other than the municipality or county from which the provider obtained the letter of approval under this subsection until after the second anniversary of the date the provider's initial license was issued, unless the expansion or stationing occurs in connection with:

(A) a contract awarded by another municipality or county for the provision of EMS;

(B) an emergency response made in connection with an existing mutual aid agreement; or

(C) an activation of a statewide emergency or disaster response by the department.

(9) Paragraph (8) of this subsection does not apply to renewal of an EMS provider license or a municipality, county, emergency services district, hospital, or EMS volunteer provider organization in this state that applies for an EMS provider license.

(10) Paragraph (8) of this subsection does not apply to fixed or rotor wing EMS providers.

(c) - (s) (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 3, 2014.

TRD-201400432
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 16, 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 E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES

28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4128, 5.4133, 5.4135, 5.4136, 5.4141 - 5.4149, 5.4164

The Texas Department of Insurance proposes adding new 28 TAC §§5.4123 - 5.4128, 5.4135, 5.4136, 5.4148, and 5.4149, and amending 28 TAC §§5.4101, 5.4102, 5.4121, 5.4133, 5.4141 - 5.4147, and 5.4164 to implement HB 3, 82nd Legislature, 1st Called Session, 2011. These sections concern funding losses and operating expenses in excess of the Texas Windstorm Insurance Association's premium and other revenue under Insurance Code Chapter 2210, Subchapters B-1, J, and M. These sections will be incorporated into the association's plan of operation. Matters addressed in the proposed plan of operation amendments include: (i) the catastrophe reserve trust fund; (ii) financing arrangements; (iii) issuance of public securities; (iv) use of public securities proceeds; and (v) payment of public security obligations. In conjunction with this proposal, the department is also proposing the repeal of 28 TAC §5.4131 and §5.4132 separately and also published in this issue of the *Texas Register.*

The association is the insurer of last resort for windstorm and hail insurance coverage in the catastrophe area to those who are unable to obtain insurance in the private market. The catastrophe area includes the 14 first tier coastal counties and parts of Harris County. The association functions similar to other insurers in that it sells policies, collects premiums, and pays claims. The association's largest risk exposure is catastrophic losses from hurricanes.

In 2009, the Texas Legislature enacted HB 4409, 81st Legislature, Regular Session, which substantially changed how the association paid for catastrophic losses that exceeded its premium and other revenue, available reserves, and available amounts in the catastrophe reserve trust fund. HB 4409 amended Insurance Code Chapter 2210 to establish three classes of public securities to pay for excess losses in the event of a catastrophe. Texas Public Finance Authority (TPFA) issues public securities at the request of the association and with the approval of the

commissioner. In 2011, the Texas Legislature amended the association's loss funding provisions to authorize the issuance of class 1 public securities prior to a catastrophic event and to permit the issuance of class 2 and class 3 public securities if TPFA is unable to issue all or any portion of the class 1 public securities. Insurance Code §2210.6136, enacted by HB 3, authorizes the commissioner to order the issuance of class 2 public securities if the commissioner finds that all or any portion of the total principal amount of class 1 public securities cannot be issued.

The rules currently in place regarding the issuance of public securities do not address the changes in the statute as a result of HB 3. HB 3 amended how association losses and operating expenses in excess of premium and other revenue are funded by amending Subchapters B-1 and M in Insurance Code Chapter 2210. Rules are necessary to implement HB 3 to provide loss funding in the event of a catastrophe. The proposed rules do not directly affect rates. The proposed rules implement requirements that already exist in Insurance Code Chapter 2210. HB 3 also amended Insurance Code §2210.355 to require the association to consider the payment of class 1 public security obligations in adopting its rates.

The department previously proposed rules in the June 22, 2012, edition of the *Texas Register.* The department received requests to postpone adopting those rules until the 83rd Legislature had an opportunity to address the association's funding. As a result, the rules were withdrawn by operation of law on December 27, 2012. Because the 83rd Legislature did not address the association's funding, the department is resuming its proposal of these rules. The department posted an informal draft of these rules on October 14, 2013, with a comment period that ended on October 28, 2013. Based on comments, the department revised the informal draft rule for this proposal. The proposed rules address: (i) the catastrophe reserve trust fund; (ii) financing arrangements; (iii) the issuance of public securities; (iv) the use of public securities proceeds; and (v) the payment of public security obligations.

These rules will be incorporated into the association's plan of operation. The association operates under a plan of operation that must provide for the efficient, economical, fair, and nondiscriminatory administration of the association and include procedures for obtaining and repaying amounts under any authorized financial instruments. The plan of operation may also include other provisions that the department considers necessary to implement the purposes of Insurance Code Chapter 2210. Because HB 3 amended how the association's excess losses and operating expenses are funded, it is necessary to propose these rules and amend the plan of operation. A thorough discussion of the new proposed rule sections and amendments follows.

§5.4101. Applicability. As previously discussed, the association operates under a plan of operation. Section 5.4101(a) has been amended to include the proposed new sections in this division that will be part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this title. Section 5.4001 contains the association's plan of operation, but that plan has been augmented by rules in other sections. Changes were also made to conform to agency style.

§5.4102. Definitions. Proposed §5.4102 defines terms used in this division. The defined terms are derived from Insurance Code Chapter 2210 and information and terminology TPFA provided to the department. New terms that have been defined in this section include: class 1 payment obligation, earned premium, member assessment trust fund, net premium, obligation revenue fund, premium, premium surcharge and member assessment repayment obligation, premium surcharge trust fund, public security administrative expenses, and repayment obligation trust fund. Other terms have been amended based on changes in the statute as a result of HB 3, for clarity and to conform to agency style.

§5.4121. Financing Arrangements. Insurance Code §2210.072 and §2210.612 provide that the association may enter into financing arrangements directly with a market source to enable the association to pay losses or obtain public securities under Insurance Code §2210.072. Amended §5.4121(b)(1) provides that the association may pay for the financing arrangement with net premium that is not required for the payment of class 1 public securities, or the repayment of premium surcharge or member assessment repayment obligations. HB 3 revised Insurance Code §2210.612 to define the revenue stream available to fund class 1 public security obligations and public security administrative expenses as "net premium" rather than "premium." Insurance Code §2210.609 establishes a priority for the use of net premium to fund class 1 public security obligations and public security administrative expenses. Section 5.4121(b)(1) reflects that the use of net premium and other revenue for the payment of financing arrangements is subordinate to the payment of class 1 public security obligations under §5.4126 and §5.4141 and Insurance Code §2210.612 and §2210.6136. The amendment to §5.4121(c) states the collateral assignment applies to "any class of public security issued under Insurance Code Chapter 2210" rather than listing each class.

§5.4123. Public Securities Request, Approval, and Issuance. Before public securities may be issued, Insurance Code §2210.604 requires the association to submit a request for the issuance of public securities. The commissioner must approve that request before TPFA may issue public securities on behalf of the association. Under the statute, class 1 public securities may be issued before or after a catastrophic event, and class 2 and class 3 public securities may be issued only after a catastrophic event.

This section allows the association to request public securities as often as necessary and at any time. This means that the association can submit a request for issuance of post-event public securities to the commissioner for approval prior to a catastrophe, but the public securities may be issued only after a catastrophe occurs. The department drafted this provision to allow TPFA the opportunity to review and prepare for the issuance of public securities prior to an event without actually issuing the securities. TPFA has informed the department that it cannot begin preparation for the issuance of public securities until it has a request for issuance from the association that is approved by the commissioner. By allowing the association to submit requests for commissioner approval prior to a catastrophe, TPFA can prepare for the issuance of public securities so that, in the event of a catastrophe, TPFA can more expediently issue public securities.

The proposed rule establishes the supporting documentation that must be included in the association's request and provides that the commissioner may request additional information. The association must provide to the department any requested information concerning public securities or the pending issuance of public securities. It is important that this information be accessible to maintain effective regulation of the association. The commissioner may deny the association's request. If a request is denied, the association may submit another request for the commissioner's consideration. When the association's request

is approved, the department must provide the commissioner's written approval to the association and TPFA.

The procedures established by this section apply to the issuance of public securities and the reissuance and refinancing of public security obligations.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event. HB 3 amended Insurance Code §2210.072 to authorize the issuance of class 1 public securities before a catastrophic event. The association's board of directors must request the issuance of the public securities, and the commissioner must approve the board's request before TPFA can issue the class 1 public securities. This rule establishes specific requirements for a request to issue class 1 public securities before a catastrophic event and the method for calculating the outstanding aggregate principal amount of class 1 public securities issued before a catastrophic event. This rule also details the information the association must submit with its request to the commissioner, including a cost-benefit analysis required by Insurance Code §2210.604(a) for all public security requests. The contents of the cost-benefit analysis are set out in §5.4135 of this proposal. Additionally, the association must submit a three-year pro forma financial statement reflecting the financial impact to the association if class 1 public securities are issued before a catastrophic event.

The association may submit one or more requests to issue class 1 public securities before a catastrophic event under this section. Section 5.4124(d) establishes the method of calculating the outstanding aggregate principal amount of class 1 public securities issued before a catastrophic event. Insurance Code §2210.072(b) limits the amount of outstanding class 1 public securities issued before a catastrophic event to $1 billion, regardless of the calendar year when the class 1 public securities were issued. Insurance Code §2210.072(e) states that the association must deplete the proceeds of outstanding class 1 public securities issued before a catastrophic event before the proceeds of class 1 public securities issued after a catastrophic event may be used. Insurance Code §2210.072(f) states that the proceeds of outstanding class 1 public securities issued before a catastrophic event count against the $1 billion catastrophe year limit set out in Insurance Code §2210.072(b). These provisions authorize the association to issue class 1 public securities before a catastrophic event in an outstanding aggregate principal amount of up to $1 billion. If the proceeds of the class 1 public securities issued before a catastrophic event must be depleted, those proceeds are applied to that catastrophe year cap, but do not count against the aggregate principal amount cap for class 1 public securities issued before a catastrophic event. This will enable the association to continue to use class 1 public securities issued before a catastrophic event for liquidity in years following a catastrophic event.

§5.4125. Issuance of Public Securities after a Catastrophic Event. This section establishes specific requirements for the association's request to issue class 1, class 2, and class 3 public securities following a catastrophic event and the method for calculating the authorized principal amount of public securities that TPFA may issue. As previously discussed, the statute limits when the public securities can be issued, not when the public securities may be requested. Requests for issuance of public securities may be submitted prior to a catastrophe even though the public securities may not be issued until after a catastrophe. The association may submit a request for the issuance of public securities after a catastrophe for commissioner's approval at any time, although TPFA will not actually issue the public securities until a catastrophic event has occurred.

Section 5.4125(b) lists the information the association must provide to the commissioner to support its request, including a cost-benefit analysis. Section 5.4125(c) establishes the method of calculating the authorized principal amount of public securities that can be requested for issuance. Section 5.4125(d) clarifies that for each catastrophe year, the association must request the statutorily authorized principal amount of each class of public security before it can request the next class of public security. Section 5.4124(e) provides that the association may make one or more requests to issue public securities under this section and clarifies that the association need not exhaust all proceeds from a class of public security before it requests issuance of the next class of public security. Depending on the severity of a catastrophic event, the association may need additional loss funding from one or more classes of public security. TPFA has informed the department that it measures the process of issuing public securities from the request to obtaining the proceeds in months. This rule section allows the association to request more than one class of public security so the association may have adequate proceeds available as timely as possible for prompt payment of claims.

§5.4126. Alternative for Issuing Class 2 and Class 3 Public Securities. Insurance Code §2210.073 provides that class 2 public security proceeds are to pay for losses that have not been paid by class 1 public security proceeds. This raises an issue of providing adequate loss funding for the association if the entire $1 billion authorized amount of class 1 public securities cannot be issued due to market conditions. Class 1 public securities are to be repaid with the association's net premium under Insurance Code §2210.612. A catastrophic event may result in losses that exceed the association's revenue and impair its ability to repay class 1 public securities. If the association's class 1 public securities are not marketable, Insurance Code §2210.6136 allows the commissioner to authorize the issuance of class 2 public securities. Section 5.4126 implements the procedure for the association to request issuance of class 2 and 3 public securities under Insurance Code §2210.6136 when all or any portion of class 1 public securities cannot be issued.

Section 5.4126(a) establishes that the purpose of this section is the issuance of class 2 and class 3 public securities if TPFA cannot issue on behalf of the association all or any portion of the authorized principal amount of class 1 public securities. Section 5.4126(b) lists the information that the association must provide to the commissioner in support of its request for issuance of class 2 or class 3 public securities. Section 5.4126(c) requires that the association must first request the authorized principal amount of class 1 public securities, as determined under §5.4125(c) of this title, before the association may request class 2 public securities under this alternative issuance procedure. The association is not required to have requested the maximum authorized principal amount of class 1 public securities because the catastrophic event may not reach that level of loss. The amount of the request under this section will be based on the amount of class 1 public securities that TPFA cannot issue on behalf of the association to fund the catastrophic loss.

The commissioner may issue an order authorizing TPFA to issue class 2 public securities in an amount that does not exceed the authorized principal amount as determined under §5.4125(c) of this title. The principal amount is further limited by the amount the association needs to fund the excess losses. The commis-

sioner may rely on information from any source in ordering the issuance of class 2 public securities. Subsection (e) sets forth the required contents of the commissioner's order authorizing the issuance of class 2 public securities. Subsection (f) allows the commissioner to revise the order as necessary because the association has paid excess amounts towards repayment of the premium surcharges and member assessments, or the association's financial situation has changed, necessitating a change in the repayment schedule. As discussed in §5.4127(d), the priority of the repayment obligation is subordinate to the payment of the class 1 public securities.

TPFA may issue the class 2 public securities authorized in the commissioner's order. TPFA may elect to issue the class 2 public securities in separate series. Section 5.4126(h) clarifies that the association may request and the commissioner may approve the issuance of class 3 public securities prior to the issuance of class 2 public securities under this section and Insurance Code §2210.6136. TPFA cannot issue the class 3 public securities until after TPFA has issued $1 billion in class 2 public securities on behalf of the association for that catastrophe year.

§5.4127. Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments. The Legislature enacted Insurance Code §2210.6136 for funding excess losses when a sufficient amount of class 1 public securities cannot be issued. HB 3 does not express any legislative intent that the association is to stop paying claims based on its inability to market class 1 public securities, which are paid from the association's net premium and other revenue. Insurance Code §2210.6136 allows TPFA to issue class 2 public securities if it cannot issue all or any portion of the total authorized principal amount of class 1 public securities. Class 2 public securities are repaid by a combination of member assessments and premium surcharges under Insurance Code §2210.613.

Insurance Code §2210.6136 specifies that if class 2 public securities are issued under that section, then the class 2 public securities must be repaid by the association's net premium and other revenue in an amount equal to the lesser of $500 million or the portion of class 1 public securities that cannot be issued. This has the effect of treating class 2 public securities issued under Insurance Code §2210.6136 as class 1 public securities, which are repayable by premium and revenue. This is inconsistent with the purpose of Insurance Code §2210.6136 to provide for the issuance of class 2 public securities because class 1 public securities cannot be issued. If a hurricane occurs that results in excess losses, the fully authorized amount of class 1 public securities may not be available to pay for those losses because those securities are based on the association's premium and revenue. The fully authorized amount of class 1 public securities may not be marketable because the association's net premium and other revenue may not be a large enough to secure the full $1 billion in class 1 public securities. In the event of catastrophic losses, the association is obligated to pay claims. If class 1 public securities are not marketable and cannot be issued, then class 2 public securities and class 3 public securities must be issued.

This means that under Insurance Code §2210.6136, the association must then repay the principal, interest, and cost of class 2 public securities with premium surcharges and member assessments. This is the only reasonable reading of Insurance Code §2210.6136 that is consistent with Government Code §311.021. If a catastrophe occurs that results in losses in excess of funding authorized under Insurance Code §2210.072, and the association cannot issue all or any portion of class 1 public securities, then class 2 public securities may be issued under Insurance Code §2210.6136. Under the plain language of Insurance Code §2210.6136, the association must issue $500 million in class 2 public securities that are to be repaid by the association's premium and other revenue. Under this provision, class 2 public securities are repaid from the same source of revenue used to pay class 1 public securities. If the association can issue class 2 public securities that are to be repaid by premium, then this means the association is capable of issuing class 1 public securities. This eliminates the need for having an alternative to issue class 2 public securities when class 1 public securities cannot be issued. It is not feasible to read the statute to require TPFA to issue all of the class 1 public securities it can based on the association's net premium and other revenue, and then expect TPFA to issue additional public securities using the same funding sources simply because the name of the public security has changed. Such a reading would render Insurance Code §2210.6136 meaningless. The statute does not require the association to borrow additional amounts. The statute requires the association to repay the costs incurred on some of the class 2 public securities. The association must repay the premium surcharges and member assessments to fulfill that requirement.

Section 5.4127 implements the repayment scheme in Insurance Code §2210.6136. Section 5.4127(a) requires the association to pay class 2 public securities issued under §5.4126 of this title using premium surcharges and member assessments. Section 5.4127(a)(1) and (2) clarify that the definition of insurer and the procedures for collecting premium surcharges and member assessments under this section are the same as those used for class 2 public securities that will be issued under §5.4125. Section 5.4127(b) provides the method of determining the principal amount of class 2 public securities to be repaid by member assessments and premium surcharges. Section 5.4127(c) clarifies that the requirement is to repay premium surcharges and member assessments that are paid, or payable, on the total principal amount, plus any costs and contractual coverage amount associated with that amount.

Section 5.4127(d) describes the primary sources of funding for repayment of the premium surcharges and member assessments. The association must collect premium and other revenue to make the repayments, which means that the collection of premium to repay the amount owed should be reflected in the association's rates. Section 5.4127(f) describes the methods the association may use to make the repayment and addresses the situation when the association has sufficient funds to pay class 2 obligations, which will eliminate or reduce the need to collect premium surcharges and member assessments. The association will make deposits necessary to make this payment in the appropriate trust funds. This may result in savings on administrative costs for the association that results from a reduction in the amount of premium surcharge repayments the association must track. Association policyholders may also benefit from prepayment of premium surcharges, because association insurance coverage is subject to the premium surcharge. Section 5.4127(f)(2) requires the association to deposit funds in a repayment obligation trust fund to repay the premium surcharges and member assessments. The funds will later be distributed to insurers for repayment in compliance with the commissioner's order. Together, through prepayment or repayment, the association must fulfill its obligation under this section and Insurance Code §2210.6136.

Subsection (g) requires the association to track receipts of premium surcharges and member assessments. Subsection (h) provides that insurers may pay, on behalf of their policyholders, the premium surcharges that will be subject to repayment under Insurance Code §2210.6136(b). The insurer will then collect the repayment when made, as described in §5.4128(c) of this division.

§5.4128. Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers. Section 5.4128 addresses the repayment procedures the association and insurers must use to repay premium surcharges and member assessments. The association must specify the surcharge and assessment period being repaid. Subsection (b) establishes when the repayments must begin, and subsection (c) establishes insurer requirements for making repayments to their policyholders. The repayment will be proportional to the amount paid for that period, and the insurer may not claim a greater share of the premium surcharge than the portion it paid on behalf of its policyholder during that period. Member assessments will be returned to the insurer or insurance group that paid the member assessment.

§5.4133. Public Security Proceeds. The public security proceeds are held in trust with the trust company for the benefit of the association and may only be used for certain purposes specified by statute. This section establishes the procedure for the association to request the trust company to disburse funds for use. HB 3 amended Insurance Code §2210.608 to specifically allow two additional uses of public security proceeds and prohibit the association from using the proceeds of public securities issued before a catastrophic event to purchase reinsurance. The amendment to §5.4133 removes the reference to using public security proceeds and points to Insurance Code §2210.608 for the authorized uses of public security proceeds.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis. This section discusses the marketability of public securities and sets out factors that may be considered in determining the marketability of class 1 public securities. Subsection (a) defines "marketable public securities." Subsection (b) establishes factors the association must consider in determining whether class 1 public securities are not marketable. This information is necessary for the determination of issuing class 2 public securities under §5.4126. Subsection (c) addresses the factors the association must consider in determining "market conditions and requirements" under §5.4135(b).

Subsection (d) requires the association to submit a cost-benefit analysis as required by Insurance Code §2210.604(a) and lists the information the cost-benefit analysis must include.

§5.4136. Association Rate Filings. HB 3 amended Insurance Code §2210.355 to clarify that association rates must consider class 1 public security obligations and contractual coverage amounts that the association determines to be required for the issuance of marketable public securities. This section restates the statutory requirement and clarifies that it also applies to repayment amounts owed under §5.4127(b), which are repaid from the same sources of funds as class 1 public securities. This section establishes how the association must comply with this requirement.

§5.4141. Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund. HB 3 amended Insurance Code §2210.609 to direct the association to deposit its net premium and other revenue collected under Insurance Code §2210.612 in the obligation revenue fund for the payment of class 1 public securities. Subsection (a) of this section was amended to be consistent with this requirement. The amendment replaces the reference to "net revenue" with "net premium and other revenue." The association must deposit net premium in the amounts and for the periods required in the class 1 public security agreements. The intent is to allow greater flexibility in establishing payment schemes while the association continues to operate.

Insurance Code §2210.609(c) requires that all revenue collected under Insurance Code §§2210.612, 2210.613, and 2210.6135 be deposited in the appropriate public security obligation revenue fund. Subsection (b) was amended to provide the association flexibility to transfer funds from any operating reserve fund or other association held funds into the obligation revenue fund to pay class 1 public securities.

§5.4142. Excess Obligation Revenue Fund Amounts. From time to time, the association may need to disburse funds in the obligation revenue fund, including the contractual coverage amount. Section §5.4142 provides that excess revenue collected in the obligation revenue fund is an asset of the association and may be disbursed for any purpose authorized by Insurance Code §2210.056, including the repayment of the premium surcharge and member assessments under §5.4127. If the association elects to repay class 1 public securities early, commissioner approval is required under Insurance Code §2210.072. Although the funds in the obligation revenue fund consist of net premium and other revenue, excess funds released under §5.4142 do not apply to class 1 public security payment obligations. Distribution of the excess revenue in the obligation revenue fund does not affect the amounts due under Insurance Code §2210.6136 or §5.4126 of this title. The distribution provides the association with additional funds that can be used for pre-paying the amounts due under Insurance Code §2210.6136 or §5.4126 of this title. The proposal does not require prepayment because it is impossible to determine what the association's financial position will be at the time of the distribution or what will be the best use of the distribution.

§5.4143 and §5.4146. Trust Funds for the Payment of Class 2 and Class 3 Public Securities and Member Assessment Trust Fund for the Payment of Class 3 Public Securities. Insurance Code §2210.613 provides for the payment of class 2 public security obligations with premium surcharges on property and automobile insurance policies in the catastrophe area and member insurer assessments. Insurance Code §2210.6135 provides for the payment of class 3 public security obligations with association member insurer assessments. The procedure for establishing, assessing, collecting, reporting, accounting for, and transmitting the premium surcharges and member assessments to the association are currently set out in §§5.4161 - 5.5467, 5.4171 - 5.5173, and 5.4181 - 5.4192 of this title. HB 3 amended Insurance Code §2210.613 to specify the lines of insurance subject to the premium surcharge; rules implementing the premium surcharge are addressed in a separate rule proposal published in this edition of the *Texas Register.*

Section 5.4143 and §5.4146 concern how the amounts collected from premium surcharges and member assessments are deposited. The association is required to deposit the collected revenue in the appropriate trust fund. The amendments to these sections reflect HB 3 changes to Insurance Code §2210.609, which created distinct revenue trust accounts for the premium

surcharges and member assessments. Additionally, the proposal requires the association to transfer the collected money in the trust funds on receipt. The rules also allow the option for insurers to direct deposit the funds electronically into the appropriate funds. If insurers are required by the financial agreements to direct deposit, the association must send notice to the insurers with direct deposit information. Finally, the amended sections limit the use of these funds. The deposited funds may only be used to fund the appropriate public security obligation or as authorized in this title, which includes the use of excess funds under §§5.4144, 5.4145, and 5.4147 as authorized by Insurance Code §2210.611.

§§5.4144, 5.4145, and 5.4147. Excess Class 2 Premium Surcharge Revenue, Excess Class 2 Member Assessment Revenue, and Excess Class 3 Member Assessment Revenue. The revenue funds may have excess funds. HB 3 amended Insurance Code §2210.611 to include procedures for handling both excess premium surcharge and member assessment revenue. The amendments to these sections conform to the existing provisions of Insurance Code §2210.611, as amended.

§5.4148 and §5.4149. Repayment Obligation Trust Fund for the Payment of Amounts Owed Under §5.4127 and Excess Repayment Obligation Trust Fund Amounts. Insurance Code §2210.6136 requires the association to collect net premium and other revenue for the repayment of premium surcharges and member assessments as provided in Insurance Code §2210.612, which states that the collected net premium and other revenue are to be deposited in the revenue obligation fund. While the trust company could create accounts within the fund, use of the term "revenue obligation fund" for the purposes of class 1 public security payment and the repayment of premium surcharges and member assessments could be confusing. To clarify, §5.4148 creates procedures for a designated repayment obligation trust fund. Section 5.4149 provides that the purpose of these funds is the payment of class 2 public securities subject to repayment under §5.4127(b) of this title, and the repayment of all amounts owed under §5.4127(b). To the extent funds in this account are distributed, the funds must first be used to repay class 2 public securities. Once those amounts have been paid, excess funds will be disbursed to the association.

§5.4164. Payment of Assessment. Section 5.4164 was revised to allow insurers to deposit member assessments directly into the member assessment trust fund. Changes were made to this section to provide that insurers may be required to deposit assessments directly into the member assessment trust fund instead of remitting assessments to the association.

FISCAL NOTE. C. H. Mah, associate commissioner of the Property and Casualty Section, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal. This rule proposal implements the requirements in the statute. Any impact on local employment or the local economy resulting from the premium surcharges required by Insurance Code §2210.613 are a result of the statute and not as a result of this proposal.

PUBLIC BENEFIT and COST NOTE. Mr. Mah has also determined that for each year of the first five years the proposed sections are in effect, there will be public benefits resulting from the proposal and there will be costs to persons required to comply with the proposal.

Anticipated public benefits. The department anticipates that a primary public benefit resulting from the proposal will be the implementation of HB 3, which is intended to provide efficient access to funding for association insured losses and operating expenses exceeding the association's premium and other revenue.

Estimated costs for persons required to comply with the proposal. The association will incur costs resulting from new administrative, reporting, loss evaluation, and analysis requirements related to public securities under §§5.4124 - 5.4128, 5.4135, 5.4136, 5.4143, 5.4146, and 5.4148. Insurers writing lines of insurance that are subject to the premium surcharge, including the association, will incur costs resulting from new administrative and reporting requirements under §5.4127 and §5.4128. Except for actuarial costs under §5.4136, the costs identified in this proposal will follow the issuance of class 2 public securities under Insurance Code §2210.6136.

Public security costs. The association was to provide windstorm and hail insurance in the designated catastrophe area. As a residual insurer, the association must provide this coverage. Further, the association must comply with the requirements of Insurance Code Chapter 2210 and regulations implemented under the statute.

While the proposal implements HB 3, many of the requirements in these rule sections are the same or substantially similar to existing requirements. The department has chosen in some instances to restate overall costs estimates for the requirements in these sections rather than attempt to estimate if each new requirement had a measurable cost. Overall, the department anticipates that these activities will involve both managerial and administrative personnel, office space, and equipment. Some systems, including electronic systems, may need to be developed or updated to complete these functions. Other new and amended sections in this proposal restate existing requirements and do not add additional costs.

The association previously provided cost information to the department concerning these functions and the department does not anticipate the requirements in its proposal will change those estimated costs. The association indicated that the actual costs may differ from these estimates due to unanticipated situations and expenses. While the association indicated that the proposal will result in labor costs, the association did not identify specific costs resulting from additional staff, office space, new equipment, or systems development resulting from the proposal.

§5.4124 and §5.4125. As previously discussed, this new section requires the association to submit certain information with its request to issue public securities for the commissioner's approval. Section 5.4124 concerns the issuance of class 1 public securities before a catastrophic event and §5.4125 concerns the issuance of public securities after a catastrophic event. The commissioner needs the information specified in the rules to determine whether to approve the association's request.

In response to a department request, the association stated it does not anticipate that providing this information will require additional staff. As to §5.4124, the association stated that its current staff will prepare and provide this information and estimates the costs associated with doing so to be $15,000 per year. If the association submits a request under §5.4125, the association estimates the cost to prepare a submittal to be $2,000 per year in addition to the cost of a submittal under §5.4124.

§5.4126 and §5.4135. HB 3 amended Insurance Code Chapter 2210, Subchapters B-1 and M, to provide an alternative funding

means of issuing class 2 and class 3 public securities if all or any portion of the class 1 public securities could not be issued, and to require that a cost-benefit analysis be submitted with each request for public securities. Section 5.4126 establishes the procedural requirements for the association to request the issuance of class 2 and class 3 public securities if all or any portion of class 1 public securities cannot be issued. Section 5.4135 establishes the requirements for demonstrating the class 1 public securities are not marketable for purposes of §5.4126 and the requirements for the cost-benefit analysis. The commissioner needs this information to determine whether to approve the association's request. Although reorganized, the requirements for requesting the issuance of class 1, class 2, and class 3 public securities have not significantly changed.

The association previously estimated the cost of preparing information to support a public security funding request to be $800 per submission. The department estimates that this $800 cost will also apply to the request for the issuance of public securities under §5.4126. The department also anticipates that preparation of the cost-benefit analysis could result in increased association costs for all public security requests. However, the additional information and analysis will not more than double the cost of the existing requirements. The department estimates the additional cost of preparing the cost-benefit analysis will not exceed $800 per request, in addition to the costs for existing public security request requirements and the costs of requesting public securities under §5.4126. Each public security request is estimated to cost $1,600. The department further estimates that these costs will not change over the first five year period this proposal is to be in effect.

§§5.4127, 5.4128, and 5.4148. Insurance Code §2210.6136 requires the association to repay premium surcharges and member assessments used to pay class 2 public securities. Section 5.4127 requires the association to record the premium surcharges and member assessments it collects to pay class 2 public securities so that the association can repay those amounts. While the association must account for these receipts under current requirements, it is not required to distinguish the amounts that must be repaid. This requirement will result in administrative costs to the association to distinguish and record these amounts, and then report these amounts when repayments are made under §5.4128.

In response to a department request, the association estimated that the additional costs to develop information systems and implement financial procedures to administer the collection and return of premium surcharges and member assessments to be $80,000 in the first year and in subsequent years to be $20,000 to maintain. This cost does not include the administrative cost of making premium surcharge repayments to policyholders.

Insurance Code §2210.6136 requires the association to repay premium surcharges and member assessments used to pay class 2 public securities. Section 5.4127 requires the association to collect and deposit funds to repay the premium surcharges and member assessments as ordered by the commissioner under §5.4126. Section 5.4148 establishes the repayment obligation trust fund, which will hold some or all of the collected repayment amounts. The association may deposit other collected repayment funds in the premium surcharge trust fund and the member assessment trust fund. The department anticipates the association will incur some administrative and accounting costs for these transactions.

The association previously considered the cost of administrative and accounting costs for collecting and depositing class 2 and class 3 revenue funds. The association considered that the activity will be similar to those necessary to comply with §5.4111 of this title and estimated the cost of the activity to be $5,000 per year. The department anticipates that the requirements for collecting and depositing the funds collected under §5.4147 will be similar to those for collecting and depositing the other funds, and estimates the cost of the activity to be $5,000 per year. The department further estimates that this cost will not change over the first five year period this proposal is to be in effect.

§5.4136. Insurance Code §2210.355 requires the association to consider the cost of class 1 public securities in its rates. Section 5.4136 establishes the information and analysis that the association must submit to comply with Insurance Code §2210.355. Section 5.4136 further extends this requirement to the net premium that the association uses to repay premium surcharges and member assessments under §5.4126 and Insurance Code §2210.6136. In response to a department request, the association estimated that the additional cost of preparing this information and analysis will be negligible. The department anticipates that an actuary will work approximately two hours to prepare this information and analysis. The department estimates that this requirement will result in an approximate cost of $200 to the association, which employs an actuary. The department further estimates that this cost will not change over the first five year period this proposal is in effect.

§5.4143 and §5.4146. Section 5.4143 and §5.4146 concern how the amounts collected from premium surcharges and member assessments are deposited. The association is required to deposit the collected revenue in the appropriate trust fund. Insurance Code §2210.609, as amended by HB 3, creates distinct revenue trust accounts for the premium surcharges and member assessments. These rule sections require the association to deposit premium surcharges and member assessments into the appropriate trust accounts. The rules also provide that insurers may direct deposit the funds. If insurers are required to direct deposit, the association must provide notice of the direct deposit requirement to insurers.

In response to a department request, the association estimated the cost of complying with the notice requirement contained in these rules to be $5,000 based on the cost of printing and postage. The association stated that if insurers are not required to direct deposit, the association will establish a process to manually deposit the checks into the appropriate trust funds. The association stated that the costs associated with manually depositing the funds will be negligible, but that direct deposit is a better control for collecting and depositing the funds.

Repayment of premium surcharges and member assessments. Insurance Code §2210.6136 requires insurers to collect premium surcharges and pay member assessments to pay for class 2 public securities. This proposal does not affect existing requirements for the collection of premium surcharges and payment of member assessments. Additional costs will result from the requirement to repay premium surcharges to the insurer's policyholders. Member assessments will simply be repaid to the insurer or insurer group that paid them and will result in no measurable additional administrative cost for the insurer.

As indicated in §5.4127, the term "insurer" in this context is the same as that defined in §5.4172 of this title. The term applies to insurers that write lines in the catastrophe area that are subject to the premium surcharge. This includes the association. The

repayment costs apply to the association and are in addition to the association's administrative costs previously discussed.

Section 5.4128 specifies that the repayment must be made within 90 days after the insurer receives a distribution from the association. To comply with this requirement, the insurer must identify all policyholders who paid premium surcharges during the period specified in the association's distribution. The insurer must track premium surcharges that will be repaid separately from premium surcharges that will not be repaid. Both types of surcharges will be collected during the same periods. Section 5.4128 does not specify how the repayment will be made. The insurer will have options for compliance within that period, particularly if the policyholder is still a customer of the insurer.

Overall, the department anticipates that the repayment of premium surcharges will involve managerial and staff personnel, office space, and equipment. Some systems, including electronic systems, may need to be developed or updated to complete these functions. The department anticipates that compliance will require additional systems programming to the insurers' accounting, billing, and policy systems. This involves information technology costs, including programmers, software engineers, database managers, and computer support specialists.

The department anticipates the cost will vary significantly between insurers, in part based on the number of lines the insurer writes that are subject to the premium surcharge, the number of policyholders for these lines that the insurer has in the catastrophe area, and the insurer's current systems and procedures. Further, the insurer will have to develop systems for transmitting the repayment to its policyholders, including former policyholders.

In response to a department request, the association estimated that the additional costs to develop the systems and procedures necessary to repay its policyholder's premium surcharges will be $100,000 for the first year of implementation and that each succeeding year, it will cost the association $20,000 to maintain. Based on this analysis and the association's estimate, the department estimates the cost for compliance with the premium surcharge repayment requirement will be from several tens of thousands of dollars to several hundreds of thousands of dollars. The department estimates that the cost will not change over the first five year period this proposal is in effect. The department notes that these costs will follow the issuance of class 2 public securities under Insurance Code §2210.6136, which may not occur during that period.

Because the administrative cost of tracking policyholders over the course of several years may be costly and burdensome, §5.4127 provides insurers with the alternative of paying the premium surcharge on behalf of its policyholder. The insurer will then receive the repayment. The insurer will still need to identify which policy it paid the premium surcharge on, but it will not need to track the policyholder for repayment. Because this option is not required, it is not included as a cost of this proposal. Each insurer will make a business decision as to the best means to comply with the repayment requirement.

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

As specified in the Public Benefit and Cost Note section of this proposal, the proposal has an economic impact on the association and insurers that write lines of insurance that are subject to the premium surcharge.

The association. The association does not meet the definition of a small business under Government Code §2006.001(2). The association is a statutorily created association of property insurers, not a corporation, partnership, nor sole proprietorship. It is not formed for the purpose of making a profit. The association is not independently owned and operated. Further, the association has approximately 150 employees (including employees who are providing services by contract to the Texas Fair Access to Insurance Requirements Plan Association (FAIR Plan)) and net receipts well over $6 million. Based on these factors, the association does not meet the definition of a small or micro business under Government Code §2006.001(1) and (2), and an analysis of the economic impact of this proposal on the association under Government Code §2006.002(c) is not required.

Insurers. As discussed in the Public Benefit and Cost Note section of this proposal, it is anticipates that insurers subject to §5.4127 and §5.4128 will also be subject to additional costs from the adoption and enforcement of those proposed sections. The costs will arise from the requirement to repay premium surcharges to the insurer's policyholders under those sections and Insurance Code §2210.6136.

As discussed in the Public Benefit and Cost Note section of this proposal, the term "insurer" has the same meaning as defined in §5.4172 of this title. Insurer refers to each property and casualty insurer authorized to engage in the business of property and casualty insurance in the State of Texas and an affiliate of the insurer, as described by Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property and casualty insurance in the State of Texas, the association, and the FAIR Plan. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange. This includes some insurers that qualify as small and micro businesses.

The department has determined that §5.4127 and §5.4128 may have an adverse economic effect on insurers operating as small or micro businesses. The department, in compliance with Government Code §2006.002(c-1), considered the following alternative methods of achieving the purpose of the proposed rule, while reducing costs to insurers operating as small and micro businesses: reduce or eliminate the notice requirement.

The department considered allowing insurers to pay that portion of the premium surcharge that is subject to the repayment on behalf of their policyholder. This will eliminate the need for the insurer to distribute funds to the policyholder in the future, which may be burdensome if the customer is no longer a policyholder. The department considers this option to be reasonable and included it in the proposal for all insurers.

The department considered requiring the association to directly repay other insurers' policyholders. The department determined that this procedure will be impractical, because the association does not have access to up-to-date billing and location information, and the insurer will be required to transfer significant amounts of personal financial information to the association. Without current information, the association will be required to contact the insurer to make the payment. To facilitate the refund, the insurer will have to design systems to make the information readily available to the association. Further, if a question over the premium surcharge or repayment amount arose, the insurer will still be required to maintain a record of the collection and transmittal information to resolve the inquiry or dispute. Finally, Insurance Code §2210.6136 does not indicate that the legislature intended that policyholders will be compelled to provide their personal financial information to the association to obtain repayment of the premium surcharge they paid. The department determined that a requirement for the association to directly repay the policyholders of small and micro businesses is not practical.

The department considered waiving the repayment requirement for small and micro businesses. Insurance Code §2210.6136 requires repayment and does not make exception for the insurer's size. The department considers that waiving the repayment requirement is not consistent with the statute because it will discriminate against policyholders of small and micro businesses.

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

REQUEST FOR PUBLIC COMMENT. To have your comments considered, you must submit written comments on the proposal no later than 5 p.m., Central time on March 10, 2014. You may send your comments electronically to the Chief Clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit your comments by email to Brian Ryder in the Property and Casualty Actuarial Office at Brian.Ryder@tdi.texas.gov, or by mail to Brian Ryder, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No. 2764 scheduled for March 3, 2014, at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The hearing will reconvene under the same docket number on March 5, 2014, at 9 a.m. in Ballrooms B and C at Texas A&M University - Corpus Christi, 6300 Ocean Drive, Corpus Christi, Texas. The commissioner will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes the new and amended sections under Insurance Code §§2210.008, 2210.056, 2210.071, 2210.072, 2210.073, 2210.074, 2210.151, 2210.152, 2210.604, 2210.608, 2210.609, 2210.611, 2210.612, 2210.613, 2210.6135, 2210.6136, and 36.001. Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 2210.056 establishes the allowable uses for the association's assets. Section 2210.071 provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses must be paid as provided by Insurance Code Chapter 2210, Subchapter B-1. Section 2210.072 authorizes the association to use the proceeds of class 1 public securities before, on, or after an occurrence or series of occurrences and establishes the maximum principal amount of class 1 public securities that may be issued before, on, or after an occurrence or series of occurrences to pay losses not paid under Insurance Code §2210.071. Section 2210.072 also authorizes the association to enter into financing arrangements with any market source so that the association can pay losses and obtain public securities.

Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.072, and establishes the maximum principal amount of class 2 public securities. Section 2210.074 authorizes the association to use the proceeds of class 3 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.073, and establishes the maximum principal amount of class 3 public securities.

Section 2210.151 authorizes the commissioner to adopt the association's plan of operation to provide Texas windstorm and hail insurance coverage in the catastrophe area by rule. Section 2210.152 requires that the association's plan of operation provide for the efficient, economical, fair, and nondiscriminatory administration of the association and include both underwriting standards and other provisions that the department considers necessary to implement the purposes of Insurance Code Chapter 2210.

Section 2210.604 requires commissioner approval of the association's request to TPFA to issue class 1, class 2, or class 3 public securities prior to issuance. Section 2210.608 provides for how the association may use public security proceeds and excess public security proceeds. Section 2210.609 provides that the association must repay all public security obligations from available funds, and if those funds are insufficient, revenue collected under Insurance Code §§2210.612, 2210.613, 2210.6135, and 2210.6136. Section 2210.609 further provides that the association must deposit all revenue collected under §§2210.612, 2210.613, and 2210.6135 in the obligation revenue fund, premium surcharge obligation revenue fund, and the member assessment obligation revenue fund.

Section 2210.611 establishes that for class 2 public securities the association may use premium surcharge revenue and member assessment revenue collected under Insurance Code §2210.613, in any calendar year that exceeds the amount of the class 2 security obligations and public security administrative expenses payable in that calendar year and interest earned on those funds to: (i) pay the applicable public security obligations payable in the subsequent year; (ii) redeem or purchase outstanding public securities; or (iii) make a deposit in the CRTF. Section 2210.611 further establishes that the association may handle member assessment revenue collected under Insurance Code §2210.6135 in any calendar year that exceeds the amount of the class 3 security obligations and public security administrative expenses payable in that calendar year, and interest

earned on the those funds in the same manner as the excess class 2 amounts.

Section 2210.612 provides that the association must pay class 1 public securities issued under §2210.072 from its net premium and other revenue. Section 2210.613 provides that the association must collect premium surcharges and member assessments to pay class 2 public securities issued under §2210.073. Section 2210.6135 provides that the association collect member assessments to pay class 3 public securities issued under Section 2210.074.

Section 2210.6136 provides that if all or any part of the class 1 public securities cannot be issued, the commissioner may order the issuance of class 2 public securities. Section 2210.6136 further provides that the commissioner will order the association to repay the premium surcharges and member assessments used to pay the cost of a portion of the class 2 public securities issued under this section.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code §§2210.151, 2210.152, 2210.056, 2210.071, 2210.072, 2210.073, 2210.074, 2210.151, 2210.152, 2210.259, 2210.355, 2210.452, 2210.453, 2210.604, 2210.608, 2210.609, 2210.611, 2210.612, 2210.613, 2210.6135, and 2210.6136.

§5.4101. Applicability.

(a) Sections 5.4101, 5.4102, 5.4111 - 5.4114, 5.4121, 5.4123 - 5.4128, 5.4133 - 5.4136 [~~5.4131 - 5.4134~~], and 5.4141 - 5.4149 [~~5.4147~~] of this division are a part of the Texas Windstorm Insurance Association's Plan of Operation [~~plan of operation~~] and will [~~shall~~] control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation). If a court of competent jurisdiction holds that any provision of this division is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of the sections in this division will [~~shall~~] remain in effect.

(b) Notwithstanding any provision in this subchapter, the Department [~~department~~] retains regulatory oversight of the Association as required by [~~the~~] Insurance Code Chapter 2210, including periodic examinations of the accounts, books, and records of the Association, and no provision in this subchapter should be interpreted as negating or limiting the Department [~~department~~] regulatory oversight of the Association.

§5.4102. Definitions.

The following words and terms when used in this division will [~~shall~~] have the following meanings unless the context clearly indicates otherwise:

(1) Association--Texas Windstorm Insurance Association.

(2) Association Program [~~program~~]--The funding of any or all of the purposes authorized to be funded with the Public Securities under Insurance Code Chapter 2210, Subchapter M[~~, Chapter 2210, Insurance Code~~].

(3) Authorized Representative of the Department [~~representative of the department~~]--Any officer or employee of the Department [~~department~~], empowered to execute instructions and take other necessary actions on behalf of the Department [~~department~~] as designated in writing by the Commissioner [~~commissioner~~].

(4) Authorized Representative of the Trust Company [~~representative of the trust company~~]--Any officer or employee of the Comptroller [~~comptroller~~] or the Trust Company [~~trust company~~] who is designated in writing by the Comptroller [~~comptroller~~] as an authorized representative.

(5) Budgeted Operating Expenses [~~operating expenses~~]--All operating expenses as budgeted for and approved by the Association's Board of Directors, excluding expenses related to Catastrophic Losses [~~catastrophic losses~~].

(6) Catastrophe Area [~~area~~]--A municipality, a part of a municipality, a county, or a part of a county designated by the Commissioner [~~commissioner~~] under [~~the~~] Insurance Code §2210.005.

(7) Catastrophe Reserve Trust Fund (CRTF)--A statutorily created trust fund established with the Trust Company [~~trust company~~] under Insurance Code Chapter 2210, Subchapter J [~~of Chapter 2210, Insurance Code~~].

(8) Catastrophic Event [~~event~~]--An occurrence or a series of occurrences in a Catastrophe Area [~~catastrophe area~~] resulting in insured Losses [~~losses~~] and operating expenses of the Association in excess of Premium [~~premium~~] and Other Revenue [~~other revenue~~] of the Association.

(9) Catastrophic Losses [~~losses~~]--Losses resulting from a Catastrophic Event [~~catastrophic event~~].

(10) Class 1 Payment Obligation--The contractual amount of Net Premium and Other Revenue that the Association must deposit in the Obligation Revenue Fund at specified periods for the payment of Class 1 Public Security Obligations, Public Security Administrative Expenses, and Contractual Coverage Amount as required by class 1 public security agreements.

(11) [~~(10)~~] Class 1 Public Securities [~~public securities~~]--A debt instrument or other public security that TPFA may issue as authorized [~~to be issued by the TPFA~~] under Insurance Code §2210.072 and Insurance Code Chapter 2210, Subchapter M [~~of Chapter 2210, Insurance Code~~].

(12) [~~(11)~~] Class 2 Public Securities [~~public securities~~]--A debt instrument or other public security that TPFA may issue as authorized [~~to be issued by the TPFA~~] under [~~the~~] Insurance Code §2210.073 and Insurance Code Chapter 2210, Subchapter M [~~of Chapter 2210, Insurance Code~~].

(13) [~~(12)~~] Class 3 Public Securities [~~public securities~~]--A debt instrument or other public security that TPFA may issue as authorized [~~to be issued by the TPFA~~] under [~~the~~] Insurance Code §2210.074 and Insurance Code Chapter 2210, Subchapter M [~~of Chapter 2210, Insurance Code~~].

(14) [~~(13)~~] Commercial Paper Notes [~~paper notes~~]--A debt instrument that the Association may issue as a financing arrangement or that TPFA may issue as any class of [~~type of class 1~~] public security [~~issued by the TPFA~~].

(15) [~~(14)~~] Commissioner--Commissioner of Insurance of the State of Texas.

(16) [~~(15)~~] Comptroller--Comptroller of the State of Texas.

(17) [~~(16)~~] Contractual Coverage Amount [~~coverage amount~~]--Minimum amount over scheduled debt service that the Association is required to deposit in [~~into~~] the applicable public security obligation revenue fund, Premium Surcharge Trust Fund, or Member Assessment Trust Fund as security for the payment of debt service on the public securities, administrative expenses on public securities, or

other payments the Association must pay [~~required to be paid by the Association~~] in connection with public securities.

(18) [~~(17)~~] Credit Agreement [~~agreement~~]--An [~~A loan~~] agreement described by Government Code Chapter 1371 that TPFA may issue as authorized under Insurance Code Chapter 2210, Subchapter M[~~, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase obligations, purchase or sale agreement, interest rate management agreement, or other commitment or agreement authorized by the TPFA in anticipation of, related to, or in connection with the authorization, issuance, sale, resale, security, exchange, payment, purchase, remarketing, or redemption of some or all of its public security obligations or interest on public security obligations, or both, or as otherwise authorized by Chapter 1371 of the Government Code~~].

(19) [~~(18)~~] Department--Texas Department of Insurance.

(20) Earned Premium--That portion of Gross Premium that the Association has earned because of the expired portion of the time for which the insurance policy has been in effect.

(21) [~~(19)~~] Financing Agreement [~~arrangement~~]--An agreement between the Association and [~~with~~] any market source under which the market source makes interest-bearing loans or provides other financial instruments to the Association to enable the Association to pay Losses [~~losses~~] or obtain public securities under [~~the~~] Insurance Code §2210.072.

(22) [~~(20)~~] Gross Premium [~~premiums~~]--The amount of Premium the Association receives, less Premium returned to policyholders for canceled or reduced policies. [~~premium received by the Association. The term does not include premium surcharges collected by the Association pursuant to the Insurance Code §2210.259 and §2210.613.~~]

(23) [~~(21)~~] Investment Income [~~income~~]--Income [~~received by the Association~~] from the investment of funds [~~held by or for the benefit of the Association~~].

(24) [~~(22)~~] Letter of Instruction [~~instruction~~]--The Commissioner's or authorized Department representative's signed written [~~Written~~] authorization and direction to an Authorized Representative of the Trust Company [~~authorized representative of the trust company, which is signed by the commissioner or an authorized representative of the department~~].

(25) [~~(23)~~] Losses--Amounts paid or expected to be paid on Association insurance policy claims, including adjustment expenses, litigation expenses, [~~and~~] other claims expenses, and other amounts that are incurred in resolving a claim for indemnification under an Association insurance policy.

(26) Member Assessment Trust Fund--A dedicated trust fund established by TPFA and held by the Trust Company in which the Association or assessed insurers must deposit member assessments collected under Insurance Code §2210.613 and §2210.6135. The Member Assessment Trust Fund may be segregated into separate funds, accounts, or subaccounts, including for the purpose of segregating class 2 and class 3 public security member assessments.

(27) [~~(24)~~] Net Gain from Operations [~~gain from operations~~]--Net income reported during [~~The gain from operations, for~~] a calendar year equal to the amount of [~~or policy year as the case may be including~~] all Earned Premium, Other Revenue [~~earned premium, and other revenue~~] of the Association, and distributions of excess revenues from the Obligation Revenue Fund and the Repayment Obligation Trust Fund that are in excess of incurred Losses [~~losses~~], operating expenses, reinsurance premium, current year financial arrangement obligations, current year Class 1 Payment Obligations, current year Public Security Administrative Expenses, and Premium Surcharge and Member Assessment Repayment Obligations. [~~and amounts to satisfy in whole or in part the obligations of the Association incurred in connection with the Insurance Code Chapter 2210, Subchapters B-1, J, and M, including reinsurance, public securities and financial instruments.~~]

(28) Net Premium--Gross Premium less Unearned Premium. Following the issuance of public securities, Net Premium is pledged for the payment of Class 1 Payment Obligation.

(29) [~~(25)~~] Net Revenues--Net Premium [~~Gross premiums received by the Association from policyholders,~~] plus Other Revenue, [~~other revenue, less unearned premium,~~], less Scheduled Policy Claims [~~scheduled policy claims~~], less budgeted operating expenses, less Class 1 Payment Obligation for that calendar year, less Premium Surcharge and Member Assessment Repayment Obligation for that calendar year, and less amounts necessary to fund or replenish any Operating Reserve Fund [~~the operating reserve fund~~].

(30) Obligation Revenue Fund--The dedicated trust fund established by TPFA and held by the Trust Company in which the Association must deposit Net Premium and Other Revenue for the payment of Class 1 Payment Obligation.

(31) [~~(26)~~] Operating Reserve Fund--Association or Trust Company held fund [~~The amount budgeted each year by the Association~~] for the payment of budgeted Scheduled Policy Claims [~~scheduled policy claims~~] and budgeted operating expenses [~~divided by four~~].

(32) [~~(27)~~] Other Revenue--Revenue of the Association from any source other than Premium [~~premiums~~]. Other Revenue [~~revenue~~] includes Investment Income [~~investment income~~] on Association assets. Other Revenue[~~; but other revenue~~] does not include premium surcharges and member assessments collected under [~~pursuant to the~~] Insurance Code §§2210.259, 2210.613, 2210.6135, and 2210.6136 and interest income on those amounts [~~§2210.259, premiums surcharges collected from Association policyholders and other insurers under the Insurance Code §2210.613, Association member assessments collected under the Insurance Code §2210.613 and §2210.6135, and investment income on premium surcharges and member assessments collected under the Insurance Code §§2210.259, 2210.613, and 2210.6135~~].

(33) [~~(28)~~] Plan of Operation [~~operation~~]--The Association's Plan of Operation [~~plan of operation~~] as adopted by the Commissioner under Insurance Code [~~commissioner pursuant to~~] §2210.151 and §2210.152 [~~of the Insurance Code~~].

(34) Premium--Amounts received in consideration for the issuance of Association insurance coverage. The term does not include premium surcharges collected by the Association under Insurance Code §§2210.259, 2210.613, and 2210.6136.

(35) Premium Surcharge and Member Assessment Repayment Obligation--The amount of premium surcharge and member assessment that the Commissioner has ordered the Association to repay under §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities).

(36) Premium Surcharge Trust Fund--The dedicated trust fund established by TPFA and held by the Trust Company in which the Association or insurers must deposit premium surcharges collected under Insurance Code §2210.613.

(37) [~~(29)~~] Public Securities--Collective reference to Class 1 Public Securities, Class 2 Public Securities, and Class 3 Public Se-

curities [~~class 1 public securities, class 2 public securities, and class 3 public securities~~].

(38) Public Security Administrative Expenses--Expenses incurred by the Association, TPFA, or TPFA consultants to administer public securities issued under Insurance Code Chapter 2210, including fees for credit enhancement, paying agents, trustees, attorneys, and other professional services.

(39) [~~(30)~~] Public Security Obligations [~~security obligations~~]--The principal of a public security and any premium and interest on a public security issued under Insurance Code Chapter 2210, Subchapter M [~~this subchapter~~], together with any amount owed under a related Credit Agreement [~~credit agreement~~].

(40) Repayment Obligation Trust Fund--The dedicated trust fund that the Trust Company holds in which the Association deposits Net Premium and Other Revenue that is not contractually required for the Class 1 Payment Obligation in amounts necessary to comply with the Commissioner's order under §5.4126 of this division for payment of the Premium Surcharge and Member Assessment Repayment Obligation.

(41) [~~(31)~~] Scheduled Policy Claims--That portion of the Association's Earned Premium [~~earned premium~~] and Other Revenue [~~other revenue~~] expected to be paid in connection with the disposition of Losses [~~losses~~] that do not result from a Catastrophic Event [~~catastrophic event~~].

(42) [~~(32)~~] Trust Company--The Texas Treasury Safekeeping Trust Company managed by the Comptroller under [~~comptroller pursuant to the~~] Government Code §404.101, et seq.

(43) [~~(33)~~] Trust Company Representative--Any individual employed by the Trust Company who is designated by the Trust Company [~~trust company~~] as its authorized representative for purposes of any agreement related to the Catastrophe Reserve Trust Fund [~~catastrophe reserve trust fund~~] or the public securities.

(44) [~~(34)~~] TPFA--Texas Public Finance Authority.

(45) [~~(35)~~] Unearned Premium--That portion of Gross Premium [~~gross premiums~~] that has been collected in advance for insurance that the Association has not yet [~~been~~] earned [~~by the Association~~] because of the unexpired portion of the time for which the insurance policy has been in effect.

§5.4121. Financing Arrangements.

(a) The Association may enter into financing arrangements. The financing arrangement must:

(1) enable the Association [~~association~~] to:

(A) pay Losses [~~losses~~] under [~~the~~] Insurance Code §2210.072; or

(B) obtain public securities under [~~the~~] Insurance Code §2210.072; and[~~.~~]

(2) be approved by the Association's board of directors before [~~prior to~~] the Association enters [~~entering~~] into the financing arrangement.

(b) The Association may pay a financing arrangement with any or all:

(1) Net Premium [~~premiums~~] and Other Revenue [~~other revenue~~] of the Association that is not required for payment of Class 1 Payment Obligations or Premium Surcharge and Member Assessment Repayment Obligations;

(2) - (3) (No change.)

(4) the proceeds of any class of public security issued under Insurance Code Chapter 2210; or [~~and~~]

(5) (No change.)

(c) As collateral security for such financial arrangements, including interest bearing loans or other financial instruments, the Association may grant in favor of the applicable market source a collateral assignment and security interest in and to all or any portion of the Association's assets, including without limitation, all or any portion of the Association's right, title, and interest in and to all proceeds of any class of public security issued under Insurance Code Chapter 2210 [~~or all class 1 public securities, including commercial paper notes, class 2 public securities, and/or class 3 public securities, with the priority of each such collateral assignment and security interest, whether first or secondary, to be determined by the Association in its discretion~~].

§5.4123. Public Securities Request, Approval, and Issuance.

(a) The Association's board of directors must request the issuance of public securities as prescribed in §§5.4124 - 5.4126 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event; Issuance of Public Securities after a Catastrophic Event; and Alternative for Issuing Class 2 and Class 3 Public Securities).

(1) The request must be submitted to the Commissioner for approval with all required supporting documentation prescribed in §§5.4124 - 5.4126 of this division.

(2) The Association's board of directors may request public securities as often as necessary.

(3) If multiple classes of public securities are combined into a single request, the request must separately identify and provide supporting documentation for the issuance of each class of public securities.

(4) The Association's board of directors may submit a request for the issuance of public securities to be issued after a Catastrophic Event at any time. If the request for the issuance of public securities after a Catastrophic Event is submitted before a Catastrophic Event, the Association's request must specify that the requested public securities may only be issued after a Catastrophic Event.

(b) The Commissioner must approve the request before TPFA may issue the requested public securities.

(1) If the supporting documentation is incomplete, the Commissioner or the Department may request additional documentation without rejecting the request.

(2) In considering the Association's request, the Commissioner may rely on any statements or notifications of definitive or estimated Losses, Association revenue, reinsurance proceeds, and any other related or supporting information from any source, including from the general manager of the Association and from TPFA and its consultants and legal counsel.

(3) If the Commissioner disapproves the request, the Association's board of directors may reconsider the matter and submit another request under subsection (a) of this section.

(4) The Department must provide the Commissioner's written approval of the request to the Association and TPFA.

(c) Following the Commissioner's written approval of the request, TPFA may issue public securities and Credit Agreements on behalf of the Association, as authorized in Insurance Code Chapter 2210 and §§5.4124 - 5.4126 of this division, for the issuance, reissuance, refinancing, and payment of Public Security Obligations and Public Security Administrative Expenses.

(d) The Association must provide to the Department and the Commissioner any requested information concerning public securities or the pending issuance of public securities, including information TPFA, a TPFA consultant, or TPFA legal counsel provides to the Association.

(e) A request for issuance of public securities under subsection (a) of this section includes a request for the reissuance and refinancing of Public Security Obligations.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event.

(a) The Association's board of directors may request that TPFA issue Class 1 Public Securities before a Catastrophic Event, if the Association's board of directors determines that Class 1 Public Security proceeds may become necessary and the Commissioner approves the request.

(b) The Association must submit its board of directors' written request under subsection (a) of this section to the Commissioner. The request must include the following information:

(1) the reason why the requested Class 1 Public Securities may become necessary;

(2) the amount of Premium and Other Revenue that the Association expects will be available to pay loss claims in the current calendar year;

(3) reinsurance coverage that the Association expects will be available to pay claims in the current calendar year;

(4) the amount in the CRTF that the Association expects will be available to pay loss claims in the current calendar year;

(5) the principal amount of Class 1 Public Securities that are authorized and available to be issued before a Catastrophic Event, and that are requested;

(6) the estimated amount of debt service for the public securities, including any Contractual Coverage Amount and Public Security Administrative Expenses;

(7) the structure and terms of the public securities, including any terms that may change as a result of a Catastrophic Event or the use of any proceeds of Class 1 Public Securities issued before a Catastrophic Event;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis);

(10) a three-year pro forma financial statement consisting of a balance sheet, income statement, and a statement of cash flows, reflecting the financial impact of issuing Class 1 Public Securities before a Catastrophic Event that assumes the proceeds will be used in the event of a catastrophe; and

(11) any other relevant information requested by the Commissioner.

(c) The Association may make one or more requests under this section.

(d) The Association may request Class 1 Public Securities up to an aggregate principal amount not to exceed $1 billion outstanding at any one time, regardless of the calendar year or years in which the securities are issued, except that Class 1 Public Securities that are issued before a Catastrophic Event and that have been used to pay for insured Losses or expenses will not continue to count against the combined $1 billion aggregate limit described in this subsection. This section does not authorize the Association to request Class 1 Public Securities in an amount in excess of the catastrophe year limit prescribed in §5.4125(c) of this division (relating to Issuance of Public Securities after a Catastrophic Event).

§5.4125. Issuance of Public Securities after a Catastrophic Event.

(a) As provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and subject to the Commissioner's approval, the Association's board of directors may request that TPFA issue public securities after a Catastrophic Event has occurred. The Association's board of directors may make the request:

(1) after the Catastrophic Event if the Association's board of directors determines that actual Catastrophic Losses are estimated to exceed available money in the CRTF and available reinsurance proceeds, and that the public security proceeds are necessary to fund the Catastrophic Losses; or

(2) before the Catastrophic Event if the Association's board of directors determines that public security proceeds may become necessary to fund potential Catastrophic Losses. This paragraph does not affect the requirements for issuing public securities that are issued after a Catastrophic Event or the use of proceeds from public securities issued after a Catastrophic Event.

(b) The Association must submit its board of directors' written request under subsection (a) of this section to the Commissioner. The request must include the following information:

(1) an estimate of the actual, or potential, Losses and expenses from the Catastrophic Event;

(2) the Association's current Premium and Other Revenue;

(3) the Association's current Net Revenues;

(4) the sources and amount of loss funding other than public securities, including:

(A) the amount of the loss paid from Premium and Other Revenue;

(B) the amount requested from the CRTF;

(C) amounts available from other financing arrangements, and the Association's obligations for other financing arrangements, including whether such amounts must be repaid from public security proceeds or from other means; and

(D) available reinsurance proceeds;

(5) the principal amount of each requested class of public securities that is authorized and available to be issued and that is requested;

(6) the estimated costs associated with each requested amount and class of public securities under this section, including any contractual coverage requirement and Public Security Administrative Expenses;

(7) the structure and terms of the public securities;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis); and

(10) any other relevant information requested by the Commissioner.

(c) For each class of public securities requested under this section, the Association must determine and submit as part of its request the authorized amount of public securities. This amount must be the lesser of:

(1) the statutorily authorized principal amount for that class, less any principal amount of that class of public security that was issued in the catastrophe year, less, in the case of Class 1 Public Securities, the proceeds of Class 1 Public Securities issued under §5.4124 of this division (relating to issuance of Class 1 Public Securities before a Catastrophic Event) that were available for a Catastrophic Event at the beginning of the catastrophe year for which the Class 1 Public Securities are requested under this section; or

(2) the amount of the estimated loss, and estimated costs including the costs associated with the issuance of that class of public security.

(d) The Association must request, in aggregate for each catastrophe year:

(1) the statutorily authorized principal amount of Class 1 Public Securities before Class 2 Public Securities may be requested; and

(2) the statutorily authorized principal amount of Class 2 Public Securities before Class 3 Public Securities may be requested.

(e) The Association:

(1) may make one or more requests under this section;

(2) may, following a Catastrophic Event, request the issuance of Class 1 Public Securities under this section, before the exhaustion of any remaining proceeds from Class 1 Public Securities issued before a Catastrophic Event;

(3) must deplete the proceeds of any outstanding Class 1 Public Securities issued before a Catastrophic Event before using the proceeds of Class 1 Public Securities requested under this section; and

(4) may request the issuance of Class 2 and Class 3 Public Securities under this section, before the exhaustion of all Class 1 or Class 2 Public Security proceeds.

§5.4126. Alternative for Issuing Class 2 and Class 3 Public Securities.

(a) If all or any portion of the authorized principal amount of Class 1 Public Securities requested under §5.4125 of this division (relating to Issuance of Public Securities after a Catastrophic Event) cannot be issued based on the factors described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis), the Commissioner may order the issuance of Class 2 and Class 3 Public Securities as provided in by this section.

(b) In its request to the Commissioner to order issuance of public securities under this section, the Association must submit the following information:

(1) the information required by §5.4125(b) of this division; and

(2) information based on the analyses described in §5.4135 of this division;

(3) the amount of Class 1 Public Securities that can be issued;

(4) the amount of Class 1 Public Securities that cannot be issued; and

(5) the specific reasons, market conditions, and requirements that prevent TPFA from issuing all or any portion of the authorized principal amount of Class 1 Public securities. The Association may rely on information and advice provided by TPFA, TPFA consultants, TPFA legal counsel, and third parties retained by the Association for this purpose.

(c) The Association must request that TPFA issue the authorized principal amount of Class 1 Public Securities that can be issued under §5.4125(c) of this division before Class 2 Public Securities may be issued under this section.

(d) The Commissioner may rely on information provided to the Commissioner under this section, §5.4125 of this division, and from any other source, including information and advice provided by the Association, TPFA, TPFA consultants, and TPFA legal counsel. If the Commissioner finds that all or any portion of the authorized amount of Class 1 Public Securities cannot be issued, the Commissioner may order the issuance of Class 2 Public Securities in an amount that does not exceed the authorized principal amount of Class 2 Public Securities as determined in §5.4125(c) of this division.

(e) The order must specify:

(1) the maximum principal amount of Class 2 Public Securities that are to be issued;

(2) the information and amount required under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments);

(3) the maximum term of the Class 2 Public Securities;

(4) when the Association is to begin collecting funds under this section for deposit in the Repayment Obligation Trust Fund;

(5) the Premium Surcharge and Member Assessment Repayment Obligation; and

(6) the year repayment begins under §5.4128 of this division (relating to Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers).

(f) The Commissioner may revise an order issued under this section as necessary if the Association prepays amounts due or to maintain the Association's ability to fund the Class 1 Payment Obligations or other Association obligations, including Losses.

(g) TPFA may issue the Class 2 Public Securities authorized by the Commissioner's order under this section. TPFA may issue the Class 2 Public Securities that are subject to §5.4127(b) of this division as a separate series from other Class 2 Public Securities.

(h) If Class 2 Public Securities are issued in the manner authorized under this section, Class 3 Public Securities may be issued only after Class 2 Public Securities have been issued in the statutorily authorized principal amount of $1 billion for that catastrophe year. Despite the restriction on issuing Class 3 Public Securities in this subsection, the Association may request, the Commissioner may approve, and TPFA may prepare for the issuance of Class 3 Public Securities before the issuance of all Class 2 Public Securities. Class 3 Public Securities must be requested as provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and §5.4125 of this division.

§5.4127. Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments.

(a) All Public Security Obligations and Public Security Administrative Expenses for Class 2 Public Securities issued under §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities) must be paid 30 percent from member assessments and 70 percent from premium surcharges on those Catastrophe Area insurance policies subject to premium surcharge under Insurance Code §2210.613.

(1) For purposes of the premium surcharge, in this section and §5.4128 of this division (relating to Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers), the term "insurer" has the meaning that is defined in §5.4172 of this division (relating to Premium Surcharge Definitions).

(2) The Association must collect and deposit the member assessments and premium surcharges as directed in §§5.4143 - 5.4146 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities; Excess Class 2 Premium Surcharge Revenue; Excess Class 2 Member Assessment Revenue; and Member Assessment Trust Fund for the Payment of Class 3 Public Securities).

(b) The Commissioner's order described in §5.4126(d) and (e) of this division must require the Association to repay the cost of the Class 2 Public Securities issued under subsection (a) of this section in an amount equal to the lesser of:

(1) $500 million total principal amount, plus any costs associated with that amount; or

(2) that portion of the total principal amount of Class 1 Public Securities authorized to be issued as described in §5.4125 of this division (relating to Issuance of Public Securities after a Catastrophic Event) that cannot be issued, plus any costs associated with that portion.

(c) The Association must repay the costs under subsection (b) of this section by repaying the amount of premium surcharges and member assessments that are paid, or payable, on the total principal amount, plus any costs and Contractual Coverage Amount associated with that amount.

(d) The sources of funds for the repayment required under subsection (b) of this section include:

(1) the Association's Net Premium and Other Revenue that is not contractually pledged to Class 1 Payment Obligations; and

(2) excess amounts released from the Obligation Revenue Fund that are released as described in §5.4142 of this division (relating to Excess Obligation Revenue Fund Amounts).

(e) In addition to Premium and Other Revenue amounts that the Association must collect to pay for outstanding Class 1 Payment Obligations, the Association must collect Premium and Other Revenue in an amount sufficient to repay the Premium Surcharge and Member Assessment Repayment Obligation owed under the Commissioner's order in subsection (b) of this section.

(f) Using either or both of the following methods, the Association must repay the amounts required under the Commissioner's order in subsection (b) of this section.

(1) To reduce the need for collecting premium surcharges and member assessments, the Association may deposit funds described in subsection (d) of this section in the Premium Surcharge Trust Fund, Member Assessment Trust Fund, or both funds, before the collection of any premium surcharges or member assessments.

(2) The Association may deposit funds described in subsection (d) of this section in the Repayment Obligation Trust Fund for repayment of class 2 premium surcharges and member assessments already collected.

(g) For each year in which the Association owes funds to repay member assessments or premium surcharges used to pay debt service for public securities described under subsection (b) of this section, the Association must record the following information:

(1) the amount of premium surcharges the Association owes to each insurer for that year; and

(2) the amount of member assessments the Association owes to each insurer for that year.

(h) Despite any other requirement in this division, an insurer may pay on behalf of its policyholder all or any part of a premium surcharge that is subject to repayment under this section. If the insurer makes the payment under this subsection, the insurer is entitled to repayment of that amount when the Association repays it. The insurer:

(1) may only pay the premium surcharge to pay the amounts owed for the payment of Class 2 Public Security Obligations and Public Security Administrative Expenses associated with the amount to be repaid under the Commissioner's order in subsection (b) of this section;

(2) must pay the premium surcharges for all policyholders of that insurer subject to the premium surcharge equally; and

(3) must maintain records that track the amount of premium surcharges paid to their policyholders and those not paid.

§5.4128. Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers.

(a) When providing a repayment to insurers for amounts paid for class 2 premium surcharges and member assessments, the Association must specify the surcharge and assessment period being repaid.

(b) Beginning with the year designated in the Commissioner's order described in §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities), not later than March 1 of each year the Association must direct payment of the funds held in the Repayment Obligation Trust Fund to the insurer or insurance group to which the funds are owed for repayment of premium surcharges or member assessments.

(c) Within 90 days of receipt of a premium surcharge repayment from the Association, insurers must repay to the policyholders who made the payments all amounts received from the Association. Premium surcharge repayments must be proportional to the amount of premium surcharge each insured paid in the period the Association specified in its repayment. To the extent that the insurer paid all or any portion of the premium surcharge for its policyholders as provided under §5.4127 of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), the insurer may recoup the amount it paid for the period refunded from the Association repayment as if it were the insured to whom the repayment was owed.

§5.4133. Public Security Proceeds.

(a) As necessary, the Association must [~~shall~~] make written requests to TPFA for the disbursement [~~distribution~~] of public security proceeds for the Association program, including:

(1) for the payment of incurred claims and operating expenses of the Association; or

(2) other amounts as authorized in Insurance Code §2210.608.

[~~(2) to purchase reinsurance for the Association.~~]

(b) The Association's written request must specify:

(1) the amount of the request; and

(2) the purpose of the request.

(c) To facilitate timely payment of Losses [~~losses~~], the Association may request funds to be disbursed to the Association before [~~prior to~~] the settlement of incurred claims.

(d) The Association must [~~shall~~] account for the receipt and use of public security proceeds separately from all other sources of funds. The Association may hold public security proceeds in the manner authorized by the Association's Plan of Operation [~~plan of operation~~] or as required by agreement with TPFA.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis.

(a) Marketable public securities under this division are public securities for which the Association in consultation with TPFA determines:

(1) are consistent with state debt issuance policy requirements; and

(2) achieve the goals of the Association.

(b) In determining the amount of Class 1 Public Securities that can and cannot be issued, the Association must consider:

(1) the Association's current Premium and Net Revenue;

(2) the estimated amount of debt service for the public securities, including any contractual coverage amount;

(3) the Association's obligations for outstanding Class 1 Public Securities, including contractual coverage requirements and Public Security Administrative Expenses;

(4) the estimated Premium Surcharge and Member Assessment Repayment Obligations;

(5) the Association's outstanding Premium Surcharge and Member Assessment Repayment Obligations;

(6) the Association's obligations for other financing arrangements;

(7) any conditions precedent to issuing Class 1 Public Security Obligations contained in any applicable public security financing documents;

(8) TPFA administrative rules;

(9) applicable State of Texas debt issuance policies;

(10) administrative rules of the Office of the Attorney General of Texas that require evidence of debt service and other obligation coverage; and

(11) market conditions and requirements necessary to sell marketable public securities, including issuing classes in installments.

(c) The Association may rely on the advice and analysis of TPFA, TPFA consultants, TPFA legal counsel, and third parties the Association has retained for this purpose in determining "market conditions and requirements" under subsection (b) of this section. The Association's determination may include consideration of the following factors:

(1) interest rate spreads;

(2) municipal bond ratings of the public securities;

(3) prior issuances of catastrophe related public securities in Texas or any other state;

(4) similar financings in the market within the preceding 12 months;

(5) news or other publications relating to the Association or the issuance of catastrophe-related public securities;

(6) a nationally recognized investment banking firm's confidence memorandum;

(7) legal and regulatory conditions; and

(8) any other market conditions and requirements that the Association deems necessary and appropriate.

(d) As part of each request for public securities, the Association must submit to the Commissioner a cost-benefit analysis of the various financing methods and funding structures that are available to the Association. A cost-benefit analysis must include:

(1) for public securities requested under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event):

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the Association's claim-paying capabilities, liquidity position, and other benefits associated with issuing public securities before a Catastrophic Event; and

(C) estimates of the monetary costs, benefits associated with, and the availability of funding alternatives, such as:

(i) purchasing additional reinsurance for similar funding at a similar level;

(ii) providing financing arrangements, or additional financing arrangements, that provide similar funding and at a similar layer; or

(iii) other alternative risk transfer arrangements, such as catastrophe bonds, that provide similar funding and at a similar layer;

(2) for public securities requested under this division following a Catastrophic Event:

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the Association's claim-paying capabilities and other benefits associated with issuing public securities; and

(C) the availability of alternative funding arrangements, if any, including the monetary costs and benefits associated with any available alternative funding arrangements.

§5.4136. Association Rate Filings.

While there are outstanding Class 1 Public Securities, or there are repayment obligations under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), the Association:

(1) must consider its obligations for the payment of Class 1 Public Securities and the repayment of Class 2 Public Securities, including the additional amount of any debt service coverage that the

Association determines is required for the issuance of marketable public securities in developing its rates;

(2) must include in a rate filing submitted to the Department an analysis that demonstrates that the filed rates produce Premium sufficient to provide for at least:

(A) the expected operating costs of the Association, including expected nonhurricane wind and hail Losses and loss adjustment expenses; and

(B) the expected payment of Class 1 Public Security Obligations and the expected repayment of Class 2 Public Securities, including any Contractual Coverage Amount the Association determines is required for the issuance of marketable public securities, during the period in which the rates will be in effect; and

(3) must include a cost component in the rates sufficient to at least provide for the expected payment of Class 1 Payment Obligations and the expected repayment of Premium Surcharge and Member Assessment Repayment Obligations during the period in which the rates will be in effect.

§5.4141. Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund.

(a) While Class 1 Public Securities [~~class 1 public securities~~] are outstanding, the Association must [~~all of the Association's net revenue shall be paid into the obligation revenue fund created for such class 1 public securities. The Association shall~~] deposit Net Premium and Other Revenue in [~~the required amounts in~~] the Obligation Revenue Fund [~~obligation revenue fund created for class 1 public securities~~] at [~~such~~] periods and in amounts as required by the Class 1 Public Security Agreements to fund the Class 1 Payment Obligation [~~under agreements with the TPFA~~].

(b) Without limiting other options, the Class 1 Public Security Agreements may include an Operating Reserve Fund. [~~The operating reserve fund shall be held by the Association.~~] If the Class 1 Public Securities Obligation Revenue Fund [~~class 1 public securities obligation revenue fund~~] does not contain sufficient money to pay debt service on the Class 1 Public Securities [~~class 1 public securities~~], administrative expenses on the class public securities, or other Class 1 Public Security Obligations [~~class 1 public security obligations~~], the Association must [~~shall~~] transfer sufficient money from any Operating Reserve Fund or other Association held funds [~~the operating reserve fund~~] to the Obligation Revenue Fund [~~obligation revenue fund for class 1 public securities~~] to make [~~such~~] the payment.

§5.4142. Excess [~~Class 1 Public Security~~] Obligation Revenue Fund Amounts.

(a) Excess revenue collected in the Obligation Revenue Fund [~~to fund class 1 public security obligations~~] that is disbursed to the Association is [~~shall be~~] an asset of the Association and may be used for any purpose authorized in [~~the~~] Insurance Code §2210.056, including as provided in §5.4127 of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), or deposited in [~~into~~] the CRTF [~~catastrophe reserve trust fund~~].

(b) As specified in [~~the~~] Insurance Code §2210.072(a), Class 1 Public Securities [~~class 1 public securities~~] may be repaid before their full term if the Association's board of directors elects to do so and the Commissioner [~~commissioner~~] approves it.

§5.4143. Trust Funds [~~Obligation Revenue Fund~~] for the Payment of Class 2 Public Securities.

(a) As required by any agreements between the Association, TPFA, or the Trust Company, insurers may be required to deposit premium surcharges and member assessments directly into the Premium Surcharge Trust Fund and Member Assessment Trust Fund, respectively.

(b) If insurers are required to direct deposit under subsection (a) of this section, then the Association must provide notice to the Commissioner and insurers:

(1) for premium surcharges, no later than 60 days before the insurers must implement the surcharge; and

(2) for member assessments, with the notice required under §5.4163 of this division (relating to Notice of Assessments).

(c) The notice under subsection (b) of this section must include all applicable deposit instructions, including any required routing information and account numbers.

(d) Insurers must deposit the funds into the appropriate accounts on the date the funds must otherwise be remitted to the Association under §5.4164 of this division (relating to Payment of Assessment) and §5.4186 of this division (relating to Remittance of Premium Surcharges).

(e) If insurers are not required to direct deposit under subsection (a) of this section, then the Association must deposit the collected premium surcharges and Association member assessments on receipt into the appropriate accounts as required under agreements with TPFA and the Trust Company. The Association may not directly or indirectly use, borrow, or in any manner pledge or encumber premium surcharges and Association member assessments collected, or to be collected, by the Association under Insurance Code §2210.613, except for the payment of Class 2 Public Security obligations and as otherwise authorized in this title.

(f) The Trust Company must deposit any Investment Income earned on the premium surcharges or member assessments into the appropriate trust fund accounts while these amounts are on deposit.

[~~(a) The Association shall deposit collected premium surcharges and Association member assessments pursuant to the Insurance Code §2210.613 in the obligation revenue fund created for class 2 public securities. The Association shall also deposit in that obligation revenue fund any investment income earned on the premium surcharges and Association member assessments while these amounts are held by the Association. The deposits shall be made as required under agreements with the TPFA.~~]

[~~(b) Pending deposit as required under subsection (a) of this section, the Association shall hold such collected premium surcharges and Association member assessments as required under agreements with the TPFA, or in the absence of an agreement, as required in the Association's plan of operation, including this section. Premium surcharges and Association member assessments collected by the Association pursuant to the Insurance Code §2210.613, must be held by the Association separately from all other Association funds. The Association may not directly or indirectly use, borrow, or in any manner pledge or encumber premium surcharges and Association member assessments collected, or to be collected, by the Association pursuant to the Insurance Code §2210.613.~~]

§5.4144. Excess Class 2 Premium Surcharge Revenue.

(a) Revenue collected in any calendar year from premium surcharges under [~~the~~] Insurance Code §2210.613 that exceeds the amount of Class 2 Public Security Obligations [~~class 2 public security obligations~~] and Class 2 Public Security Administrative Expenses [~~class 2 public security administrative expenses~~] payable in that calendar year from premium surcharges and interest earned on the Premium Surcharge Trust Fund deposits [~~class 2 public security obligation fund~~] may, at [~~in~~] the discretion of the Association, be:

(1) used to pay Class 2 Public Security [~~class 2 public security~~] obligations payable in the following calendar [~~subsequent~~] year, offsetting the amount of the premium surcharge that would otherwise be required to be levied for the year under [~~the~~] Insurance Code Chapter 2210, Subchapter M;

(2) used to redeem or purchase outstanding Class 2 Public Securities [~~class 2 public securities~~]; or

(3) deposited in the CRTF [~~catastrophe reserve trust fund~~].

(b) As specified in [~~the~~] Insurance Code §2210.073(a), Class 2 Public Securities [~~class 2 public securities~~] may be repaid before their full term if the Association's board of directors elects to do so and the Commissioner [~~commissioner~~] approves it.

§5.4145. Excess Class 2 Member Assessment Revenue.

(a) Revenue collected in any calendar year from a member assessment under [~~the~~] Insurance Code §2210.613 that exceeds the amount of Class 2 Public Security Obligations [~~class 2 public security obligations~~] and class 2 Public Security Administrative Expenses [~~public security administrative expenses~~] payable in that calendar year from member assessments and interest earned on the Member Assessment Trust Fund created for Class 2 Public Securities deposits may, at the discretion of the Association, [~~may~~] be:

(1) used to pay Class 2 Public Security Obligations [~~class 2 public security obligations~~] payable in the following calendar [~~subsequent~~] year, offsetting the amount of the member assessment that would otherwise be required to be levied for the year under [~~the~~] Insurance Code Chapter 2210, Subchapter M; [~~or~~]

(2) used to redeem or purchase outstanding Class 2 Public Securities; or [~~class 2 public securities.~~]

(3) deposited in the CRTF.

(b) As specified in [~~the~~] Insurance Code §2210.073(a), Class 2 Public Securities [~~class 2 public securities~~] may be repaid before their full term if the Association's board of directors elects to do so and the Commissioner [~~commissioner~~] approves it.

[~~(c) If options (1) and (2) of subsection (a) of this section have been fully satisfied, the excess member assessments may be deposited in the catastrophe reserve trust fund.~~]

§5.4146. Member Assessment Trust [~~Obligation Revenue~~] Fund for the Payment of Class 3 Public Securities.

(a) As required by any agreement between the Association, TPFA, or the Trust Company, insurers may be required to direct deposit member assessments into the Member Assessment Trust Fund.

(b) If insurers are required to direct deposit under subsection (a) of this section, then the Association must provide notice of the direct deposit requirement to the Commissioner and insurers with the notice required under §5.4163 of this division (relating to Notice of Assessments).

(c) If insurers are not required to direct deposit under subsection (a) of this section, then the Association must deposit the collected member assessments on receipt in the Member Assessment Trust Fund. The deposits must be made as required under agreements with TPFA and the Trust Company.

(d) The Trust Company must deposit in that Member Assessment Trust Fund any Investment Income earned on the member assessments while these amounts are held on deposit in the Member Assessment Trust Fund.

[~~(a) The Association shall deposit collected member assessments pursuant to the Insurance Code §2210.6135 in the obligation revenue fund created for class 3 public securities. The Association shall also deposit in that obligation revenue fund any investment income earned on the member assessments while these amounts are held by the Association. The deposits shall be made as required under agreements with the TPFA.~~]

(e) [~~(b)~~] [~~Pending deposit as required under subsection (a) of this section, the Association shall hold such collected Association member assessments as required under agreements with the TPFA, or in the absence of an agreement, as required in the Association's plan of operation, including this section. Member assessments collected by the Association pursuant to the Insurance Code §2210.6135, must be held by the Association separately from all other Association funds.~~] The Association may not directly or indirectly use, borrow, or in any manner pledge or encumber Association member assessments collected, or to be collected, by the Association under [~~pursuant to the~~] Insurance Code §2210.6135, except for the payment of Class 3 Public Security obligations and as otherwise authorized by this title.

§5.4147. Excess Class 3 Member Assessment Revenue.

(a) Revenue collected in any calendar year from a member assessment under [~~the~~] Insurance Code §2210.6135 that exceeds the amount of Class 3 Public Security Obligations [~~class 3 public security obligations~~] and Class 3 Public Security [~~class 3 public security~~] administrative expenses payable in that calendar year from member assessments and interest earned on the Member Assessment Trust Fund created for Class 3 Public Securities deposits may, in the discretion of the Association, [~~may~~] be:

(1) used to pay Class 3 Public Security Obligations [~~class 3 public security obligations~~] payable in the following calendar [~~subsequent~~] year, offsetting the amount of the member assessments that would otherwise be required to be levied for the year under [~~the~~] Insurance Code Chapter 2210, Subchapter M; [~~or~~]

(2) used to redeem or purchase outstanding Class 3 Public Securities; or [~~class 3 public securities.~~]

(3) deposited in the CRTF.

(b) As specified in [~~the~~] Insurance Code §2210.074(a), Class 3 Public Securities [~~class 3 public securities~~] may be repaid before their full term if the Association's board of directors elects to do so and the Commissioner [~~commissioner~~] approves it.

[~~(c) If options (1) and (2) of subsection (a) of this section have been fully satisfied, the excess member assessments may be deposited in the catastrophe reserve trust fund.~~]

§5.4148. Repayment Obligation Trust Fund for the Payment of Amounts Owed Under §5.4127.

(a) As required by the Commissioner's order under §5.4126(d) of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities), the Association must deposit funds collected under §5.4127(d)(2) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments) in the Repayment Obligation Trust Fund. The Trust Company must deposit any Investment Income earned on these amounts while they are on deposit in the Repayment Obligation Trust Fund.

(b) The Association may not directly or indirectly use, borrow, or in any manner pledge or encumber Repayment Obligation Trust Funds held by the Trust Company except as authorized under Insurance Code Chapter 2210 and this division.

§5.4149. Excess Repayment Obligation Trust Fund Amounts.

Following the payment of all Class 2 Public Securities subject to repayment under §5.4127(b) of this division (relating to Payment of

Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments) and the repayment of all amounts owed under §5.4127(b) of this division, any funds remaining in the Repayment Obligation Trust Fund must be disbursed to the Association as an asset of the Association and may be used for any purpose authorized in Insurance Code §2210.056.

§5.4164. Payment of Assessment.

Except as provided by §5.4143 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities) and §5.4146 of this division (relating to Member Assessment Trust Fund for the Payment of Class 3 Public Securities), each [~~Each~~] member must [~~shall~~] remit to the Association payment in full of its assessed amount of any assessment levied by the Association within 30 days of receipt of notice of assessment.

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

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Texas Department of Insurance
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28 TAC §5.4131, §5.4132

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

The Texas Department of Insurance proposes the repeal of 28 TAC §5.4131 and §5.4132 concerning the Texas Windstorm Insurance Association's procedure for requesting the issuance of public securities and the Texas Public Finance Authority's responsibilities concerning the issuance of public securities, respectively. The repeal of these sections is necessary to implement the requirements of HB 3, 82nd Legislature, First Called Session, effective September 28, 2011, and to reorganize the sections in the division. This proposed repeal is related to a separate rule proposal published in this issue of the *Texas Register* concerning the association's loss funding and the issuance of public securities. In that rule proposal, the department is proposing adding new 28 TAC §§5.4123 - 5.4128, 5.4135, 5.4136, 5.4148, and 5.4149, and amending 28 TAC §§5.4101, 5.4102, 5.4121, 5.4133, 5.4141 - 5.4147, and 5.4164.

Section 5.4131 was previously adopted to implement HB 4409, 81st Legislature, Regular Session, 2009. HB 4409 substantially amended how the association funded its losses in excess of premium and other revenue by establishing public securities to pay for excess losses in the event of a catastrophe. Three classes of public securities were established in Insurance Code Chapter 2210 to pay for losses that exceed the association's premium and other revenue from available reserves and available amounts in the catastrophe reserve trust fund. Section 5.4131, adopted in the February 4, 2011, issue of the *Texas Register,* established the procedure for the association to request, subject to the commissioner's approval, the issuance of public securities after a catastrophe when the association estimates its losses will exceed its net premium, other revenue, available amounts in the catastrophe reserve trust fund, and any reinsurance proceeds. HB 3 amended several provisions in Insurance Code Chapter 2210 concerning public securities. Specifically, HB 3 amended Insurance Code §2210.072 to permit the association's board of directors to request the issuance of class 1 public securities before a catastrophe occurs. HB 3 also enacted Insurance Code §2210.6136, which establishes a procedure for the issuance of class 2 and class 3 public securities if the Texas Public Finance Authority (TPFA) cannot issue all or any portion of the class 1 public securities authorized under Insurance Code §2210.072. Prior to Insurance Code §2210.6136, 28 TAC §5.4131 established the procedure for issuing public securities. Section 5.4131 has become outdated because it does not address the issuance of class 1 public securities prior to a catastrophe or the issuance of class 2 and 3 public securities if the TPFA cannot issue all or any portion of class 1 public securities.

In a separate rule proposal in this issue of the *Texas Register,* the department proposes new 28 TAC §§5.4123 - 5.4126 to establish the procedure for issuing public securities to pay for excess losses. These new sections implement changes as a result of HB 3. Proposed §5.4123 requires the association's board of directors to submit a written request for the issuance of public securities to the commissioner for the commissioner's approval. Proposed §5.4124 establishes the procedure for the issuance of class 1 public securities before a catastrophic event and establishes the information the association must include in its request to the commissioner. Proposed §5.4125 establishes the procedure for requesting public securities after a catastrophic event, and proposed §5.4126 establishes the procedure for the issuance of class 2 and class 3 public securities when TPFA cannot issue all or any portion of the class 1 public securities authorized under Insurance Code §2210.072. Sections 5.4123 - 5.4126 will replace §5.4131.

The department also proposes to repeal §5.4132 which references TPFA's responsibilities in connection with the issuance of public securities on behalf of the association under Insurance Code Chapter 2210. Section 5.4132 does not establish any requirements for TPFA; it only refers to statutory obligations which already exist. Referencing those statutory obligations in §5.4132 is unnecessary, so the department has determined that §5.4132 should be repealed.

FISCAL NOTE. C. H. Mah, associate commissioner of the Property and Casualty Section, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Mah has determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the implementation of Insurance Code §2210.6136, the more efficient operation of the association, and the removal of unnecessary sections. There are no anticipated economic costs to persons who are required to comply with the proposed repeal. There will be no effect on small or micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Section 2006.002(c) of the Government Code requires that if

a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

There will be no new costs to any person to comply with the repeal. There is no anticipated adverse economic effect on small or micro businesses regarding the regulatory cost of compliance with the repeal, so preparation of an economic impact statement and regulatory flexibility analysis is not statutorily required.

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

REQUEST FOR PUBLIC COMMENT. To have your comments considered, you must submit written comments on the proposal no later than 5 p.m., Central time on March 10, 2014. You may send your comments electronically to the Chief Clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit a copy of your comments by email to Brian Ryder in the Property and Casualty Actuarial Office at Brian.Ryder@tdi.texas.gov, or by mail to Brian Ryder, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must submit any request for a public hearing separately to the Office of Chief Clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The department proposes the repeal under Insurance Code §§2210.008, 2210.072, 2210.073, 2210.074, 2210.151, 2210.152, 2210.604, 2210.6136, and 36.001. Section 2210.008 authorizes the commissioner to adopt rules necessary to carry out the purposes of Insurance Code Chapter 2210. Section 2210.071 provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses must be paid as provided in Insurance Code Chapter 2210, Subchapter B-1. Section 2210.072 authorizes the association to use the proceeds of class 1 public securities before, on, or after an occurrence or series of occurrences to pay losses not paid under §2210.071, and establishes the maximum principal amount of class 1 public securities that may be issued before, on, or after an occurrence or series of occurrences. Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.072, and establishes the maximum principal amount of class 2 public securities. Section 2210.074 authorizes the association to use the proceeds of class 3 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.073, and establishes the maximum principal amount of class 3 public securities.

Section 2210.151 requires the commissioner to adopt the association's plan of operation as a rule. Section 2210.152(a)(1) requires the association's plan of operation to provide for the efficient, economical, fair, and nondiscriminatory administration of the association.

Section 2210.604 requires commissioner approval of the association's request to TPFA to issue class 1, class 2, or class 3 public securities prior to issuance. Section 2210.608 provides how the association may use public security proceeds and excess public security proceeds. Section 2210.6136 provides that if all or any part of the class 1 public securities cannot be issued, the commissioner may order the issuance of class 2 and 3 public securities.

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

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§2210.008, 2210.072, 2210.073, 2210.074, 2210.151, 2210.152, 2210.604, and 2210.6136.

§5.4131. Issuance of Public Securities.

§5.4132. Texas Public Finance Authority Responsibilities Concerning Issuance of Public Securities.

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 January 30, 2014.

TRD-201400395
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 463-6327

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28 TAC §§5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4187, 5.4189 - 5.4192

The Texas Department of Insurance proposes amendments to 28 TAC §§5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4187, and 5.4189 - 5.4192 to implement House Bill (HB) 3, 82nd Legislature, 1st Called Session, effective September 28, 2011. These sections concern procedures for making and assessing premium surcharges under Insurance Code Chapter 2210, Subchapter M. Premium surcharges are required to repay class 2 public securities that are issued in the event of a catastrophe that results in losses that exceed the Texas Windstorm Insurance Association's premium, revenue, available reserves, and amounts available in the catastrophe reserve trust fund. In conjunction with this proposal, the department is also proposing the repeal of existing 28 TAC §5.4183 in a separate proposal also published in this issue of the *Texas Register.* This rule proposal also relates to a separate rule proposal concerning loss funding, which is also published in this issue of the *Texas Register.* In that proposal, the department proposes to add new 28 TAC §§5.4123 - 5.4128, 5.4135, 5.4136, 5.4148, and 5.4149, and amend 28 TAC §§5.4101, 5.4102, 5.4121, 5.4133, 5.4141 - 5.4147, and 5.4164 to implement HB 3.

The association is the insurer of last resort for windstorm and hail insurance coverage in the catastrophe area along the coast. The association provides insurance coverage to those who are unable to obtain wind and hail insurance in the private market. The catastrophe area includes the 14 first tier coastal counties and parts of Harris County. The association functions similar to other insurers in that it sells policies, collects premiums, and pays claims. The association's largest risk exposure is catastrophic losses from hurricanes.

In 2009, the Texas Legislature enacted HB 4409, 81st Legislature, Regular Session, which substantially changed how the association paid for losses that exceeded its premium, other revenue, and amounts available in the catastrophe reserve trust fund. HB 4409 amended Insurance Code Chapter 2210 to provide for three classes of public securities to pay for excess losses in the event of a catastrophe. In 2011, the Texas Legislature amended the association's loss funding provisions again to authorize the association to request the issuance of class 1 public securities prior to a catastrophic event, and to permit the association to request the issuance of class 2 and class 3 public securities if the Texas Public Finance Authority is unable to issue all or any portion of the class 1 public securities. Class 1 public securities must be issued when losses in a catastrophe year exceed the association's premium, available revenue, and amounts in the catastrophe reserve trust fund. Class 1 public securities are to be paid with the association's net premium and other revenue. Losses not paid by class 1 public securities are to be paid by the proceeds of class 2 and class 3 public securities.

Insurance Code §2210.613 describes how the association must pay class 2 public securities. HB 4409 required that class 2 public securities be paid with member insurer assessments and a premium surcharge on coastal policyholders. Thirty percent of the cost of class 2 public securities is to be paid by member insurer assessments. Seventy percent of the cost of class 2 public securities was to be paid by premium surcharges assessed on all policyholders who reside or have operations in, or whose insured property is located in the catastrophe area. HB 3 amended Insurance Code §2210.613 so that 70 percent of the cost of class 2 public securities is to be paid by premium surcharges assessed on all policyholders of policies that cover insured property that is located in the catastrophe area, including automobiles principally garaged in a catastrophe area. HB 3 also amended Insurance Code §2210.613 to specify the lines of insurance to which the premium surcharge applies. Before the enactment of HB 3, the premium surcharge in Insurance Code §2210.613 applied to "all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance." After HB 3, Insurance Code §2210.613 states that the premium surcharge applies to "all policies of insurance written under the following lines of insurance: fire and allied lines, farm and ranch owners, residential property insurance, private passenger automobile liability and physical damage insurance, and commercial automobile liability and physical damage insurance." The current rules that implement the premium surcharge required by Insurance Code §2210.613 do not reflect the current law as amended by HB 3. It is necessary to amend these rules to conform them with current law.

In the event of a hurricane that results in excess losses, the rules implementing the loss funding and premium surcharges required by the statute must be up-to-date for the orderly issuance of public securities and the repayment of those securities. The department has made substantive changes to these rules in addition to conforming changes for clarity and agency style. The proposed amendments do not impose any requirement that is not already required by the statute. The proposed amendments do not directly affect rates.

The department posted to its website an informal draft of these rules on October 14, 2013, with a comment period that ended on October 28, 2013. Based on comments, the department revised the informal draft rule and proposes these amendments. A thorough discussion of the proposed amendments to the rules follows.

§5.4171. Premium Surcharge Requirement. This section concerns the premium surcharge that insurers must assess if the association issues class 2 public securities under Insurance Code §2210.613. The department proposes amending this section to conform it to other proposed rule amendments and to changes HB 3 made to Insurance Code §2210.613. Subsection (a) is amended for agency style and to clarify that the premium surcharge applies to covered insured property including automobiles principally garaged in the catastrophe area. Subsection (b) is amended to specify the lines of insurance that are subject to the premium surcharge consistent with Insurance Code §2210.613.

§5.4172. Premium Surcharge Definitions. The department proposes amending the definition of insured property to clarify that it includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy. The department proposes adding residential property insurance as a defined term for clarity and removing the definitions for operations and premises consistent with HB 3.

§5.4173. Determination of the Surcharge Percentage. The department proposes amending this section for agency style and to conform it with other proposed amendments. To conform the section to Insurance Code §2210.613, the department also proposes amending the section to require that the premium surcharge date specified by the commissioner be at least 180 days after the commissioner approves issuance of class 2 public securities.

§5.4181. Premiums to be Surcharged. The department proposes amending this section to clarify that the premium surcharge applies to premium subject to surplus lines premium tax and premium subject to independently procured premium tax.

§5.4182. Method for Determining the Premium Surcharge. The department proposes amending this section so that it applies to policies written in the lines of insurance specified in HB 3. The department also proposes amending this section to allow insurers to determine the premium surcharge for certain composite-rated policies on the basis of the insured address. For these policies, if the insured address is not within a designated catastrophe area, no premium surcharge applies to that policy.

§5.4184. Application of the Surcharges. The department proposes amending this section to provide for refunding premium surcharges to policyholders if a policy subject to a premium surcharge is canceled or a midterm change results in a premium decrease. The proposal requires that insurers credit or refund the excess surcharge within 20 days of the date of the transaction. These changes are consistent with the fact that the surcharges may be refunded under Insurance Code §2210.613. The department also proposes deleting references to §5.4183 (relating to Allocation Method for Other Lines of Insurance), which is being repealed in a separate rule proposal.

§5.4185. Mandatory Premium Surcharge Collection. This section concerns how insurers collect premium surcharges. The department proposes amending the section to give insurers two possible methods of collecting premium surcharges. An insurer must either collect the premium surcharge when the insurance policy is issued and effective, or collect the premium surcharge proportionately as it collects premiums from the policyholder. This means that the insurer can collect the surcharge that is due in a calendar year with the initial payment of premium or can collect the same surcharge over the course of the premium installments that are paid by the policyholder. The department provided these two options because it recognizes that policyholders may pay their premiums in installments, especially for personal automobile and residential property policies. If an insurer collects the premium surcharge under the second option, this may relieve policyholders from having to pay the premium surcharge all at once. The proposed amendment requires insurers to choose one collection method to apply to all of the policies issued by that insurer.

§5.4186. Remittance of Premium Surcharges. This section provides the procedures for how insurers are to remit the premium surcharges to the association. The department proposes amending this section to conform it with the proposed amendments to §5.4143 (relating to Trust Funds for the Payment of Class 2 Public Securities) and §5.4185 (relating to Mandatory Premium Surcharge Collection). The department also proposes amending this section to allow the association to impose reporting requirements on surplus lines agents so that the association may fulfill its duties under §5.4190 (relating to Annual Premium Surcharge Report). Section 5.4190 requires insurers to submit reports to the association, which the association must then review to determine that the premium surcharges reported as collected match those actually remitted to the association or deposited directly into the premium surcharge trust fund and that the premiums reported for the catastrophe area are consistent with the premium surcharges reported as collected by the insurer. Surplus lines agents collect premium from the policyholders on behalf of surplus lines insurers and so are permitted to collect premium surcharges from policyholders. Because surplus lines agents may be remitting premium surcharges on behalf of more than one surplus lines insurer, the association will need additional information from surplus lines agents to ensure the association can fulfill its duties under §5.4190.

§5.4187. Offsets. The department proposes amending this section to make it consistent with the proposed amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) that require insurers to refund premium surcharges to policyholders in certain cases and to conform the section with the proposed amendments to §5.4143 (relating to Trust Funds for the Payment of Class 2 Public Securities).

§5.4189. Notification Requirements. The department proposes amending this section to make the premium surcharge notice that insurers must give policyholders consistent with the proposed amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) that require insurers to refund premium surcharges to policyholders in certain cases.

§5.4190. Annual Premium Surcharge Report. This section concerns the annual premium surcharge report that insurers must submit to the association. The department proposes amending this section based on changes to Insurance Code §2210.613 as a result of HB 3. The department also proposes amending subsection (e) to require insurers to report the method they used to collect premium surcharges under §5.4185 (relating to Mandatory Premium Surcharge Collection) and to conform the section with the proposed amendments to §5.4143 (relating to Trust Funds for the Payment of Class 2 Public Securities).

§5.4191. Premium Surcharge Reconciliation Report. The department proposes amending this section so that it applies to policies written in the lines of insurance specified in HB 3. The department also proposes amending this section to make it consistent with the proposed amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) that require insurers to refund premium surcharges to policyholders in certain cases.

§5.4192. Data Collection. This section concerns data that the department may collect from insurers to determine the applicable premium surcharge percentage. The department proposes amending this section to conform with other proposed amendments relating to the lines of insurance specified in HB 3. The department also proposes deleting references to §5.4183 (relating to Allocation Method for Other Lines of Insurance), which is being repealed in a separate rule proposal.

FISCAL NOTE. C. H. Mah, associate commissioner of the Property and Casualty Section, has determined that for each year of the first five years the proposed amended sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. The amendments to the rules impose no additional requirements that affect state or local governments in the enforcement and administration of this proposal. This rule proposal implements changes based on the passage of HB 3, which amended the lines of insurance that are subject to a premium surcharge. The premium surcharge only applies if the association has issued class 2 public securities under Insurance Code §2210.613 or §2210.6136. Mr. Mah does not anticipate any measurable effect on local employment or the local economy as a result of the proposal. This rule proposal implements the requirements in the statute. Any impact on local employment or the local economy resulting from the premium surcharges required by Insurance Code §2210.613 are as a result of the statute and not as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Mah also has determined that for each year of the first five years the proposed amended sections are in effect, there will be public benefits resulting from the proposal and there will be costs to persons required to comply with the proposal. As discussed in the Introduction, this rule proposal is necessary to implement changes to the statute as a result of HB 3, which changed the lines of insurance that are subject to the premium surcharge. By amending the sections to reflect the current law and to provide clarity, the anticipated public benefit will be the ability of the association to collect premium surcharges to fund the debt obligations associated with the issuance of class 2 public securities. By providing clarity with regard to the lines of insurance that the surcharge applies to and clarity with regard to assessing, collecting, and remitting premium surcharges, the anticipated public benefit will be an orderly process of assessing, collecting, and remitting premium surcharges. The premium surcharges will enable the association to pay insured losses if a hurricane or other events result in losses that exceed the association's premium, revenue, and amounts available in the catastrophe reserve trust fund. Without these proposed amendments, the association's ability to collect the premium surcharge and pay class 2 public securities in the event they are issued may be impaired. Anticipated public benefits and costs stemming from specific amendments follow.

A. Anticipated Public Benefits.

Determining the Premium Surcharge. A proposed amendment to §5.4182 (relating to Method for Determining the Premium Surcharge) would require an insurer to determine the premium surcharge based on the insured address in cases where a policy is composite rated and the premium attributable to insured property located in the catastrophe area cannot reasonably be determined. Under current §5.4182, in cases where a policy is not rated based on the insured property's geographic location, insurers must determine the premium surcharge based on what proportion of the total exposure for a policy is located in the catastrophe area. In composite rating, insurers rate premiums using a single rate that applies to all coverages using a single exposure base and they may not know the geographic location of the insured exposure. Composite rating is used infrequently and only in commercial lines of insurance, usually only for large risks. The anticipated public benefit of this change is that it would spare insurers, in the limited cases described in the amended §5.4182, the expense of determining what proportion of the total exposure in a policy is located in the catastrophe area. This lowering of expenses should lower the cost of insurance for the public.

Premium Surcharge Collection and Reporting. Proposed amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) would enable insurers to collect surcharges either when a premium transaction is effective, or proportionately as the insurer collects premium. A proposed amendment to §5.4190 (relating to Annual Premium Surcharge Report) would require that insurers report the method they use to collect premium surcharges under §5.4185. An anticipated public benefit for insurers under §5.4185 is that choosing the option of collecting surcharges over an installment plan would simplify the billing process and reduce costs. For example, collecting surcharges over an installment plan would spare an insurer the time and expense necessary to refund surcharges on canceled policies. An anticipated public benefit for policyholders is that this option reduces the amount policyholders must pay at the start of the policy period. Permitting policyholders to pay the surcharge in installments makes insurance more affordable. The amendment to §5.4190 would update the information gathered in the premium surcharge reports to match the new option for collecting surcharges under §5.4185. Information on the method an insurer uses to collect premium surcharges provides the benefit of aiding the association in ensuring that insurers are correctly collecting the surcharges.

Premium Surcharge Refunding. Proposed amendments to §5.4184 (relating to Application of the Surcharges) would make premium surcharges refundable for policies that are canceled or that undergo a decrease in premium due to a midterm policy change. This benefits policyholders because it reduces the amount of premium surcharges the policyholders must otherwise pay, and makes the premium surcharges policyholders pay commensurate with the premium they actually pay. Surcharge refundability benefits insurers by reducing the cost of complying with the premium surcharge requirement. Insurers would no longer need to distinguish between policies in which premiums change after policy expiration, and to which surcharge refunds currently apply, from policies not currently subject to surcharge refunds. Proposed amendments to §5.4191 (relating to Premium Surcharge Reconciliation Report) would require insurers to provide to the department on request a reconciliation report, a report on the unearned premiums returned due to midterm cancellations, and information on the amount of premium surcharges refunded or credited to the policyholder. These amendments conform the information required in the reconciliation report to the amendment to §5.4184 enabling premium surcharges to be refundable. Information on the amount of unearned premium refunded would allow the department to determine whether an insurer is collecting and remitting the correct amount of premium surcharges to the association, or depositing them directly into the premium surcharge trust fund.

Reporting Requirements for Surplus Lines Agents. Under the amendments to §5.4186 (relating to Remittance of Premium Surcharges) the association could impose reporting requirements on surplus lines agents as part of the procedures it establishes for surplus lines agents remitting premium surcharges to the association. The reporting requirements would be established so that the association can reconcile the annual premium surcharge reports submitted by surplus lines insurers under §5.4190 with premium surcharges remitted or deposited by surplus lines agents. An anticipated public benefit is that, if imposed on surplus lines agents, reporting requirements would enable the association to reconcile amounts reported by affiliated surplus lines insurers with amounts remitted by surplus lines agents. This reconciliation will enable the association to determine whether each surplus lines insurer is surcharging the correct amount, thus helping to ensure that the public securities are paid for.

B. Estimated Costs for Persons Required to Comply with the Proposal. The persons that will incur costs for compliance with the proposal are insurers.

Premium Surcharge Collection and Reporting.

Insurers. As discussed above, the proposed amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) would enable insurers to collect surcharges either when a premium transaction is effective or proportionately as the insurer collects premium. There is no significant cost to insurers that elect to collect and remit the premium surcharges when the premium transaction becomes effective. This is substantially similar to the current requirement that insurers apply money from the policyholder's first payment to the premium surcharge. Collecting and remitting the premium surcharges when the premium transaction becomes effective is more closely aligned with how premiums are booked for accounting purposes than is collecting the premium surcharge from the policyholder's first payment. This may yield a small reduction in costs compared with the current requirement due to simplified bookkeeping. Insurers that elect to collect the premium surcharges in proportion to how the premium is collected may have lost opportunity costs associated with the premium surcharges, which may have to be remitted before the insurer collects them. Because proposed amendments to §5.4187 permit insurers to offset unpaid surcharges from amounts the insurer would otherwise have to remit to the association, or deposit in the premium surcharge trust fund, remitting premium surcharges in proportion to how the premium is collected poses little or no credit risk to insurers. Because policy terms for the lines of insurance subject to premium surcharges are almost always one year or less, the period between when the insurer remits the surcharge and when the insurer collects the surcharge is expected to be approximately six months or less, on average. According to the Federal Reserve, the yield on six-month U.S. Treasury bills for the week ending December 20, 2013, was approximately 0.09 percent per year. This equates to a lost opportunity cost of 4.5 hundredths of a penny for each dollar of premium surcharge collected. The proposed amendments do not impose this cost on insurers because the

proposed amendments permit insurers to choose to collect the premium surcharge when the surcharges must be remitted. As discussed above, a proposed amendment to §5.4190 (relating to Annual Premium Surcharge Report) would require that insurers report the method they use to collect premium surcharges under §5.4185 in addition to the information the annual premium surcharge report currently requires. The department expects this additional requirement to consume 10 minutes of time per year for both a junior accountant and a compliance analyst. The Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics* indicates that the hourly mean wage for accountants and compliance officers in Texas is $34.54 and $31.20, respectively. Therefore, this amendment to §5.4190 would result in a total cost of approximately $11 per year.

Premium Surcharge Refunding.

Insurers. As discussed above, proposed amendments to §5.4191 would require insurers to provide the unearned premiums returned due to midterm cancellations in a premium surcharge reconciliation report. The department anticipates that to add the amount of unearned premium to the report, an insurer would incur a one-time cost of approximately 20 to 40 hours of computer programming time. The Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics* indicates that the hourly mean wage for computer programmers in Texas is $37.78. Assuming a qualified computer programmer earns between $35 and $40 per hour, the total cost would be between $700 and $1,600. The department expects this cost would be small in comparison to the reduction in costs insurers would experience as a result of allowing premium surcharges to be refundable.

Reporting Requirements for Surplus Lines Agents.

Surplus Lines Agents. The amendments to §5.4186 (relating to Remittance of Premium Surcharges) allow, but do not require, the association to impose reporting requirements on surplus lines agents as part of the procedures the association establishes for surplus lines agents remitting surcharges to the association. Neither the current or amended §5.4186 require surplus lines agents to remit premium surcharges on behalf of the surplus lines insurers they represent. A surplus lines agent can avoid any reporting requirement the association may establish by deciding not to remit premium surcharges on the surplus lines insurers' behalf. Surplus lines agents currently determine the amount of premium they must remit to each surplus lines insurer they represent. The department anticipates that any reporting requirements the association would impose would require surplus lines agents to make this determination for premium surcharges as well as premiums. Surplus lines agents would need to program their accounting and billing systems to capture the amount of premium surcharges applicable to each surplus lines insurer and program reports into the agents' computer systems. In addition, surplus lines agents would need to generate reports and review the reports for errors before submitting them to the association. The department does not anticipate that the association will require surplus lines agents to generate reports more than once a month. If the association does impose reporting requirements and a surplus lines agent decides to remit premium surcharges, the cost to the agent will depend on the number of surplus lines insurers the agent represents and the number of policies issued. The Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics* indicates that the hourly mean wage for computer programmers in Texas is $37.78.

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

As provided in the Public Benefit and Cost Note section of this proposal, the term "insurer" has the same meaning as defined in §5.4172 (relating to Premium Surcharge Definitions). The term insurer refers to each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of such an insurer, as described by Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the association, and the Texas FAIR Plan Association. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange. This includes some insurers that qualify as small and micro businesses.

Premium Surcharge Collection and Reporting.

Insurers. As discussed in the Public Benefit and Cost Note section of this proposal, the department anticipates that insurers subject to §5.4185 (relating to Mandatory Premium Surcharge Collection) would encounter some costs, in the form of lost opportunity costs, if they chose to collect premium surcharges proportionately as they collect premium. The department has determined that even though the proposed amendment to §5.4185 may have an adverse economic effect on insurers operating as small or micro businesses, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002(c)(2) because insurers operating as small or micro businesses are not required by statute or the proposed amendment to collect premium surcharges proportionately as they collect premium. Those small and micro businesses that sell insurance coverage in the catastrophe area and collect premiums in installments choose to bear the costs of doing so. The costs outlined in the Public Benefit and Cost section of this proposal provide cost information so that insurers operating as small or micro businesses in the catastrophe area may make an informed decision on the method of collecting premium surcharges.

As discussed in the Public Benefit and Cost Note section of this proposal, the department anticipates that insurers subject to §5.4190 (relating to Annual Premium Surcharge Report) would encounter some costs in reporting the method the insurers used to collect premium surcharges. Some of these insurers would qualify as small and micro businesses. In compliance with Government Code §2006.002(c-1), the department considered waiving the method reporting requirement for small

and micro businesses and requiring that all insurers use the same method of collecting premium surcharges, eliminating the need for reporting the method, as an alternative means of achieving the purpose of §5.4190. The department determined that waiving the method reporting requirement would impede the purpose of §5.4190, and of Insurance Code §2210.613, because it would limit the association's ability to determine whether surcharges from policyholders with insurers operating as small or micro businesses were collected correctly. This could result in policyholders with small or micro businesses being charged inappropriately high or low premium surcharges. The department also determined that requiring all insurers to use the same method of collecting premium surcharges would either negate the proposed amendments to §5.4185 or force all insurers to adopt the costs associated with collecting premium surcharges proportionately as they collect premium, depending on which method the department mandated. The latter might also have an adverse economic impact on insurers operating as small and micro businesses, and those insurers would not have the option of avoiding the cost by collecting premium surcharges when the written premium transaction is effective. The department concluded that both alternatives are impractical and rejected them.

Premium Surcharge Refunding.

Insurers. As discussed in the Public Benefit and Cost Note section of this proposal, the department anticipates that insurers would encounter some costs in complying with the proposed amendment to §5.4191 (relating to Premium Surcharge Reconciliation Report), which requires insurers to report the unearned premiums returned due to midterm cancellations. Some of the affected insurers would qualify as small or micro businesses. In compliance with Government Code §2006.002(c-1), the department considered waiving this reporting requirement for insurers operating as small and micro businesses and waiving the requirement while attributing to those insurers an estimated amount of unearned premium surcharges returned as alternative means of achieving the purpose of §5.4191. The department concluded that both of these alternatives would impede the functioning of Insurance Code §2210.613. Insurance Code §2210.613 cannot function if insurers' determination of the premium base to be surcharged and the amount to be collected are not subject to later verification. Because HB 3 eliminated the requirement that premium surcharges be nonrefundable, the amount of unearned premiums that an insurer has refunded is information necessary to verify that the insurer has collected the correct amount of premium surcharges and refunded the correct amounts to policyholders.

Reporting Requirements for Surplus Lines Agents.

Insurers. As discussed in the Public Benefit and Cost Note section of this proposal, the department anticipates that surplus lines agents might encounter some costs as a result of a proposed amendment to §5.4186 (relating to Remittance of Premium Surcharges). This proposed amendment allows the association to impose reporting requirements on surplus lines agents as part of the procedures the association establishes for surplus lines agents remitting surcharges to the association. Some of the affected surplus lines agents would qualify as small or micro businesses. The department has determined that even though the proposed amendment to §5.4186 may have an adverse economic effect on surplus lines agents operating as small or micro businesses, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002(c)(2) because surplus lines agents are not required by statute or the proposed amendment to remit premium surcharges on behalf of the surplus lines insurers they represent. A surplus lines agent can avoid any reporting requirement the association may establish by deciding not to remit premium surcharges on the surplus lines insurers' behalf. Surplus lines agents that operate as small and micro businesses that sell coverage in the catastrophe area and remit premium surcharges on the surplus lines insurers' behalf choose to bear the cost of doing so. The costs outlined in the Public Benefit and Cost section of this proposal provide cost information so that surplus lines agents operating as small or micro businesses in the catastrophe area may make an informed decision on whether to remit premium surcharges on behalf of the surplus lines insurers they represent.

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

REQUEST FOR PUBLIC COMMENT. To have your comments considered, you must submit written comments on the proposal no later than 5 p.m., Central Time on March 10, 2014. You may send your comments electronically to the Chief Clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of your comments to Brian Ryder, Property and Casualty Actuarial Office, electronically at Brian.Ryder@tdi.texas.gov, or by mail to Brian Ryder, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed amendments in a public hearing under Docket No. 2763 scheduled for 9 a.m. on March 3, 2014, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The hearing will reconvene under the same docket number on March 5, 2014, at 9 a.m. in Ballrooms B and C at Texas A&M University - Corpus Christi, 6300 Ocean Drive, Corpus Christi, Texas. The commissioner will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes the amended sections under Insurance Code §§2210.008, 2210.071, 2210.073, 2210.609, 2210.613, 2210.6136, and 36.001. Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 2210.071 provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses must be paid as provided in Insurance Code Chapter 2210, Subchapter B-1, which includes the issuance of public securities. Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.072, and establishes that class 2 public securities must be repaid in the manner prescribed by Insurance Code Chapter 2210, Subchapter M.

Section 2210.609 provides that the association must repay all public security obligations from available funds, and if those

funds are insufficient, then revenue collected under Insurance Code §§2210.612, 2210.613, 2210.6135, and 2210.6136. Section 2210.611 establishes that for class 2 public securities, the association may use premium surcharge revenue and member assessment revenue collected under Insurance Code §2210.613 in any calendar year that exceeds the amount of the class 2 security obligations and public security administrative expenses payable in that calendar year, and the interest earned on those funds to: (i) pay the applicable public security obligations payable in the subsequent year; (ii) redeem or purchase outstanding public securities; or (iii) make a deposit in the catastrophe reserve trust fund.

Section 2210.613 provides that the association must collect premium surcharges and member assessments to pay class 2 public securities issued under §2210.073. Section 2210.613(c) establishes the lines of insurance to which the premium surcharge applies. Section 2210.6136 provides that the commissioner may order the issuance of class 2 public securities if all or any part of the class 1 public securities cannot be issued. Section 2210.6136 further provides that the commissioner shall order the association to repay the premium surcharges and member assessments used to pay the cost of a portion of the class 2 public securities issued under this section.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code §§2210.069, 2210.613, 2210.6136, 2210.071, and 2210.073.

§5.4171. Premium Surcharge Requirement.

(a) Following a Catastrophic Event [~~catastrophic event~~], Insurers [~~insurers~~] may be required to assess a premium surcharge under [~~the~~] Insurance Code §2210.613(b) and [~~§2210.613~~](c) on all policyholders of policies that cover Insured Property that is located in a Catastrophe Area, including automobiles principally garaged in the Catastrophe Area [~~with property and casualty insurance policies that provide coverage on premises, operations, or insured property located in a catastrophe area~~]. This requirement applies to property and casualty Insurers [~~admitted insurers~~], the Association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association policies, Affiliated Surplus Lines Insurers [~~affiliated surplus lines insurers~~], and includes property and casualty policies independently procured from Affiliated Insurers [~~affiliated insurers~~].

(b) This section and §§5.4172, 5.4173, [~~and~~] 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Definitions, Determination of the Surcharge Percentage, Premiums to be Surcharged, [~~Allocation~~] Method for Determining the Premium Surcharge, [~~Specified Lines of Insurance, Allocation Method for Other Lines of Insurance,~~] Application of the Surcharges, Mandatory Premium Surcharge Collection [~~Surcharges are Mandatory~~], Remittance of Premium Surcharges, Offsets, Surcharges not Subject to Commissions or Premium Taxes, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) only [~~do not~~] apply to policies written for the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; Residential Property Insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; and commercial automobile physical damage [~~and reported under the following annual statement lines of business: federal flood; medical malpractice; group accident and health; all other accident and health; workers' compensation; excess workers' compensation, and surety~~].

(c) This section and §§5.4172, 5.4173, [~~and~~] 5.4181, 5.4182, and 5.4184 - 5.4192 of this division do not apply to:

(1) a farm mutual insurance company operating under [~~the~~] Insurance Code Chapter 911;

(2) a nonaffiliated county mutual fire insurance company described by [~~the~~] Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by [~~the~~] Insurance Code §912.310(a)(2);

(3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title 78, Revised Statutes, respectively, before those chapters' repeal by §18, Chapter 40, Acts of the 41st Legislature, First [~~1st~~] Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, Second [~~2nd~~] Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections; and

(4) premium and policies issued by an Affiliated Surplus Lines Insurer [~~affiliated surplus lines insurer~~] that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under [~~the~~] Insurance Code Chapter 2210.

(d) For all lines of insurance subject to [~~§5.4182 of~~] this division, [~~(relating to Allocation Method for Specified Lines of Insurance)~~] this section and[~~,~~] §§5.4172, 5.4173, [~~and~~] 5.4181, 5.4182, and 5.4184 - 5.4192 of this division are effective June 1, 2011.

~~[(e) For all other lines, this section, §§5.4172, 5.4173 and 5.4181 - 5.4192 of this division are effective October 1, 2011.]~~

§5.4172. Premium Surcharge Definitions.

The following words and terms when used in §§5.4171, 5.4173, [~~and~~] 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Requirement, Determination of the Surcharge Percentage, Premiums to be Surcharged, [~~Allocation~~] Method for Determining the Premium Surcharge, [~~Specified Lines of Insurance, Allocation Method for Other Lines of Insurance,~~] Application of the Surcharges, Mandatory Premium Surcharge Collection [~~Surcharges are Mandatory~~], Remittance of Premium Surcharges, Offsets, Surcharges not Subject to Commissions or Premium Taxes, [~~Determination of the Surcharge~~], Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) will [~~shall~~] have the following meanings unless the context clearly indicates otherwise:

(1) Affiliated Insurer [~~insurer~~]--An insurer that is an affiliate, as described by [~~the~~] Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas. Affiliated Insurer [~~insurer~~] includes an Insurer [~~insurer~~] not authorized to engage in the business of property or casualty insurance in the State of Texas.

(2) Affiliated Surplus Lines Insurer [~~surplus lines insurer~~]--An eligible surplus lines insurer that is an affiliate, as described by [~~the~~] Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas.

(3) (No change.)

(4) Insured Property [~~property~~]--Real property, or tangible or intangible personal property including automobiles, covered under an insurance policy issued by an Insurer [~~insurer~~]. Insured Property

includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy.

(5) Insurer--Each property and casualty Insurer [~~insurer~~] authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of the Insurer [~~such an insurer~~], as described by [~~the~~] Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the Association, and the FAIR Plan [~~Texas Fair Access to Insurance Requirements Plan Association~~]. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

[~~(6) Operations--A person's interest in property, or activities, that may result in, or give rise to, a loss that is insurable under a property or casualty insurance policy, including the use of a automobile; ownership, lease, or occupancy of a residence or other real property; and activities performed by a person in connection with the manufacture, distribution, or sale of goods or services. A person is considered to have operations in the catastrophe area if the person maintains an automobile or physical location in the catastrophe area, regardless of whether that location is owned, leased, rented, or occupied by the person.~~]

[~~(7) Premises--A physical location where a person resides, or owns, leases, rents, or occupies real property, or has operations.~~]

(6) [~~(8)~~] Premium surcharge percentage--The percentage amount determined by the Commissioner [~~commissioner~~] under §5.4173 of this division [~~(relating to the Determination of the Surcharge)~~].

(7) Residential Property Insurance--Insurance against loss to real or tangible personal property at a fixed location, including through a homeowners insurance policy, a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

§5.4173. Determination of the Surcharge Percentage.

(a) The Association must [~~shall~~] review information provided by TPFA [~~the Texas Public Finance Authority~~] concerning the amount of the Class 2 Public Security Obligations [~~class 2 public security obligations~~] and estimated amount of the Class 2 Public Security Administrative Expenses [~~class 2 public security administrative expenses~~], including any required Contractual Coverage Amount [~~contractual coverage amount~~], to determine whether the Association has sufficient available funds to pay the Public Security Obligations [~~public security obligations~~] and Public Security Administrative Expenses [~~public security administrative expenses~~], if any, including any Contractual Coverage Amount [~~contractual coverage amount~~], or whether a premium surcharge under [~~the~~] Insurance Code §2210.613 is required. The Association may consider all of the Association's outstanding obligations and sources of funds to pay those obligations.

(b) If the Association determines that it is unable to satisfy the estimated amount of Class 2 Public Securities obligations and administrative expenses with available funds [~~necessary to collect revenue specified in the Insurance Code §2210.613~~], the Association must [~~shall~~] submit a written request to the Commissioner [~~commissioner~~] to approve a premium surcharge on policyholders with [~~premises, operations, or~~] insured property in the Catastrophe Area [~~catastrophe area~~] as authorized under [~~the~~] Insurance Code §2210.613. The Association's request must specify:

(1) the total amount of the Class 2 Public Security Obligations [~~class 2 public security obligations~~] and estimated amount of the Class 2 Public Security Administrative Expenses [~~class 2 public security administrative expenses~~], including any required Contractual Coverage Amount [~~contractual coverage amount~~], provided in the TPFA notice;

(2) the amount to be collected from Insurers [~~insurers~~] through a member assessment, which may not exceed 30 percent of the amount specified in the TPFA notice;

(3) the amount to be collected from Catastrophe Area [~~catastrophe area~~] policyholders through premium surcharges, which may not exceed 70 percent of the amount specified in the TPFA notice; and

(4) the date on [~~upon~~] which the premium surcharge is to commence and the date the premium surcharge for the noticed amount is to end.

(c) On approval by the Commissioner, [~~commissioner~~] each Insurer must [~~insurer shall~~] assess a premium surcharge in a percentage amount set by the Commissioner [~~commissioner~~] to the Insurer's [~~insurer's~~] policyholders. The Premium Surcharge Percentage must [~~premium surcharge percentage shall~~] be applied to the premium attributable to Insured Property [~~premises, operations, and insured property~~] located in the Catastrophe Area [~~catastrophe area~~] on policies that become effective, or on multiyear [~~multi-year~~] policies that become effective or have an anniversary date, during the premium surcharge period when the Premium Surcharge Percentage [~~premium surcharge percentage~~] will be in effect, as specified in §§5.4181, 5.4182, and 5.4184 - 5.4188 of this division (relating to Premiums to be Surcharged, [~~Allocation~~] Method for Determining the Premium Surcharge, [~~Specified Lines of Insurance, Allocation Method for Other Lines of Insurance,~~] Application of the Surcharges, Mandatory Premium Surcharge Collection [~~Surcharges are Mandatory~~], Remittance of Premium Surcharges, Offsets, and Surcharges not Subject to Commissions or Premium Taxes, respectively). The premium surcharge date specified by the Commissioner must be at least 180 days after the date the Commissioner issues notice of approval of the Public Securities.

(d) This section is part of the Association's Plan of Operation [~~Texas Windstorm Insurance Association's plan of operation~~] and will [~~shall~~] control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4181. Premiums to be Surcharged.

(a) The Premium Surcharge Percentage must [~~premium surcharge percentage shall~~] be applied to:

(1) amounts reported as premium for the purposes of reporting under the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas; [~~and~~]

(2) if not reported as described in paragraph (1) of this subsection, those additional amounts collected by Insurers that are subject to premium taxation by the Comptroller [~~comptroller~~], including policy fees not reported as premium; and [~~surplus lines premium tax; and independently procured premium tax.~~]

(3) premium subject to surplus lines premium tax, and premium subject to independently procured premium tax.

(b) Premium surcharges do not apply to fees that are neither reported as premium in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas, nor subject to premium taxation by the Comptroller [~~comptroller~~].

§5.4182. [~~Allocation~~] Method for Determining the Premium Surcharge [~~Specified Lines of Insurance~~].

(a) The methods addressed in this section will [~~shall~~] apply to all:

(1) policies written and reported under the following annual statement lines of business: fire; allied lines; farm and ranch owners [multi-peril crop; farmowners]; homeowners; commercial multiple peril [multi-peril] (nonliability portion [property]); [commercial multi-peril policies written on an indivisible premium basis, regardless whether reported as commercial multi-peril (property) or commercial multi-peril (liability); earthquake;] private passenger auto no fault (personal injury protection (PIP)), other private passenger auto liability, and private passenger auto physical damage; and commercial auto no fault (PIP) [(personal injury protection (PIP))], other commercial auto liability, and commercial auto physical damage [for policies where the premium is determined based on the geographic location of the exposures, or where the automobiles are principally garaged; boiler and machinery; burglary and theft]; and

[(2) personal and residential policies, including boat owners, personal liability, personal umbrella, and personal inland marine policies; and]

(2) [(3)] personal and commercial risks assigned by the Texas Automobile Insurance Plan Association (TAIPA) under [pursuant to the] Insurance Code Chapter 2151.

(b) The [If the policy is rated based on the geographic location of the insured's premises, operations, or insured property, the] premium surcharge will [shall] be determined by applying the Premium Surcharge Percentage [premium surcharge percentage] to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to Insured Property [premises, operations, or insured property] located in the Catastrophe Area [catastrophe area].

(c) In cases where the policy is composite rated and the premium attributable to Insured Property located in the Catastrophe Area cannot be reasonably determined, the Insurer must determine the premium surcharge based on the insured address. If the insured address is within a designated Catastrophe Area, then the Insurer must determine the premium surcharge by applying the Premium Surcharge Percentage to the full policy premium determined in §5.4181 of this division. If the insured address is not within a designated Catastrophe Area, then no premium surcharge applies to the policy [not rated based on the geographic location of the insured's premises, operations, or insured property, the insurer shall allocate premium to the catastrophe area based on the proportion the exposure in the catastrophe area bears to the total exposure on the policy. The premium surcharge percentage shall apply to that portion of the policy premium allocated to the catastrophe area].

§5.4184. Application of the Surcharges.

(a) When assessed under [the] Insurance Code §2210.613, the premium surcharges must [shall] apply to all policies with Insured Property [premises, operations, or insured property] in the Catastrophe Area [catastrophe area] that are issued or renewed with effective dates in the assessment period specified in the Commissioner's [commissioner's] order, with two exceptions:

(1) Insurers must [insurers shall] not surcharge policies, and are not responsible for collecting premium surcharges on policies, that did not go into effect or were canceled [cancelled] as of the inception date of the policy; and

(2) for multiyear [multi-year] policies, the premium surcharge in effect on the effective date of the policy, or the anniversary date of the policy, must [shall] be applied to the 12-month premium for the applicable policy period.

(b) Premium surcharges are refundable [non-refundable] under [the] Insurance Code §2210.613.

(1) If the policy is canceled [cancelled], an amount [a pro-rata portion] of the surcharge that is proportionate to the return premium must be refunded [is not returned] to the policyholder; however,

(2) instead of a refund of the premium surcharge, the insurer may credit the return premium surcharge against amounts due the Insurer but unpaid by the policyholder; and

(3) [(2)] an additional surcharge will [shall] not apply to a policy that was canceled after [cancelled subsequent to] the effective date of the policy, and is later reinstated, if the premium surcharge was paid in full. If the policyholder did not pay the premium surcharge in full, the policyholder must pay the premium surcharge that is due but unpaid before the Insurer may reinstate the policy. For purposes of this section a policy is reinstated if it covers the same period as the original policy without a lapse in coverage, except as provided in [the] Insurance Code §551.106.

[(c) A mid-term policy change consists of all transactions on a policy occurring within a seven day period that result in a change in the premium.]

(c) [(d)] If a midterm [mid-term] policy change increases the premium on the policy, the policyholder [insureds] must pay an additional surcharge for the increased premium attributable to Insured Property located [premises, operations, or insured property] in the Catastrophe Area [catastrophe area], which will [shall] be determined [as follows:]

[(1) For policies where the premium surcharge is determined under §5.4182 or §5.4183(1) of this division (relating to Allocation Method for Specified Lines of Insurance and Allocation Method for Other Lines of Insurance), the additional premium surcharge is determined] by applying the applicable Premium Surcharge Percentage [premium surcharge percentage] to that portion of the additional premium attributable to Insured Property [premises, operations or insured property] located in the Catastrophe Area [catastrophe area].

[(2) For policies where the premium surcharge is determined under §5.4183(1) and (2) of this division, the additional premium surcharge is determined by applying the premium surcharge percentage and the catastrophe area allocation percentage to the additional premium.]

(d) [(e)] If a midterm [mid-term] policy change decreases the premium, the policyholder is due a refund of the surcharge for the decreased premium attributable to Insured Property located in the Catastrophe Area, which must be determined by applying the applicable Premium Surcharge Percentage to that portion of the return premium attributable to Insured Property located in the Catastrophe Area. The insurer must credit or refund the excess surcharge to the policyholder within 20 days of the date of the transaction. The Insurer may credit any refund paid or credited to the policyholder to the Association through the offset process described in §5.4187 of this division (relating to Offsets). [there shall be no corresponding decrease in the surcharge or refund of the surcharge.]

(e) [(f)] Surcharges or refunds must [shall] apply to all premium changes resulting from Exposure [due to exposure] or premium audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration. On inception of the policy [Upon policy inception], the premium surcharge must [shall] be collected on the deposit premium paid. If, after Exposure [exposure] or premium audit, retrospective rating adjustment, or similar adjustment after policy expiration, an additional premium is required, an additional surcharge must [shall] be paid. If, after Exposure [exposure] or premium audit, retrospective rating adjustment, or other similar adjustment after policy expiration, the deposit premium exceeds the actual premium, the ex-

cess surcharge must [shall] be refunded to the policyholder [insured], and the Insurer [insurer] may credit any refund paid to the Association through the offset process described in §5.4187 of this division [(relating to Offsets)]. Additional surcharges and refunds must [shall] be determined [as follows:]

[(1) For policies where the premium surcharge is determined under §5.4182 or §5.4183(1) of this division, the additional premium surcharge (or refund) is determined] by applying the Premium Surcharge Percentage [premium surcharge percentage] in effect on the inception date of the policy, or the anniversary date of the policy in the case of multiyear [multi-year] policies, to the additional premium (or return premium) attributable to Insured Property located in the Catastrophe Area [catastrophe area].

[(2) For policies where the premium surcharge is determined under §5.4183(1) and (2) of this division, the additional premium surcharge (or refund) is determined by applying the premium surcharge percentage and the catastrophe area allocation percentage to the additional premium (or return premium).]

(f) [(g)] Even if [Notwithstanding whether] a surcharge was in effect on the inception date of the policy, or the anniversary date in the case of multiyear [multi-year] policies, no additional premium surcharges or refunds will [shall] apply to premium changes resulting from Exposure [exposure] or premium audits, retrospective rating adjustments, or other similar adjustments that occur when there is no premium surcharge in effect.

§5.4185. Mandatory Premium Surcharge Collection [Premium Surcharges are Mandatory].

(a) Except as provided in §5.4127(h) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), Insurers may not pay the surcharges instead [in lieu] of surcharging their policyholders.[;] However [however], an Insurer [insurer] may remit a surcharge prior to collecting the surcharge from its policyholder.

(b) Insurers must collect the premium surcharges either:

(1) when the corresponding written premium transaction is effective; or

(2) proportionately as the Insurer collects the premium.

(c) Insurers may elect only one of the premium surcharge collection methods described in subsection (b)(1) and (2) of this section and this premium surcharge collection method must be used for all policies issued by the Insurer.

[(b) Insurers shall apply any money received from the insured to the premium surcharge prior to applying the funds to premium or any other obligation or debt owed to the insurer.]

[(1) Premium surcharges may not be allocated pro-rata or otherwise mixed with premium over installment plan payments. All money received under an installment plan shall be applied first to the premium surcharge prior to applying the money to premium or any other obligation or debt owed to the insurer.]

[(2) Premium surcharges may not be refunded to a premium finance company.]

(d) [(c)] Under [Pursuant to the] Insurance Code §2210.613(d), the failure of a policyholder to pay the premium surcharge constitutes failure to pay premium for the purposes of policy cancellation.

§5.4186. Remittance of Premium Surcharges.

(a) Except as provided in §5.4143 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities), Insurers must [shall] remit to the Association the aggregate amount of surcharges as provided by this section. An Affiliated Surplus Lines Insurer [paid by its policyholders; however, an affiliated surplus lines insurer] may allow a surplus lines agent to remit premium surcharges to the Association on its behalf in compliance with [in accordance with] any procedures established by the Association relating to premium surcharge remissions from surplus lines agents.

(b) Insurers, or surplus lines agents allowed by Affiliated Surplus Lines Insurers [affiliated surplus lines insurers] to remit surcharges under [pursuant to] subsection (a) of this section, must [shall] remit all surcharges [paid by its insureds] not later than the last day of the month following the month in which the corresponding written premium transaction [surcharge] was effective [received].

(c) Insurers and agents may not allow[,] or require[,] policyholders to make separate payments for the surcharge amounts that [which] are payable to the Association or the Premium Surcharge Trust Fund.

(d) Subsection (b) of this section applies to all Insurers [insurers] regardless of whether the policyholder [insured] paid the premium surcharge through an agent of the Insurer [insurer] or the policyholder [insured] paid the premium surcharge directly to the Insurer [insurer].

(e) An Affiliated Surplus Lines Insurer that [affiliated surplus lines insurer who] allows an agent to remit premium surcharges to the Association under [pursuant to] subsection (a) of this section may be held liable by the Department [department] for the failure of its agent to remit the premium surcharges or timely remit the premium surcharges, under [pursuant to] subsection (b) of this section.

(f) As part of the procedures established by the Association under subsection (a) of this section, the Association may impose reporting requirements on surplus lines agents so that the Association can fulfill its duties under §5.4190(f) of this division (relating to Annual Premium Surcharge Report).

§5.4187. Offsets.

(a) An Insurer [insurer] may credit a premium surcharge amount on its next remission to the Association if the Insurer [insurer] has already remitted the amount to the Association for:

(1) the portion of the surcharge the Insurer [insurer] was not able to collect from the policyholder, if the policy was canceled or expired; [insured prior to the collection of any funds for premium or any other obligation or debt owed to the insurer; or]

(2) the portion of the surcharge remitted to the Association, or deposited directly in the Premium Surcharge Trust Fund, that was later refunded to the policyholder as a result of a midterm cancellation or midterm policy change, as described in §5.4184 of this division (relating to Application of the Surcharges); or

(3) [(2)] the portion of a surcharge remitted [paid] to the Association, or deposited directly in the Premium Surcharge Trust Fund, in excess of a deposit premium as described in §5.4184 of this division [(relating to Application of the Surcharges)].

(b) An agent may not offset payment of a premium surcharge to the Insurer [insurer] for any reason. However, a surplus lines agent allowed by an Affiliated Surplus Lines Insurer [affiliated surplus lines insurer] to remit surcharges to the Association on its behalf under §5.4186(a) of this division (relating to Remittance of Premium Surcharges), may offset as provided in this section.

§5.4189. Notification Requirements.

(a) Insurers must [shall] provide written notice to policyholders receiving a premium surcharge that their policy contains a sur-

charge. The notice must [shall] read: "Texas Insurance Code Sections 2210.073 and 2210.613 require a premium surcharge be added to certain property and casualty insurance policies providing coverage in the catastrophe area to pay the debt service on public securities issued to pay Texas Windstorm Insurance Association claims resulting from a catastrophe event. A premium surcharge {in the amount of $_____} has been added to your premium. [This premium surcharge is non-refundable under Texas Insurance Code Section 2210.613.] Should your policy be canceled by you or the insurer prior to its expiration date, a proportionate amount of the premium surcharge will [not] be refunded to you. Failure to pay the surcharge is grounds for cancellation of your policy."

(b) Insurers must [shall] provide written notice to policyholders of the dollar amount of the premium surcharge.

(c) Notices required under subsections (a) and (b) of this section must [shall]:

(1) be provided at the time the policy is issued, in the case of new business;

(2) be provided with the renewal notice, in the case of renewal business;

(3) be provided within 20 days of the date [end] of the transaction [period as specified in §5.4184(c) of this division (relating to Application of the Surcharges)] for any midterm [mid-term] change in the premium surcharge; and

(4) use at least 12-point [12 point] font and either be contained on a separate page or shown in a conspicuous location on the declarations page.

§5.4190. Annual Premium Surcharge Report.

(a) This section applies [does not apply] to an Insurer [insurer] that, during the calendar year, [exclusively] wrote any [or all] of the following types of [lines of] insurance: commercial fire; commercial allied lines; farm and ranch owners; Residential Property Insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage [federal flood insurance; medical malpractice insurance; accident and health insurance; workers' compensation insurance; or surety].

(b) No later than 90 days following the end of a calendar year in which a premium surcharge was in effect, each Insurer must [insurer shall] provide the Association with an annual premium surcharge report for the calendar year unless[. However, an annual premium surcharge report for a given year is not required if] premium surcharges were in effect for less than 45 days within the calendar year.

(c) Annual premium surcharge reports must [shall] provide information for each insurance company writing property or casualty insurance in the State of Texas, including Affiliated Surplus Lines Insurers [affiliated surplus lines insurers], and Affiliated Insurers [affiliated insurers] not authorized to engage in the business of insurance that issued independently procured insurance policies covering Insured Property [premises, operations, or insured property] in the State of Texas.

(d) Annual premium surcharge reports must [shall] provide information for the following annual statement lines of business: fire; allied lines; farmowners multiple peril; homeowners multiple peril; commercial multiple peril (nonliability portion); private passenger automobile no fault (PIP); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage [all applicable annual statement lines of business] for which the Insurer [insurer] reported premium for the applicable calendar year.

(e) Annual premium surcharge reports must [shall] provide the following information:

(1) the name and contact information of the individual responsible for submitting the report;

(2) the five-digit NAIC number of the insurance company;

(3) the name of the insurance company;

(4) the method the Insurer uses to collect premium surcharges under §5.4185(b) of this division (relating to Mandatory Premium Surcharge Collection);

(5) [(4)] for policies with effective dates, or multiyear [multi-year] policies with anniversary dates, within the calendar year, separately for each surcharge period in effect during the calendar year, and within each surcharge period in effect during the calendar year for all applicable lines of business:

(A) for [For] all policies subject to a premium surcharge:

(i) the total written premium attributable [or allocated] to Insured Property located [premises, operations, or insured property] in the Catastrophe Area [catastrophe area]; and

(ii) the total written premium attributable [or allocated] to Insured Property located [premises, operations, or insured property] outside the Catastrophe Area [catastrophe area]; and

(B) the total written premium for policies not subject to a premium surcharge because the policyholder [insured] had no [premises, operations, or] insured property located in the Catastrophe Area [catastrophe area];

(6) [(5)] for policies effective in portions of the calendar year when no surcharge period was in effect, or in the case of multiyear [multi-year] policies with an anniversary date in portions of the calendar year when no surcharge was in effect, the total written premium;

(7) [(6)] the total amount of premium surcharges collected during the applicable calendar year; and

(8) [(7)] the total amount of premium surcharges remitted to the Association during the applicable calendar year.

(f) The Association must [shall]:

(1) review the reports submitted under this section as necessary to determine:

(A) the consistency of premium surcharges actually remitted to the Association or deposited directly into the Premium Surcharge Trust Fund, with premium surcharges shown in the reports as collected and the premium surcharges shown in the reports as remitted to the Association or deposited directly into the Premium Surcharge Trust Fund; and

(B) the consistency of premiums shown in the reports as attributable to the Catastrophe Area [catastrophe area] with premium surcharges shown in the reports as collected by the Insurer [insurer], given the requirements regarding the determination of premium surcharges in this division;

(2) inform the Department [department] of any Insurer [insurer] the Association believes may not be in compliance with the rules established under this division; and

(3) before July 1 on each year reports are required to be submitted to the Association, provide an aggregate summary of the reports to the Department [~~department~~].

§5.4191. Premium Surcharge Reconciliation Report.

(a) This section applies [~~does not apply~~] to an Insurer [~~insurer~~] that, during an applicable calendar year, [~~exclusively~~] wrote any or all of the following types [~~lines~~] of insurance: commercial fire; commercial allied lines; farm and ranch owners; Residential Property Insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage [~~federal flood insurance; medical malpractice insurance; accident and health insurance; workers' compensation insurance, or surety~~].

(b) On a [~~Upon the~~] written request from [~~of~~] the Department [~~department~~], an Insurer must [~~insurer shall~~] provide the Department [~~department~~] with a premium surcharge reconciliation report for the year specified by the Department [~~department~~] in its request.

(c) Reconciliation reports must [~~shall~~] be provided to the Department [~~department~~] within 15 [~~10~~] working days after the date the request is received by the Insurer [~~insurer~~].

(d) Reconciliation reports must [~~shall~~] consist of [~~the following~~] information concerning premiums written and surcharges collected, separately for each applicable surcharge period, including periods in which no premium surcharges were in effect, within the specified year for:

(1) premium written at policy issuance for policies effective within the year, including anniversary dates within the year on multiyear [~~multi-year~~] policies, separately for:

(A) premium on policies subject to a premium surcharge, including premium attributable [~~allocated~~] to Insured Property located [~~the catastrophe area on policies having premises, operations, or insured property~~] both in and outside of the Catastrophe Area [~~catastrophe area~~]; and

(B) premium on policies not subject to a premium surcharge, including premium attributable [~~not allocated~~] to Insured Property located [~~the catastrophe area on policies having premises, operations, or insured property~~] both in and outside of the Catastrophe Area [~~catastrophe area~~];

(2) premium written due to midterm [~~mid-term~~] coverage changes occurring within the specified time period separately for:

(A) premium increases on policies subject to a premium surcharge, including premium attributable [~~allocated~~] to Insured Property located [~~the catastrophe area on policies having premises, operations, or insured property~~] both in and outside of the Catastrophe Area [~~catastrophe area~~]; [~~and~~]

(B) premium decreases on policies subject to a refund or credit of the premium surcharge, including premium attributable to Insured Property located both in and outside the Catastrophe Area; and

(C) [~~(B)~~] premium on policies not subject to a premium surcharge, including premium increases and decreases attributable [~~not allocated~~] to Insured Property located [~~the catastrophe area on policies having premises, operations, or insured property~~] both in and outside of the Catastrophe Area [~~catastrophe area and premium refunds, whether related to coverage within or without the catastrophe area~~]; [~~and~~]

(3) unearned premiums returned due to midterm cancellations occurring within the specified time period separately for:

(A) return premium on policies subject to a premium surcharge, including return premium attributable to Insured Property located both in and outside the Catastrophe Area; and

(B) return premium on policies not subject to a premium surcharge, including return premiums attributable to Insured Property located both in and outside the Catastrophe Area;

(4) [~~(3)~~] total premium due to post term [~~post-term~~] premium changes occurring within the specified time period, including adjustments caused by [~~due to~~] premium or Exposure [~~exposure~~] audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration, separately for:

(A) premium on policies subject to a premium surcharge, including premium attributable [~~allocated~~] to Insured Property located [~~the catastrophe area on policies having premises, operations, or insured property~~] both in and outside of the Catastrophe Area [~~catastrophe area~~]; and

(B) premium on policies not subject to a premium surcharge, including premium attributable [~~not allocated~~] to Insured Property located [~~the catastrophe area on policies having premises, operations, or insured property~~] both in and outside of the Catastrophe Area [~~catastrophe area~~];

(5) [~~(4)~~] separately for paragraphs (1)(A), (2)(A), and (4)(A) [~~(3)(A)~~] of this subsection, the amounts of premium surcharges collected; [~~and~~]

(6) separately for paragraphs (2)(B), (3)(A), and (4)(A) of this subsection, the amounts of premium surcharges refunded or credited to the policyholder;

(7) the total amount of premium surcharges claimed as offsets by the Insurer under §5.4187 of this division (relating to Offsets); and

(8) [~~(5)~~] the total amount of written premium for policies written in the State of Texas as reported in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas.

(e) Nothing in this section limits the Department's [~~department's~~] authority to obtain information from Insurers [~~insurers~~] under the Insurance Code.

(f) A report provided to the Department [~~department~~] under this section may be provided to the Association.

§5.4192. Data Collection.

(a) The Department [~~department~~] may request from each insurer the information necessary to enable the Department [~~department~~] to determine the Premium Surcharge Percentage [~~premium surcharge percentage~~] applicable to policyholders [~~insureds~~] with Insured Property [~~premises, operations, or insured property~~] located in the Catastrophe Area [~~catastrophe area~~].

(b) For lines of insurance subject to [~~§5.4182 of~~] this division [~~(relating to Allocation Method for Specified Lines of Insurance)~~] for policies in force on or after October 1, 2011, [~~and for lines of insurance subject to §5.4183 of this division (relating to Allocation Method for Other Lines of Insurance) for policies effective on or after October 1, 2011,~~] each Insurer must [~~insurer shall~~] maintain sufficient records to report, [~~the following information to the department:~~]

[~~(1)~~] for policies where the premium surcharge was, or would be determined under [~~§5.4182 or §5.4183(1) of~~] this division, the total written premium attributable to Insured Property [~~the catastrophe area for policies with premises, operations, or insured property~~] located in the Catastrophe Area. [~~catastrophe area; and~~]

[(2) for policies where the premium surcharge was, or would be determined under §5.4183(1) or (2) of this division, the total written premium allocated to the catastrophe area.]

(c) When possible, and practical, the Department [department] will obtain information from the Texas Surplus Lines Stamping Office prior to requesting information from Affiliated Surplus Lines Insurers [affiliated surplus lines insurers].

(d) Nothing in subsection (c) of this section should be read to mean that subsections (a) and (b) of this section do not apply to Affiliated Surplus Lines Insurers [affiliated surplus lines insurers].

(e) Nothing in this section limits the Department's [department's] authority to obtain information from Insurers [insurers] under the Insurance Code.

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

Filed with the Office of the Secretary of State on January 30, 2014.

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

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28 TAC §5.4183

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

The Texas Department of Insurance proposes the repeal of 28 TAC §5.4183, concerning the procedure for determining the premium surcharge for other applicable lines of insurance in the event of a catastrophe. The repeal of this section is necessary to implement the requirements of House Bill (HB) 3, 82nd Legislature, 1st Called Session, effective September 28, 2011. HB 3 amended Insurance Code §2210.613 to specify the lines of insurance that are subject to a premium surcharge. It is necessary to repeal §5.4183 because the lines of insurance addressed in it are not subject to premium surcharges. This proposed repeal is related to a separate rule proposal in this issue of the *Texas Register* which concerns amendments to 28 TAC §§5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4187, and 5.4189 - 5.4192. Those amendments relate to procedures for making and assessing a premium surcharge under Insurance Code Chapter 2210.

The department previously adopted §5.4183 to implement HB 4409, 81st Legislature, 2009, Regular Session. HB 4409 substantially amended how the Texas Windstorm Insurance Association funded its losses in excess of premium and other revenue by establishing public securities to pay for excess losses in the event of a catastrophe. The association provides windstorm and hail insurance to policyholders in the catastrophe area who are unable to obtain such insurance in the private market. The catastrophe area includes the 14 first tier coastal counties and parts of Harris County. HB 4409 established three classes of public securities in Insurance Code Chapter 2210 to pay for losses that exceeded the association's premium and other revenue, available reserves, and amounts in the catastrophe reserve trust fund. Public securities are only issued if a catastrophe occurs and results in excess losses. Each class of public securities is to be repaid in the manner established by Insurance Code Chapter 2210.

Class 2 public securities are issued under Insurance Code §2210.073 to pay for losses not paid under §2210.072. The cost of class 2 public securities issued under Insurance Code §2210.073 are paid by member insurer assessments and premium surcharges on policyholders in the catastrophe area. Under Insurance Code §2210.613, 30 percent of the cost of class 2 public securities is to be paid by member insurer assessments and 70 percent of the cost is to be paid by a premium surcharge assessed on property and casualty policyholders who reside, have operations in, or whose insured property is located in the catastrophe area.

HB 3 amended several provisions in Insurance Code Chapter 2210 concerning public securities. With regard to the premium surcharges and the applicable lines of insurance that are surcharged, HB 3 amended Insurance Code §2210.613 to eliminate certain lines of insurance subject to a premium surcharge and to specify the lines of property and casualty insurance policies subject to a premium surcharge. Previously, Insurance Code §2201.613 stated that the premium surcharges applied to all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance. The department adopted §5.4183 to implement an allocation method for determining the premium surcharge applicable to lines of insurance that were not specified in §5.4182. Because HB 3 amended Insurance Code §2210.613 to eliminate the lines of insurance described by §5.4183 from the lines of insurance subject to a premium surcharge, §5.4183 is no longer necessary. The department proposes to repeal §5.4183 because it is now obsolete.

FISCAL NOTE. C. H. Mah, associate commissioner of the Property and Casualty Section, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of this proposal to repeal this rule section. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Mah has determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the implementation of Insurance Code §2210.613, the more efficient operation of the association, and the removal of unnecessary sections from the TAC. There are no anticipated economic costs to persons who are required to comply with the proposed repeal. There will be no effect on small or micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule could have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

There will be no new costs to any person to comply with the repeal. There is no anticipated adverse economic effect on small

or micro businesses regarding the regulatory cost of compliance with the repeal, so preparation of an economic impact statement and regulatory flexibility analysis is not statutorily required.

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

REQUEST FOR PUBLIC COMMENT. To have your comments considered, you must submit written comments on the proposal no later than 5 p.m., Central Time on March 10, 2014. You may send your comments electronically to the Chief Clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comments to Brian Ryder in the Property and Casualty Actuarial Office at Brian.Ryder@tdi.texas.gov, or by mail to Brian Ryder, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must submit any request for a public hearing separately to the Office of Chief Clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The department proposes the repeal under Insurance Code §§2210.008, 2210.613, and 36.001. Section 2210.008 authorizes the commissioner to adopt rules necessary to carry out the purposes of Insurance Code Chapter 2210. Section 2210.613 concerns the payment of class 2 public securities and specifies the lines of insurance that are subject to a premium surcharge. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §2210.008 and §2210.613.

§5.4183. Allocation Method for Other Lines of Insurance.

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 January 30, 2014.

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Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

SUBCHAPTER A. ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§30.5, 30.7, 30.14, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30, and 30.36 and to repeal and simultaneously propose new §30.33.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rules implement requirements in House Bill (HB) 798, HB 1302, HB 1659, HB 1846, and Senate Bill (SB) 162 from the 83rd Legislature, 2013. These bills impact Chapter 30, Subchapter A.

The proposed rules will enable the commission to: exclude Class C misdemeanor convictions when reviewing applications for occupational licenses as required by Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction, amended by HB 798; prohibiting certain registered sex offenders from providing services in a person's residence unless supervised, as required by Texas Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program, amended by HB 1302; consider individuals charged with certain offenses to have been convicted of an offense for purposes of this subchapter, regardless of whether the proceedings were dismissed, as required by Texas Occupations Code, Chapter 53, amended by HB 1659; suspend or refuse the application of an individual who has not made a minimum payment of child support as required by Texas Family Code, Chapter 232, Suspension of License, amended by HB 1846; recognize verified military service, training, or education from military service members and military veterans when considering occupational licensing applications as required by Texas Occupations Code, Chapter 55, License While on Military Duty and for Military Spouses, amended by SB 162; and expedite occupational licensing applications from military spouses as required by Texas Occupations Code, Chapter 55, License While on Military Duty and for Military Spouses, amended by SB 162.

The proposed rules will: add relevant statutory citations, remove redundant citations, and remove citations which no longer pertain to occupational licenses due to historical legislative statutory changes; adjust timelines due to increased processing and evaluation time resulting from criminal history background checks required by HB 963 from the 81st Legislature, 2009; provide a uniform wait time between examinations for individuals who re-take a paper examination or a computer-based examination; clarify the validity period for examinations; incorporate a new training delivery method which utilizes current technology; establish a fee for review of this new training delivery method; provide consistency within the chapter by including a two-year validity period for licenses and registrations; and improve readability of rules by removing redundant wording and making non-substantive changes to grammar, punctuation, and organization.

The proposed rulemaking will also repeal and simultaneously propose new §30.33 in order to reorganize the section to improve readability by the public. Proposed new §30.33 will also add new requirements relating to: convictions for Class C misdemeanors as required by Texas Occupations Code, Chapter

53, amended by HB 798; prohibited employment for individuals subject to registration for certain convictions under Texas Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program, amended by HB 1302; individuals charged with certain offenses, regardless of whether the proceedings have been dismissed, to be considered to have convictions under Texas Occupations Code, Chapter 53, amended by HB 1659; and child support obligations of applicants under Texas Family Code, Chapter 232, amended by HB 1846.

Section by Section Discussion

In addition to the proposed amendments associated with this rulemaking proposal, various stylistic, non-substantive changes are included to update rule language to current Texas Register style and format requirements. Such changes ensure appropriate and consistent use of acronyms, section references, rule structure, and terminology. These changes are non-substantive and are not specifically discussed in this preamble.

§30.5, General Provisions

The proposed amendment to §30.5 would incorporate the employment prohibitions and supervision requirements for individuals with certain reportable convictions from HB 1302 by adding subsection (f). Additionally, the proposed amendment would add relevant statutory citations, remove redundant citations, and remove citations that, due to legislative changes, no longer pertain to occupational licenses issued by the commission.

§30.7, Definitions

The proposed amendment to §30.7 would remove out-of-date terminology and update the licensing training methods to reflect the availability of new technology by including a definition for webinar. The proposed amendment would remove the specific examples of CD-ROM courses and on-line education from the definition of distance learning in order to reflect changing technology. Similarly, the proposed rule would remove outdated examples of compact disks and digital video disks from the definition of technology-based training, as these delivery methods continue to evolve. The proposed rule would add the definition of webinar in order to distinguish live interactive training classes from other technology-based training methods.

§30.14, Applications for Initial Registration

The proposed amendment to §30.14 would remove the 45-day deadline from the rule to acknowledge the increased processing and evaluation time for the additional criminal history background checks required by HB 963 from the 81st Legislature, 2009. Evaluation of applicants' criminal history helps to ensure public safety by denying certain occupational licenses to certain individuals. Legislative changes require increased criminal history background evaluation for each application. In some cases, the increased evaluation requirements add an additional 21 - 24 days to the review process. Internal policy would ensure application processing is continued to be done in a timely manner. The removal of this unsupported deadline from the rule would ensure that staff can perform criminal history evaluations completely and correctly. The proposed rule would also replace the reference to the licensing and registration validity term in §30.30 with a reference to the validity terms specified in Chapter 30, Subchapters B - L in order to reflect differing terms for certain types of licenses and registrations.

§30.18, Applications for an Initial License

The proposed amendment to §30.18 would remove the 45-day deadline from the rule to acknowledge the increased processing and evaluation time for the additional criminal history background checks required by HB 963 from the 81st Legislature, 2009. Evaluation of applicants' criminal history helps to ensure public safety by denying certain occupational licenses to certain individuals. Legislative changes require increased criminal history background evaluation for each application. In some cases, the increased evaluation requirements add an additional 21 - 24 days to the review process. Internal policy would ensure application processing is continued to be done in a timely manner. The removal of this unsupported deadline from the rule would ensure that staff can perform criminal history evaluations completely and correctly. The proposed rule would also replace the reference to the license and registration validity term in §30.30 with a reference to the validity terms specified in Chapter 30, Subchapters B - L in order to reflect differing terms for certain types of licenses and registrations.

§30.20, Examinations

The proposed amendment to §30.20 would clarify that Class C misdemeanor convictions are not considered convictions when reviewing applications as specified by HB 798. The proposed rule would also grant the executive director authority to consider an individual charged with certain offenses, even if the proceedings have been dismissed, to have a conviction as provided by HB 1659. Additionally, the 60-day waiting period for individuals failing paper examinations would be removed to address the current inconsistent waiting times between paper and computer examinations. The proposed removal of this waiting period would allow individuals to re-take examinations, become licensed, and gain employment more quickly. The proposed rule would remove the subsection prohibiting an individual from taking the same examination more than four times within 365 days. These removals would reflect that it is not the commission's role to dictate how often an individual may take an examination or how long an individual must wait or study between examinations. The proposed rule language would prohibit an individual who fails an examination from taking a repeat examination until the individual receives notification of results from the previously attempted examination. This new time requirement would apply to both computer-based and paper testing methods. Additional amendments would clarify that the validity period for an application is limited to 365 days or four attempts, whichever comes first.

§30.24, License and Registration Applications for Renewal

The proposed amendment to §30.24 would remove the 45-day deadline from the rule to acknowledge the increased processing and evaluation time for the additional criminal history background checks required by HB 963 from the 81st Legislature, 2009. Evaluation of applicants' criminal history helps to ensure public safety by denying certain occupational licenses to certain individuals. Legislative changes require increased criminal history background evaluation for each application. In some cases, the increased evaluation requirements add an additional 21 - 24 days to the review process. Internal policy would ensure application processing is continued to be done in a timely manner. The removal of this unsupported deadline from the rule would ensure that staff can perform criminal history evaluations completely and correctly.

§30.26, Recognition of Licenses from Out-of-State

The proposed amendment to §30.26, would change the heading to include military spouses, military service members, and

military veterans to reflect changes made by SB 162. Also, the proposed rule would incorporate changes related to military spouses' application processing, licensing term, and notification requirements from SB 162. Finally, the proposed amendment would require the executive director to credit verified military service, training, or education toward licensing requirements and identify exceptions for examination requirements, holders of restricted licenses, or unacceptable criminal histories as specified by SB 162.

§30.28, Approval of Training

The proposed amendment to §30.28 would add the requirement that technology-based training provide criteria for successful training completion. The proposed changes would also add a new subsection relating to webinar training, webinar training providers, and webinar training materials under the commission's authority to establish uniform procedures for training granted by Texas Water Code (TWC), §37.008. These new subsections would provide requirements and exemptions for training providers who choose to provide webinar presentations for continuing education courses. Webinars are different from other forms of technology-based training in that they deliver live training via the Internet rather than previously-recorded sessions, and allow for a greater amount of interaction between the instructor and students. Webinars are widely available and are valuable methods of providing course instruction. Webinars may not be substituted for courses required to meet the educational requirements for obtaining an initial license. Because applicants must be present in the classroom to learn extensive hands-on skill required by many basic licensing courses, the use of webinar presentations for training is effectively limited to continuing education courses. The entities identified to deliver webinars are consistent with those for both conferences and distance education. The proposed rule would also amend the training fee schedule to specify the costs to training providers for a webinar course review and subsequent applications. Additionally, the proposed rule would change "should" to "must". This proposed change would clarify the commission's intent that individuals must comply with the requirements in this section.

§30.30, Terms and Fees for Licenses and Registrations

The proposed amendment to §30.30 would include language providing exceptions to the three-year validity term for licenses and registrations as specified by Subchapters B - L. This language would be amended to be consistent with rule language found in Chapter 30, Subchapter F, which provides a two-year validity period for provisional Municipal Solid Waste Facility Supervisor licenses.

§30.33, License or Registration Denial, Warning, Suspension, or Revocation

The proposed rules would repeal and simultaneously propose new §30.33 to reorganize the section in order to improve readability and flow. The current structure of the section does not follow a logical order and does not allow for clean incorporation of required statutory language. The proposed new section would reorganize the content to incorporate the Class C misdemeanor conviction exemption from HB 798, the employment prohibitions and supervision requirements from HB 1302, the consideration of a dismissal of proceedings for individuals charged with certain offenses, as a conviction, as provided by HB 1659, and the child support payment requirements from HB 1846. The reorganization would include substantive statutory changes and would create a more logical flow.

The proposed changes would specify the criminal convictions for which the commission may deny, suspend, or revoke a license or registration. The proposed rule would define residence and supervision for purposes of the prohibited employment and supervision requirements in HB 1302. The proposed changes, in accordance with HB 1659, would identify when individuals charged with certain offenses where the proceedings have been dismissed would be considered convicted of an offense under this section. The proposed rule would allow the commission to accept applications for licenses from applicants who are delinquent in child support payments but who have made an immediate payment of not less than $200 toward the owed arrearages and established a repayment schedule with the child support agency as required by HB 1846.

Proposed new §30.33(a) would specify when the executive director may deny an initial or renewal application for a license or registration. The language remains largely the same as in the current subsection; however, the proposed rulemaking would move language in existing §30.33(a)(2)(H) to proposed new §30.33(h). Additionally, the citation to a motion for reconsideration has been updated to refer to a motion to overturn the executive director's decision as described by 30 TAC §50.139, Motion to Overturn Executive Director's Decision. Section 50.139 applies to applications submitted on or after September 1, 1999.

Proposed new §30.33(b) would allow the executive director to issue a warning letter if an individual causes, contributes to, or allows a violation of this chapter. The proposed rule would make no substantive change to this subsection.

Proposed new §30.33(c) would allow the commission, after notice and hearing, to suspend or revoke a license, certificate, or registration on any grounds contained in TWC, §7.303(b). The proposed rule would make no substantive change to this subsection.

Proposed new §30.33(d) would allow a license or registration to be suspended, after notice and hearing, for a period of up to one year and require that a license or registration be revoked upon a second suspension. The proposed rule would move existing §30.33(k) to a different location within the section but would make no substantive change to the existing language in this subsection.

Proposed new §30.33(e) would allow the commission to revoke a license or registration, after notice and hearing, for a designated time period or permanently and would require the second revocation of a license or registration to be permanent. The proposed rule would move existing §30.33(l) to a different location within the section but would make no substantive change to the existing language in this subsection.

Proposed new §30.33(f) would designate procedures for renewal of suspended licenses or registrations. The proposed rule would move existing §30.33(m) to a different location within the section but would make no substantive change to the existing language in this subsection.

Proposed new §30.33(g) would specify that revoked licenses and registrations shall not be reinstated after the revocation period and that, after the revocation period has ended, an individual may apply for a new license or registration under this chapter. The proposed rule would move existing §30.33(n) to a different location within the section but would make no substantive change to the existing language in this subsection.

Proposed new §30.33(h) would specify for which types of convictions the commission may deny, suspend, or revoke a license as listed in existing §30.33(a)(2)(H). The proposed rule would require the commission to revoke a license or registration upon specific events relating to an individual's criminal conviction as listed in existing §30.33(e). Proposed §30.33(h) would also specify what constitutes a conviction for an offense for the purposes of this section as listed in existing §30.33(g), as well as when an individual may not be considered to be convicted of an offense for the purposes of this section as listed in existing §30.33(f). The proposed rule would add language to proposed §30.33(h)(1) exempting Class C misdemeanors from the criminal convictions for which the commission may deny, suspend, or revoke a license in accordance with changes mandated in HB 798. The proposed rule would also add language to proposed §30.33(h)(3) prohibiting certain registered sex offenders, from providing any type of service in the residence of another person unless supervised, and defines residence and supervision for purposes of this subsection, in accordance with HB 1302. The proposed rule would also add new language to proposed §30.33(h)(5) to specify that an individual charged with certain offenses, who has received a dismissal of proceedings will be considered convicted of an offense for the purposes of this section in accordance with HB 1659.

Proposed new §30.33(i) would specify that, after notice and hearing, the commission may revoke a maintenance provider registration on any of the grounds listed in Texas Health and Safety Code, §366.0515(m). The proposed rule would move existing §30.33(h) to a different location within the section but would make no substantive change to the existing language in this subsection.

Proposed new §30.33(j) would grant the commission authority to suspend a license or registration upon an individual's failure to pay child support as specified in existing §30.33(i)(1). The proposed rule would also require the commission to refuse to accept an application for issuance or renewal of a license or registration if the individual has failed to pay child support for six months or more, or if the child support agency notifies and requests that the commission refuse to accept the application as required by existing §30.33(i)(2). The proposed rule would require the child support agency to notify the commission that an individual has performed one of multiple listed remedial actions before the commission may accept an application that was refused under this subsection, as required by existing §30.33(i)(3). The proposed rule would allow the commission to charge a fee sufficient to recover the administrative costs incurred for denying or suspending the license, as allowed by existing §30.33(i)(4). The proposed rule would also add language allowing the commission to accept an application for a license that was refused under this subsection if notified by the child support agency that the applicant has made an immediate payment of not less than $200 toward child support arrearages owed and established a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment, as required by HB 1846.

Proposed new §30.33(j)(5) would establish the suspension periods for a license or registration suspended for failure to pay child support. The proposed rule would move existing §30.33(j) to a new location within the section but would make no substantive change to the existing language in that subsection.

§30.36, Notice

The proposed amendment to §30.36 would remove redundant words from the subsections to improve the readability of the rule.

Fiscal Note: Costs to State and Local Government

Nina Chamness, analyst in the Chief Financial Officer Division, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state government as a result of administration or enforcement of the proposed rules. The agency will implement the proposed rules using currently available resources, and other state agencies are expected to do the same. Governmental entities that develop webinar courses will pay lower costs to have the agency approve their courses and those that use webinars to train employees may also experience some cost savings if they use them for training, but resulting savings are not expected to be significant.

The proposed rules will implement the requirements of several bills from the 83rd Legislature, 2013. Specifically, the proposed rules address the requirements of HB 798, HB 1302, HB 1659, HB 1846, and SB 162, most of which were part of current agency policy, by amending Chapter 30. The proposed rules incorporate requirements pertaining to the review of occupational license applications and issuance of those applications for individuals with Class C misdemeanor convictions, for registered sex offenders, and for individuals who have not made minimum child support payments. The proposed rules also incorporate requirements regarding occupational license applications of military spouses and individuals who have served with the military or have training or education provided by the military. The proposed rules also amend current distance education training delivery methods to specifically include webinars as an approved methodology. Proposed changes are also being made to improve readability, improve understanding, provide further clarification, and to remove redundant wording.

Impact on the TCEQ

The proposed rules, in many cases, formalize current agency practice regarding acceptance of military training, expediting applications from military spouses, approval of webinar courses, and license issuance to individuals with Class C misdemeanor convictions. Proposed amendments regarding the expedition of license applications for military personnel and veterans, the requirements for supervision of certain registered sex offenders, the increased processing for additional criminal history background checks, and license issuance for individuals who have not made minimum child support payments are not expected to have significant fiscal impacts on the agency, and the agency will use currently available resources to implement the proposed rules.

The proposed fee for the agency to approve webinar training is $50 for initial review of a webinar course and $10.00 per credit hour for each subsequent application for additional webinar training courses. Under current rules, the TCEQ approves webinar training as a type of distance learning and charges a minimum fee for approval of $100 per application. The agency does not expect that the decrease in webinar approval fees to significantly impact agency revenue. The proposed rules specifically state that webinar training submitted for approval can only be from governmental entities (or their agents), industry related associations, or institutions of higher education.

State Agencies and Units of Local Government

State agencies and units of local government are not expected to experience significant fiscal impacts upon implementation of the proposed rules. Governmental entities that pay licensing costs for individuals in their employ would not see a change in licens-

ing costs. With regards to training costs, governmental entities that pay for training costs could see some savings in travel and lodging costs if webinars are used in lieu of other types of training. This fiscal note assumes that governmental entities already select the most cost effective means of training, and any savings resulting from the proposed rules are not expected to be significant.

The agency knows of one university affiliated entity and 15 municipalities that provide training for licensees and employees. If these governmental entities decide to develop webinar training, they would be charged the proposed approval fee by the agency. Although the proposed approval fee for webinar courses is $50 lower than the current minimum fee, cost savings for these entities are not expected to be significant.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law.

The proposed rules do not impose any additional licensing fees or change education requirements for the initial licensure for individuals. Current rules address requirements for individuals with criminal histories and delinquent child support payments. The proposed rules comply with recent legislative requirements (one of which is the requirement of a minimum $200 payment of delinquent child support). Assuming that individual licensees comply with state law and licensing requirements, the agency anticipates that individuals will not experience significant fiscal impacts as a result of the proposed rules. The proposed rules may benefit individual licensees if additional webinar courses are developed by authorized entities and are approved by the agency. Any savings experienced by individuals for taking webinars is expected to vary depending on the webinar fee charged by the provider and the training preferences of the individual.

Businesses that pay the licensing and training fees for their employees are not expected to experience significant fiscal impacts under the proposed rules. Businesses could experience some savings with regards to training costs if they require their employees to take approved webinar courses for training. However, the significance of savings would depend on fees charged by authorized webinar providers and the operating environment of each business.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses that pay for training courses for their licensed employees could experience some cost savings if they allow their employees to take approved webinar courses. The significance of savings would depend on fees charged by authorized providers and the operating environment of each business.

Small Business Regulatory Flexibility Analysis

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses that pay for training courses for their licensed employees could experience some cost savings if they allow their employees to take approved webinar courses. The significance of savings would depend on fees charged by authorized providers and the operating environment of each business.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to that statute because the proposed rules do not meet the criteria for "major environmental rules" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. During the 83rd Legislature, 2013, SB 162, HB 798, HB 1302, HB 1659, and HB 1846 were passed which added to and amended provisions of the occupational licensing and registration programs administered by the TCEQ.

The specific intent of the proposed rules is: to ensure consistency between the rules and their applicable statutes as amended by recent legislation; to address the procedure for granting licenses to military spouses; to credit verified military service and training of military service members or veterans toward licensing requirements; to exempt Class C misdemeanors from the types of offenses considered to be convictions; to prohibit certain registered sex offenders from providing services in a person's residence unless supervised; to designate when an individual who has been charged with certain offenses where the proceedings have been dismissed may be considered to have a criminal conviction; to allow for new and evolving types of training methods; to address child support obligations an applicant must meet prior to issuance of a license or registration; to make grammatical and punctuation corrections; and to modify, reorganize, or add language to improve readability and enhance enforceability.

The proposed rules would clarify and update the agency's licensing and registration programs and would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the proposed rules would only modify existing licensing and registration requirements. Therefore, the proposed rules do not meet the definition of a major environmental rule as defined in Texas Government Code, §2001.0225(g)(3).

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the proposed rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicability requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to rules adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these requirements: there are no federal standards for the occupational licenses and registrations program administered by the commission; the rules do not exceed an express requirement of state law; there is no delegation agreement that would be exceeded by the rules; and the proposed rules would implement requirements of SB 162, HB 798, HB 1302, HB 1659, and HB 1846.

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

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The specific purpose of these proposed rules is: to ensure consistency between the rules and their applicable statutes as amended by recent legislation; to address the procedure for granting licenses to military spouses; to credit verified military service and training of military service members or veterans toward licensing requirements; to exempt Class C misdemeanors from the types of offenses considered to be convictions; to prohibit certain registered sex offenders from providing services in a person's residence unless supervised; to designate when an individual who has been charged with certain offenses where the proceedings have been dismissed may be considered to have a criminal conviction; to allow for new and evolving types of training methods; to address child support obligations an applicant must meet prior to issuance of a license or registration; to make grammatical and punctuation corrections; and to modify, reorganize, or add language to improve readability and enhance enforceability.

The proposed regulations do not affect a landowner's rights in private real property because this proposed rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rules do not constitute a taking because they would not burden private real property. Because the proposed changes are mandated by statute, there are no reasonable alternative actions that could accomplish the specified purpose of the proposed rules.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on Thursday, March 6, 2014, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-044-030-WS. The comment period closes March 18, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Ivan Messer, Permitting and Registration Support Division, (512) 239-6316.

30 TAC §§30.5, 30.7, 30.14, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30, 30.33, 30.36

Statutory Authority

The rules are proposed under: Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, which provides the commission with the authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission with the authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; TWC, §37.006, concerning Renewal of License or Registration, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.008, concerning Training; Continuing Education, which provides that the commission shall approve training programs necessary to qualify for or renew a license; TWC, §37.009, concerning Fees, which provides the commission with the authority to establish and collect fees to cover the cost of administering and enforcing the provisions of TWC; Texas Code of Criminal Procedure, §62.063, concerning Prohibited Employment, which prohibits certain types of employment for individuals with a conviction or adjudication of a crime covered under the Sex Offender Registration Program with a victim younger than 14; Texas Family Code, §232.011, concerning Action by Licensing Authority, which provides the commission the authority to suspend a license upon receipt of a final order from a Title IV-D agency; Texas Family Code, §232.0135, concerning Denial of License Issuance or Renewal, which provides that a child support agency may require that a licensing authority refuse to accept an application for a license renewal for certain

individuals; Texas Family Code, §232.014(a), concerning Fee by Licensing Authority, which allows the agency to charge a fee in an amount sufficient to recover the administrative costs incurred for denying or suspending that license; Texas Occupations Code, §53.021(a-1), concerning Authority to Revoke, Suspend, or Deny License, which allows the commission to revoke, suspend, or deny a license to a person who has been convicted of an offense other than a Class C misdemeanor; Texas Occupations Code, §53.021(d), concerning Authority to Revoke, Suspend, or Deny License, which allows the commission to consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed if the person was charged with an offense that would require the person to register as a sex offender; Texas Occupations Code, §55.005, concerning Expedited License Procedure for Military Spouses which requires the commission to, as soon as practicable, process the application of and issue a license to a qualified military spouse; Texas Occupations Code, §55.006, concerning Renewal of Expedited License Issued to Military Spouse, which requires the commission to, as soon as practicable, notify the military spouse of the renewal requirements; and Texas Occupations Code, §55.007, concerning License Eligibility Requirements for Applicants with Military Experience, which requires the commission to consider verified military service, training, or education when processing licensing applications.

The proposed rules implement requirements in House Bill (HB) 798, 83rd Legislature, 2013, which added Texas Occupations Code, §53.021(a-1); HB 1302, 83rd Legislature, 2013, which added Texas Code of Criminal Procedure, §62.063; HB 1659, 83rd Legislature, 2013, which amended Texas Occupations Code, §53.021(d); HB 1846, 83rd Legislature, 2013, which amended Texas Family Code, §232.0135(b); and SB 162, 83rd Legislature, 2013, which added Texas Occupations Code, §§55.005, 55.006, and 55.007.

§30.5. General Provisions.

(a) A person must be licensed or registered by the commission before engaging in an activity, occupation, or profession described by Texas Water Code, §§26.0301, 26.345, [~~26.3573,~~] 26.452, 26.456, [~~or 37.003,~~] Texas Health and Safety Code, §§341.033, 341.034, [~~341.102, 341.103,~~] 361.027, [~~366.014,~~] 366.071, 366.0515, or Texas Occupations Code, §1903.251 and §1904.051. The commission shall issue a license or registration only after an applicant has met the minimum requirements for a license or registration as specified in this chapter.

(b) A person shall not advertise or represent themselves to the public as a holder of a license or registration unless that person possesses a current license or registration. A person shall not advertise or represent to the public that it can perform services for which a license or registration is required unless it holds a current license or registration, or unless it employs individuals who hold current licenses.

(c) The executive director may contract with persons to provide services required by this chapter. The commission may authorize contractors to collect reasonable fees for the services provided.

(d) Licenses and registrations are not transferable.

(e) New licenses shall not be issued to employees of the commission who have regulatory authority over the rules of this chapter. Commission employees may maintain a license if that license was issued prior to employment with the commission.

(f) Prohibited Employment.

(1) Individuals subject to registration under the Texas Code of Criminal Procedure, Chapter 62 because of a reportable conviction or adjudication for which an affirmative finding is entered under Texas Code of Criminal Procedure, Article 42.015(b) or Section 5(e)(2), Article 45.12, and licensed after September 1, 2013, may not, for compensation, provide or offer to provide any type of service in the residence of another person unless the provision of service will be supervised.

(2) For purposes of this subsection.

(A) "Residence" means a structure primarily used as a permanent dwelling and land that is contiguous to that permanent dwelling.

(B) "Supervision" means direct, continuous visual observation of the individual at all times.

§30.7. Definitions.

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

(1) Approved training event--Instructor-led classroom training, conferences, seminars, workshops, training at association meetings, distance learning, or technology-based training providing [~~that provides~~] the knowledge and skills needed to perform occupational job tasks and that has [~~that have~~] been reviewed and approved by the executive director.

(2) Aerobic treatment system owner--Persons that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment.

(3) Conference--The term conference as used in the context of this chapter includes conferences, seminars, workshops, symposiums, expos, interactive video conferences and any other such training venues.

(4) Continuing education--Job-related training approved by the executive director used for renewal of licenses and registrations.

(5) Distance learning--The acquisition of knowledge that occurs through various technologies with a separation of place and/or time between the instructor(s) or learning resources and the learner. [~~Examples of distance education include, but are not limited to correspondence courses, CD-ROM courses, and Internet education on-line courses.~~]

(6) Distributor--Any person or nongovernmental organization that sells a product primarily to individuals maintaining occupational licenses administered by the agency.

(7) High school diploma or equivalent certificate--A graduation diploma from a high school or a General Educational Development (GED) certification from an accrediting agency recognized by the United States Department of Education or other respective territory's or country's accreditation process if outside the United States.

(8) Industry-related association--A nonprofit organization that represents members that possess occupational licenses issued by the agency.

(9) License--An occupational license issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(10) Maintenance provider--A person that, for compensation, provides service or maintenance for one or more on-site sewage disposal systems using aerobic treatment.

(11) Manufacturer--For the purpose of this subchapter any person, company, or nongovernmental organization that produces a product for sale primarily to individuals who maintain occupational licenses that are administered by the agency.

(12) Person--As defined in §3.2 of this title (relating to Definitions).

(13) Qualified classroom instructor--An individual who has instructional experience, work-related experience, and subject matter expertise that enable the individual to communicate course information in a relevant, informed manner and to answer students' questions.

(14) Registration--An occupational registration issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(15) Service provider--Any person, company, or nongovernmental organization that provides a service for its own profit to individuals who maintain occupational licenses that are administered by the agency.

(16) Subject matter expert--A person having a minimum of three years of work-related experience and expert knowledge in a particular content area or areas as relates to training.

(17) Training credit--Hours of credit allowed by the executive director for successful completion of an approved training event.

(18) Technology-based training--Training offered through computer equipment [~~by compact disk (CD) or digital video disk (DVD) media,~~] or through [~~on~~] a Web site (also known as on-line training or e-learning).

(19) Training provider--An administrative entity or individual responsible for obtaining approval of training, providing acceptable delivery of approved training, ensuring that qualified instructors or subject matter experts are utilized in the delivery, support, and development of training and monitoring, recording and reporting attendance accurately and promptly as required by the executive director.

(20) Webinar--Interactive training delivered live via the Internet as a combination of conference training and distance learning where the learner is separated by place from the learning source. Successful completion of webinar training may only be credited toward training requirements for license renewals.

§30.14. Applications for Initial Registration.

(a) Applications for initial registrations shall be made on a standard form approved by the executive director. The application must be submitted to the executive director with the appropriate fee.

(b) Supplemental information for each individual program shall be submitted according to the specific requirements for each program.

[~~(c) Within 45 days after the date the executive director receives the application, the executive director shall notify the applicant in writing if all the registration requirements have been met.~~]

(c) [~~(d)~~] All statements and qualifications provided by the applicant or on the behalf of the applicant are subject to verification by the executive director.

(d) [~~(e)~~] All statements, qualifications, and attachments provided by the applicant relating to an application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(e) [~~(f)~~] Misrepresentation or falsification of any information may be grounds for denial of an application and for enforcement action.

(f) [~~(g)~~] All applications must be completed in full. All deficiencies must be corrected within 60 days of notification, or the application shall be considered void.

(g) [~~(h)~~] The executive director shall determine whether an applicant meets the requirements of this subchapter. If all requirements have been met, the executive director shall issue the registration. The registration shall be valid for the term specified in Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers, Customer Service Inspectors, Landscape Irrigators, Installers, Irrigation Technicians and Irrigation Inspectors, Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists, Municipal Solid Waste Facility Supervisors, On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators. Water Treatment Specialists, Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration, Wastewater Operators and Operations Companies, Public Water System Operators and Operations Companies, Visible Emissions Evaluator Training and Certification, respectively.) [~~After verification that the requirements for registration have been met, the executive director shall issue the registration no later than 45 days after the effective date of the registration. The registration shall be for the term specified in §30.30 of this title (relating to Terms and Fees for Licenses and Registrations).~~] The effective date of the registration shall be the date the executive director issues the registration.

§30.18. Applications for an Initial License.

(a) Applications for initial licenses shall be made on a standard form provided by the executive director. The application must be submitted to the executive director with the fee according to §30.30 of this title (relating to Terms and Fees for Licenses and Registrations). The application must be submitted to the executive director before the applicant may take the examination.

(b) Supplemental information for each individual program shall be submitted according to the specific requirements for each program.

[~~(c) Within 45 days after the date the executive director receives the application, the executive director shall notify the applicant in writing if the licensing requirements have been met.~~]

(c) [~~(d)~~] An approved application shall be valid for one year from the date of approval.

(d) [~~(e)~~] All statements and qualifications provided by each applicant or on the behalf of the applicant are subject to verification by the executive director.

(e) [~~(f)~~] All statements, qualifications, and attachments provided by the applicant relating to an application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(f) [~~(g)~~] Misrepresentation or falsification of any information may be grounds for denial of an application and for enforcement action.

(g) [~~(h)~~] All applications must be completed in full. All deficiencies must be corrected within 120 days of notification, or the application shall be considered void.

(h) [~~(i)~~] An applicant must furnish evidence of any training credit, proof of education, or work experience when requested.

(i) [~~(j)~~] The executive director shall determine whether an applicant meets the requirements of this subchapter. If all requirements have been met, the executive director shall issue the license. The license shall be valid for the term specified in Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers, Customer Service Inspectors, Landscape Irrigators, Installers, Irrigation Technicians and Irrigation Inspectors, Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists, Municipal Solid Waste Facility Supervisors, On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Main-

tenance Technicians, and Site Evaluators. Water Treatment Specialists, Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration, Wastewater Operators and Operations Companies, Public Water System Operators and Operations Companies, Visible Emissions Evaluator Training and Certification, respectively.) [~~After verification that the requirements for license have been met, the executive director shall issue the license no later than 45 days after the effective date of the license. The license shall be for the term specified in §30.30 of this title.~~] The effective date of the license shall be the date the executive director issues the license.

§30.20. Examinations.

(a) The executive director shall prescribe the content of licensing examinations. Examinations shall be based on laws, rules, job duties, and standards relating to the particular license.

(b) Examinations shall be graded and the results forwarded to the applicant no later than 45 days after the examination date. The minimum passing score for an examination is 70%.

(c) An [~~Any~~] individual with an approved application who fails an examination may not repeat an [~~the~~] examination until receiving notification of examination results [~~after waiting 60 days from the most recent examination taken by the individual~~] for that particular examination [~~exam~~].

[~~(d) An individual shall not take the same examination more than four times within 365 days of the initial application submittal.~~]

(d) [~~(e)~~] The application becomes void either after [~~After~~] 365 days from date of application or failing [~~taking~~] the same examination [~~examinations~~] four times, whichever occurs first. If an[~~, the application becomes void and a new~~] application becomes void, [~~with~~] a new fee must be submitted before the applicant may take the same examination again[~~, in accordance with subsection (d) of this section~~].

(e) [~~(f)~~] Any scores for repeat examinations [~~taken prior to waiting 60 days from the most recent examination date for that particular exam or~~] taken after an application [~~has expired or~~] becomes void will not be applied to the issuance of the license.

[~~(g) Repeat examinations taken prior to waiting 60 days from the most recent examination date for that particular exam or after an application has expired or becomes void will count towards the number of exams allowed within the 365-day period.~~]

[~~(h) Individuals using a computer-based testing method may be excluded from waiting 60 days to retest after failing an exam.~~]

(f) [~~(i)~~] Any qualified applicant with a physical, mental, or developmental disability may request reasonable accommodations to take an examination.

(g) [~~(j)~~] Examinations shall be given at places and times approved by the executive director.

(h) [~~(k)~~] The executive director shall provide an analysis of an examination when requested in writing by the applicant. The executive director shall ensure that an examination analysis does not compromise the fair and impartial administration of future examinations.

(i) [~~(l)~~] An individual who wishes to observe a religious holy day on which the individual's religious beliefs prevent the individual from taking an examination scheduled by the agency on that religious holy day shall be allowed to take the examination on an alternate date.

(j) [~~(m)~~] The executive director may deny an individual the opportunity to take a licensing examination on the grounds that the individual has been convicted of an offense, other than an offense punishable as a Class C misdemeanor, that:

(1) [~~an offense that~~] directly relates to the duties and responsibilities of the licensed occupation;

(2) [~~an offense that~~] does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;

(3) is an offense listed in Texas Code of Criminal Procedure, Article 42.12, Section 3g; or

(4) is a sexually violent offense, as defined by Texas Code of Criminal Procedure, Article 62.001.

(k) The executive director may deny an individual the opportunity to take a licensing examination on the grounds that:

(1) the individual was charged with:

(A) any offense described by Texas Code of Criminal Procedure, Article 62.001(5); or

(B) an offense other than an offense described by subparagraph (A) of this paragraph if:

(i) the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for the license; or

(ii) a conviction for the offense would make the individual ineligible for the license by operation of law; and

(2) after consideration of the factors described by Texas Occupations Code, §§53.021(d), 53.022, and 53.023(a), the executive director determines that:

(A) the individual may pose a continued threat to public safety; or

(B) employment of the individual in the licensed occupation would create a situation in which the individual has an opportunity to repeat the prohibited conduct.

§30.24. License and Registration Applications for Renewal.

(a) A license or registration may not be renewed if it has been:

(1) expired for more than 30 days and an application has not been received by the executive director or postmarked within 30 days after the expiration date of the license or registration;

(2) revoked; or

(3) replaced by a higher class of license.

(b) Applications for renewal must be made on a standard form provided by the executive director.

(1) The executive director shall mail a renewal application at least 60 days before the license or registration expires to the most recent address provided to the executive director. If a person does not receive a renewal application, the person is not relieved of the responsibility to timely submit a renewal application.

(2) The person is responsible for ensuring that the completed renewal application, the renewal fee, and other required information are submitted to the executive director by the expiration date of the license or registration.

(c) All statements, qualifications, and attachments provided by the applicant that relate to a renewal application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(d) The continuing education which includes, but is not limited to, classroom and training programs made available through the internet used to renew a license must be successfully completed after the issuance date and before the expiration date of the current license.

Any training credits completed in excess of the amount required for the renewal period shall not be carried over to the next renewal period.

(e) An individual who holds a license prescribed by Texas Water Code, §26.0301, or Texas Health and Safety Code, §341.033 or §341.034, specifically the holder of a Class A or Class B public water system operator or Class A or B wastewater treatment facility operator license may certify compliance with continuing education requirements prior to or at the time the license is renewed by submitting a continuing education certification form available from the executive director.

(f) The executive director may renew a license or registration if the application is received by the executive director or is postmarked within 30 days after the expiration date of the license or registration, and the person meets the requirements for renewal by the expiration date of the license or registration and pays all appropriate fees. This subsection does not extend the validity period of the license or registration nor grant the person authorization to perform duties requiring a license or registration. This subsection only allows an additional 30 days after the expiration of the license or registration for the person to submit the renewal application, any supporting documentation, and appropriate fees.

(g) An individual whose license renewal application is not received by the executive director or is not postmarked within 30 days after the license expiration date may not renew the license and must meet the current education, training, and experience requirements, submit a new application with the appropriate fee, and pass the examination. A person whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the expiration date may not renew the registration and must submit a new application with the appropriate fee and meet all applicable requirements for a new registration.

(h) Persons failing to renew their license or registration in a timely manner due to serving on active duty in the United States armed forces outside this state may renew their license within 180 days of returning from active duty by submitting the following:

(1) a completed renewal application;

(2) a copy of the military orders substantiating the military service during the time the license expired; and

(3) the applicable license renewal fee.

(i) For good cause the executive director may extend the 180-day period for individuals serving on active duty in the United States armed forces outside this state seeking to renew their license. Good cause may include, but is not limited to, hospitalization or injury to the licensee.

(j) Completion of the required continuing education will be waived for the renewal cycle while the licensee was on active duty service in the United States armed forces outside this state.

(k) These procedures apply only to individuals on active duty service in the United States armed forces outside this state and not to military contractors.

(l) All licensees must notify the executive director of any change in the previously submitted application information within ten days from the date the change occurs.

(m) All registration holders must notify the executive director of any change in the previously submitted application information within ten days after the month in which the change occurs.

(n) Licenses and registrations that have renewal cycles in transition shall follow the renewal requirements in the applicable subchapter.

(o) The executive director shall determine whether an applicant meets the renewal requirements of this subchapter. If all requirements have been met, the executive director shall renew the license or registration [~~and send it to the applicant within 45 days after the date the executive director receives the renewal application~~].

(p) The license or registration shall be valid for the term specified.

(q) If the application does not meet the requirements, the executive director shall notify the applicant in writing of the deficiencies [~~within 45 days after the date the executive director receives the renewal application~~].

(r) All deficiencies must be corrected within 30 days of date printed on the notification, or the renewal application shall be considered void after the license expiration date.

(s) A person whose license or registration has expired shall not engage in activities that require a license or registration until the license or registration is renewed or a new license or registration has been obtained.

§30.26. Recognition of Licenses from Out-of-State; Licenses for Military Spouses; Military Service Members; Military Veterans.

(a) Except for landscape irrigators the executive director may waive qualifications, training, or examination for individuals with a good compliance history who hold a current license from another state, territory, or country if that state, territory, or country has requirements equivalent to those in this chapter.

(b) A license may be issued after review and approval of the application, receipt of the appropriate fee, and verification of the license from the corresponding state, territory, or country.

(c) The executive director may waive any of the prerequisites for obtaining a landscape irrigator or installer license, if the applicant is licensed as an irrigator in another jurisdiction that has a reciprocity agreement with the State of Texas.

(d) The executive director may require the applicant to provide information about other occupational licenses and registrations held by the person, including:

(1) the state in which the other license or registration was issued;

(2) the current status of the other license or registration; and

(3) whether the other license or registration was ever denied, suspended, revoked, surrendered, or withdrawn.

(e) Military Spouses.

(1) The executive director shall issue a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and:

(A) [~~(1)~~] holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or

(B) [~~(2)~~] within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

(2) A license issued under this subsection shall be valid for the term specified in §30.18(i) of this title (relating to Applications for an Initial License).

(3) The executive director shall notify the license holder of the requirements for renewing a license issued under this subsection as specified in §30.24(b)(1) of this title (relating to License and Registration Applications for Renewal).

(f) In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include, but not be limited to, any combination of the following as determined by the executive director:

(1) education;

(2) continuing education;

(3) examinations (written, practical, or a combination of written and practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods or options as determined by the executive director.

(g) Military service members or military veterans. The executive director shall credit verified military service, training, or education toward the licensing requirements.

(1) Verified military service, training, or education shall not be credited toward an examination requirement.

(2) The executive director may not apply this credit provision to an applicant who:

(A) holds a restricted license issued by another jurisdiction; or

(B) has an unacceptable criminal history.

§30.28. Approval of Training.

(a) The executive director shall approve training that provides the knowledge or skills necessary to obtain or maintain licenses or registrations that are issued by the commission. This training shall be directly related to tasks performed by persons whose duties require a license or registration in a program that is administered by the commission.

(1) Within 45 days of the receipt of an application for approval for conferences, or association meeting training, the executive director shall notify the training provider of the approval of the training or any deficiencies in the application or supporting documentation.

(2) Within 120 days of the receipt of an application for approval for classroom, distance learning or technology based training the executive director shall notify the training provider of the approval of the training or any deficiencies in the application or supporting documentation.

(b) Training credit may be approved by the executive director for successful completion of:

(1) classroom training, and training at conferences;

(2) computer or Web-based training, correspondence courses, or similar distance learning training;

(3) training at association meetings, only when the meetings include training sessions containing subject matter related to the particular license; or

(4) other professional activities, such as publication of articles or teaching classroom training courses.

(c) The executive director shall determine the number of hours of training credit that will be granted for approved training. The executive director may:

(1) request field testing data from training providers to substantiate the hours requested; and

(2) use subject matter expert qualifications to determine the training credit awarded.

(d) Applications for training approval or approval of new training material must:

(1) be made on a standard form provided by the executive director;

(2) be submitted to the executive director with the applicable fee found in the chart contained in subsection (y)(6) [~~(x)(6)~~] of this section;

(3) be accompanied by supplemental information and materials according to the specific requirements for each type of training as approved by the executive director;

(4) contain supplemental materials and information edited by subject matter experts; and

(5) include samples of certificates of completion including information as required by the executive director.

(e) Once training is approved, a training provider may offer the training as approved without notification to the executive director.

(f) Training is considered approved until the content changes, or until the executive director notifies the training provider that changes in the content or presentation of the training event are necessary.

(g) If a training provider changes the delivery method of the training, the training must be resubmitted for review and approval by the executive director.

(h) The executive director may require training providers to update training or training materials to ensure that the content reflects current technology and practices.

(i) Training providers shall:

(1) keep manuals and training content updated to reflect rule changes;

(2) resubmit for approval training material that makes any reference to rules within 180 days of any new rule adoption that pertains to that training;

(3) resubmit materials with substantial changes for review and reapproval by the executive director accompanied by a summary, list, or other indication of significant changes;

(4) be responsible for the content and delivery of the training;

(5) retain accurate training records for a minimum of five years;

(6) maintain records of training approval throughout the entire period the training provider actively provides training;

(7) notify students of all fees associated with completing and obtaining credit for training before and during the training;

(8) accurately present to students approved training credit along with any other criteria for obtaining the credit;

(9) ensure that classroom instructors are qualified and provide the agency with instructor qualifications when requested;

(10) inform licensees that distance learning training repeated within the renewal period will not receive training credit if the training uses the same performance-based assessment;

(11) allow agency staff or their agents access to training events in order to audit training content, manner of presentation, and instructor effectiveness and qualifications;

(12) verify participation and report the participant's training credit hours not to exceed approved training credit hours; and

(13) provide to the executive director electronic rosters of training events within 14 business days after a participant's successful completion of the training event per procedures provided and approved by the executive director.

(j) Training events shall not be advertised as approved until notice of approval is received from the executive director.

(k) The executive director may recall training for reevaluation which may result in rescinding the previous approval of the training.

(l) Training used to meet the requirements for obtaining or renewing a license must:

(1) be approved by the executive director before the training begins;

(2) provide the knowledge or skills necessary to perform one or more of the occupation's critical job tasks as determined by a job analysis or training needs assessment;

(3) not promote or endorse the products, product lines, or services of a manufacturer, distributor, or service provider or used as an opportunity for advertisement;

(4) provide the means to accomplish the learning objectives identified for the training;

(5) include, but are not limited to, visual aids, graphics, and interactivity to enhance learning and attain learning objectives;

(6) include regular monitoring of participant comprehension throughout the training with feedback from the training provider, instructor, or subject matter expert;

(7) be monitored for successful participant completion and completed training credit reported to the agency by the approved training provider; and

(8) utilize, at a minimum, subject matter experts and instructional design experts or effective qualified classroom instructors to develop training materials for approval. Additionally, development for technology-based training must also utilize experts in technology.

(m) Classroom training, training providers, and classroom instructors must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (n), (o), (p), (q), (r), and (s) [~~and (r)~~] of this section.

(1) Classroom training must not be held in a place of business of a product manufacturer, distributor, or service provider directly related to the occupational license. Water, wastewater, and solid waste facilities are exempted and applicable approved training may be held at these facilities.

(2) The agency may approve high school vocational education courses if their content follows the guidance of the respective licensing program area and meets training requirements in this chapter.

(n) Conference training, training providers, and subject matter experts must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (o), (p), (q), (r), and (s) [~~and (r)~~] of this section.

(1) Training at conferences may be submitted for approval by:

(A) governmental entities or their designated agents;

(B) industry-related associations; or

(C) colleges listed by accrediting agencies that are recognized by the United States Department of Education.

(2) The executive director may award training credits for successful completion of in-state and out-of-state conferences.

(3) To receive training credits for in-state and out-of-state conferences, the training must be approved by the executive director prior to the conference.

(4) Training at conferences will be approved for a specified number of training credits.

(5) To be approved, a conference must [~~should~~] contain a minimum of three hours of approvable training.

(6) If the executive director determines the conference training is more appropriately presented as classroom training, the training provider may be required to meet requirements as detailed in subsection (m) of this section.

(7) The conference is considered approved until content, presenters, or duration changes.

(8) The conference training must not be held in a place of business of a product manufacturer, distributor, or service provider directly related to the occupational license.

(o) Training at association meetings, training providers, and subject matter experts must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (n), (p), (q), (r), and (s) [~~and (r)~~] of this section.

(1) Training sessions conducted at regular and special meetings of industry-related associations whose members hold licenses that are issued by the commission may be approved per event or on an annual basis.

(2) Associations may apply annually for approval of training at meetings. If not approved annually, training at individual meetings may be approved, so long as approval is requested in writing at least 45 days before the meeting as detailed in subsection (d) of this section.

(3) Training at association meetings must be presented by subject matter experts.

(4) Training at association meetings over two hours must meet requirements in subsection (n) of this section.

(5) The training at association meeting must not be held in a place of business of a product manufacturer, distributor, or service provider directly related to the occupational license.

(p) Distance learning training, training providers, and training materials must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (n), (o), and (s) [~~and (o)~~] of this section.

(1) Distance learning training may only be submitted for approval by:

(A) governmental entities or their designated agents;

(B) industry-related associations;

(C) colleges listed by accrediting agencies that are recognized by the United States Department of Education; or

(D) other entities, as determined by the executive director, who can demonstrate comparable or subject matter expertise, knowledge of and experience with educational principles and effective instructional design.

(2) Applications for distance learning training approval must be accompanied by the supplemental materials as approved by the executive director for either correspondence or technology-based training.

(3) Distance learning training:

(A) may not be substituted for actual hands-on training, if hands-on training is necessary to teach required manual skills;

(B) must provide students within one business day access to subject matter experts;

(C) repeated within the renewal period will not receive training credit if the training uses the same performance-based assessment; and

(D) must maintain procedures to protect student identity if using the Internet.

(q) Correspondence training, training providers, and training materials must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (n), (o), (r), and (s) [~~and (r)~~] of this section. Correspondence training is distance learning that can either be paper-based conducted through a postal system, electronic-based conducted through a Web site, or a blend of these delivery systems and shall:

(1) make available a text or training manual to students for training with any delivery system; and

(2) provide acceptable procedures for participant identity verification.

(r) Technology-based training must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (n), (o), (p), and (s) [~~and (q)~~] of this section, and shall provide:

(1) [~~provide~~] access to the agency if provided via the Internet;

(2) [~~provide~~] tracking of student time and progress required for training completion;

(3) [~~provide~~] acceptable procedures for participant identity verification; [~~and~~]

(4) criteria for successful training completion; and

(5) [~~(4)~~] [~~provide~~] access within one business day to technical support and subject matter experts.

(s) Webinar training, training providers, and training materials must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (n), (o), (p), (q), and (r) of this section.

(1) Webinar training may only be submitted for approval by:

(A) governmental entities or their designated agents;

(B) industry-related associations; or

(C) colleges listed by accrediting agencies that are recognized by the United States Department of Education.

(2) Applications for webinar training approval must be accompanied by the supplemental materials as approved by the executive director.

(3) Webinar training:

(A) may only be used to meet training credit requirements for renewal of a license and may not be used to meet the educational requirements for an initial license; and

(B) must provide students access to subject matter experts.

(4) The same webinar training may not be repeated within the renewal period for training credit.

(5) The webinar training provider must maintain procedures to protect student identity.

(t) [~~(s)~~] Printed training material must be presented in an original manner and must be relevant to the necessary tasks and knowledge for the occupational licensees.

(u) [~~(t)~~] Public information copied from Web sites or other sources is not acceptable as training materials unless modified to be applicable to the target audience and the method of delivery.

(v) [~~(u)~~] If training materials submitted to the executive director for approval are copyrighted materials, the training provider is responsible for obtaining proper approval from the publisher to reprint text, pictures, graphics, tables, data, and any other information that is obtained from a source that is not an original creation of the training provider. The training materials submitted shall include appropriate references.

(w) [~~(v)~~] Under the Public Information Act, copyrighted training materials submitted to the executive director may be inspected by the public. The agency will not provide copies of copyrighted materials to the public unless required to do so as a result of legal action.

(x) [~~(w)~~] The executive director may:

(1) return without approval, training courses and training material determined to contain extensive errors or not meeting the requirements of this section;

(2) monitor, recall, reevaluate, and/or rescind approval of topics or training materials provided at approved training; and

(3) recall rescind, suspend, or deny training approval for good cause, which includes, but is not limited to:

(A) the training does not conform to current accepted industry standard practices or agency rules;

(B) the training does not conform to the materials as approved;

(C) the subject matter is not related to critical job tasks performed by licensees;

(D) an instructor is not qualified to teach the subject matter;

(E) an instructor is ineffective in the delivery of the subject matter;

(F) the training promotes or endorses products, product lines, or services from a manufacturer, distributor, or service provider;

(G) participation records are not submitted as required by subsection (i)(13) of this section;

(H) records, rosters, or application materials have been falsified;

(I) noncompliance with a training recall;

(J) the training provider is not active or the training has not been conducted for three or more years; or

(K) the training environment is not conducive to learning.

(y) [~~(x)~~] Fees for training approval will be assessed based on requested training credit hours available for the event with the exception of annual review and approval of training at association meetings. If the requested hours are significantly different than the actual hours of training awarded, the executive director may request an adjustment in the fee from the applicant.

(1) Fees must [~~should~~] be submitted with the application and supplemental materials as detailed in paragraph (6) of this subsection.

(2) Fees are nonrefundable whether the training event is approved or not approved.

(3) The review and approval of training may require both an administrative review for application package completeness and a technical review for compliance with the requirements and standards detailed in this section. The fee will include both of these reviews.

(4) The application will become void and the fee forfeited if an applicant does not respond within 60 days of the notification provided by the executive director of any deficiencies in the application.

(5) Any training material submitted for approval after January 1, 2008, requires submittal of the applicable fees listed in paragraph (6) of this subsection.

(6) The greater of the following fees must [~~should~~] be submitted with each application for approval of training for occupational licensing depending on the type of training as outlined in the following table.

Figure: 30 TAC §30.28(y)(6)

[~~Figure: 30 TAC §30.28(x)(6)~~]

§30.30. Terms and Fees for Licenses and Registrations.

(a) Licenses [~~All licenses~~] and registrations are valid for three years from the date of issuance, unless specified otherwise by Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers, Customer Service Inspectors, Landscape Irrigators, Installers, Irrigation Technicians and Irrigation Inspectors, Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists, Municipal Solid Waste Facility Supervisors, On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators, Water Treatment Specialists, Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration, Wastewater Operators and Operations Companies, Public Water System Operators and Operations Companies, Visible Emissions Evaluator Training and Certification, respectively).

(b) The executive director may adopt a system under which licenses or registrations expire on various dates.

(c) The license fee is $111 for a three-year license. The total amount shall be paid with each initial and renewal application and is nonrefundable.

(d) Registration fees are established in the applicable subchapters of this chapter.

(e) The executive director may charge a $20 fee to process a duplicate certificate or pocket card.

(f) A convenience fee may be set by the executive director or service provider for alternative fee payment methods. A person using an alternative payment method is responsible for paying the convenience fee.

(g) An examination or reexamination fee may be charged if the executive director designates an entity to administer the examinations.

(h) The executive director may charge an individual requesting a criminal history evaluation letter under §30.13 of this title (relating to Eligibility of Certain Applicants for Occupational Licenses or Registrations) a fee adopted by the commission. Fees adopted by the commission under §30.13 of this title must be in an amount sufficient to cover the cost of administering §30.13 of this title.

§30.33. License or Registration Denial, Warning, Suspension, or Revocation.

(a) The executive director may deny an initial or renewal application for the following reasons.

(1) Insufficiency. The executive director shall notify the applicant of the executive director's intent to deny the application and advise the applicant of the opportunity to file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). The executive director may determine that an application is insufficient for the following reasons:

(A) failing to meet the licensing or registration requirements of this chapter; or

(B) if an out-of-state licensing program does not have requirements substantially equivalent to those of this chapter.

(2) Cause. After notice and opportunity for a hearing, the commission may deny an application for a license or registration by an applicant who:

(A) provides fraudulent information or falsifies the application;

(B) has engaged in fraud or deceit in obtaining or applying for a license or registration;

(C) has demonstrated gross negligence, incompetence, or misconduct in the performance of activities authorized by a license or registration;

(D) made an intentional misstatement or misrepresentation of fact or information required to be maintained or submitted to the commission by the applicant or by the license or registration holder;

(E) failed to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(F) at the time the application is submitted, is indebted to the state for a fee, penalty, or tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute; or

(G) is in default on loans guaranteed by Texas Guaranteed Student Loan Corporation (TGSLC) (the executive director shall proceed as described in Texas Education Code, Chapter 57) if identified by TGSLC and the application is for a renewal license or registration.

(b) If an individual causes, contributes to, or allows a violation of this chapter, the executive director may issue a warning letter. The letter shall be placed in the individual's permanent file maintained by the executive director. This letter shall be a warning that further violations or offenses by the individual may be grounds for suspension, revocation, enforcement action, or some combination. A warning is

not a prerequisite for initiation of suspension, revocation, or enforcement proceedings.

(c) After notice and hearing, the commission may suspend or revoke a license, certificate, or registration on any of the grounds contained in Texas Water Code, §7.303(b).

(d) After notice and hearing a license or registration may be suspended for a period of up to one year, depending upon the seriousness of the violations. A license or registration shall be revoked after notice and hearing upon a second suspension.

(e) The commission may revoke a license or registration after notice and hearing for a designated term or permanently. If a license or registration is revoked a second time, the revocation shall be permanent.

(f) The following procedures for renewal apply to individuals that have had their license or registration suspended.

(1) If a license or registration expiration date falls within the suspension period, an individual may renew the license or registration during the suspension period according to §30.24 of this title (relating to License and Registration Applications for Renewal) and the applicable subchapters of this chapter.

(2) A license or registration suspended in accordance with subsection (j) of this section may not be renewed during the suspension period. The license or registration may only be renewed if the court or the Title IV-D agency renders an order vacating or staying an order suspending the license or registration and the license or registration has not expired during the suspension period.

(3) After the suspension period has ended, the license or registration shall be automatically reinstated unless the individual failed to renew the license or registration during the suspension period.

(g) Individuals that have had their license or registration revoked shall not have their license or registration reinstated after the revocation period. After the revocation period has ended, an individual may apply for a new license or registration according to this chapter.

(h) Criminal Conviction.

(1) After notice and hearing, the commission may deny, suspend, or revoke a license on the grounds that the individual has been convicted of an offense, other than a Class C misdemeanor that:

(A) directly relates to the duties and responsibilities of the licensed occupation;

(B) does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;

(C) is listed in Texas Code of Criminal Procedure, Article 42.12, Section 3g; or

(D) is a sexually violent offense, as defined by Texas Code of Criminal Procedure, Article 62.001.

(2) The commission shall revoke the license or registration upon an individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(3) Prohibited Employment.

(A) Individuals subject to registration under the Texas Code of Criminal Procedure, Chapter 62 because of a reportable conviction or adjudication for which an affirmative finding is entered under Texas Code of Criminal Procedure, Article 42.015(b) or Section 5(e)(2), Article 45.12, and licensed after September 1, 2013, may not, for compensation, provide or offer to provide any type of service in the residence of another person unless the provision of service will be supervised.

(B) For purposes of this subsection:

(i) "Residence" means a structure primarily used as a permanent dwelling and land that is contiguous to that permanent dwelling.

(ii) "Supervision" means direct, continuous visual observation of the individual at all times.

(4) Except as provided by paragraph (5) of this subsection, notwithstanding any other law, the executive director may not consider an individual to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization:

(A) the individual entered a plea of guilty or *nolo contendere;*

(B) the judge deferred further proceedings without entering an adjudication of guilt and placed the individual under the supervision of the court or an officer under the supervision of the court; and

(C) at the end of the period of supervision, the judge dismissed the proceedings and discharged the individual.

(5) The executive director may consider an individual to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the individual was discharged as described by paragraph (4) of this subsection if:

(A) the individual was charged with:

(i) any offense described by Texas Code of Criminal Procedure, Article 62.001(5); or

(ii) an offense other than an offense described by clause (i) of this subparagraph if:

(I) the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for the license; or

(II) a conviction for the offense would make the individual ineligible for the license by operation of law; and

(B) after consideration of the factors described by Texas Occupations Code, §53.022 and §53.023(a), the executive director determines that:

(i) the individual may pose a continued threat to public safety; or

(ii) employment of the individual in the licensed occupation would create a situation in which the individual has an opportunity to repeat the prohibited conduct.

(i) After notice and hearing, the commission may revoke a maintenance provider registration on any of the grounds in Texas Health and Safety Code, §366.0515(m).

(j) Failure to pay child support.

(1) The commission may suspend a license or registration if a licensed or registered individual has been identified by the Office of the Attorney General as being delinquent on child support payments (upon receipt of a final order suspending a license or registration, the executive director shall proceed as described in Texas Family Code, Chapter 232).

(2) The commission shall refuse to accept an application for:

(A) issuance of a new license or registration to an individual; or

(B) renewal of an existing license or registration to an individual if:

(i) the individual has failed to pay child support for six months or more;

(ii) the commission is notified by a child support agency, as defined by Texas Family Code, §101.004; and

(iii) the child support agency requests the commission to refuse to accept the application.

(3) The commission shall not accept an application for a license that was refused under paragraph (2) of this subsection until notified by the child support agency that the individual has:

(A) paid all child support arrearages;

(B) made an immediate payment of not less than $200 toward child support arrearages owed and established with the child support agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

(C) been granted an exemption from this subsection as part of a court-supervised plan to improve the individual's earnings and child support payments; or

(D) successfully contested the child support agency's request for the commission's denial of issuance or renewal of the license or registration.

(4) The commission may charge a fee in an amount sufficient to recover the administrative costs incurred for denying or suspending that license.

(5) For purposes of this subsection, the suspension period for a license or registration shall be until:

(A) the court or the Title IV-D agency renders an order vacating or staying an order suspending the license or registration; or

(B) the expiration of the license or registration.

§30.36. Notice.

The executive director shall notify the individual in writing of the intent to suspend or revoke a license or deny the individual a license or the opportunity to be examined for a license because of the individual's prior conviction of a crime and the relationship of the crime to the license. The notification shall include, but not be limited to the:

(1) [~~the~~] reason for the suspension, revocation, denial, or disqualification;

(2) [~~the~~] review procedure provided by §30.35 of this title (relating to Guidelines); and

(3) [~~the~~] earliest date that the individual may appeal the action of the commission.

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 January 31, 2014.

TRD-201400414

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 239-2141

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30 TAC §30.33

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

Statutory Authority

The repeal is proposed under: Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, which provides the commission with the authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission with the authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; TWC, §37.006, concerning Renewal of License or Registration, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.009, concerning Fees, which provides the commission with the authority to establish and collect fees to cover the cost of administering and enforcing the provisions of TWC; Texas Code of Criminal Procedure, §62.063, concerning Prohibited Employment, which prohibits certain types of employment for individuals with a conviction or adjudication of a crime covered under the Sex Offender Registration Program with a victim younger than 14; Texas Family Code, §232.011, concerning Action by Licensing Authority, which provides the commission the authority to suspend a license upon receipt of a final order from a Title IV-D agency; Texas Family Code, §232.0135, concerning Denial of License Issuance or Renewal, which provides that a child support agency may require that a licensing authority refuse to accept an application for a license renewal for certain individuals; Texas Family Code, §232.014(a), concerning Fee by Licensing Authority, which allows the agency to charge a fee in an amount sufficient to recover the administrative costs incurred for denying or suspending that license; Texas Occupations Code, §53.021(a-1), concerning Authority to Revoke, Suspend, or Deny License, which allows the commission to revoke, suspend, or deny a license to a person who has been convicted of an offense other than a Class C misdemeanor; and Texas Occupations Code, §53.021(d), concerning Authority to Revoke, Suspend, or Deny License, which allows the commission to consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed if the person was charged with an offense that would require the person to register as a sex offender.

The proposed repeal implements requirements in House Bill (HB) 798, 83rd Legislature, 2013, which added Texas Occupations Code, §53.021(a-1); HB 1302, 83rd Legislature, 2013, which added Texas Code of Criminal Procedure, §62.063; HB 1659, 83rd Legislature, 2013, which amended Texas Occupations Code, §53.021(d); and HB 1846, 83rd Legislature, 2013, which amended Texas Family Code, §232.0135(b).

§30.33. License or Registration Denial, Warning, Suspension, or Revocation.

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 January 31, 2014.

TRD-201400417
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 239-2141

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 55. CONTRACTING TO PROVIDE HOME-DELIVERED MEALS

40 TAC §§55.3, 55.27, 55.33, 55.37, 55.41

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §55.3, concerning Definitions; §55.27, concerning Service Requirements; §55.33, concerning Suspension of Services; §55.37, concerning Termination of Services; and §55.41, concerning Billing and Claims Payment in Chapter 55, Contracting to Provide Home-Delivered Meals.

BACKGROUND AND PURPOSE

The Home-Delivered Meals (HDM) Program is a program in which a provider agency delivers meals to an individual at the individual's residence. The HDM Program is funded under Title XIX and Title XX of the Social Security Act and administered by DADS.

Currently, a provider agency is allowed to suspend HDM services if an individual or responsible party is not home to accept delivery of a meal for two consecutive service days in a calendar month. One purpose of the proposal is to allow a provider agency to also suspend or recommend the suspension of services if an individual or responsible party is not home to accept delivery of a meal for three nonconsecutive service days in a calendar month.

In addition, current HDM rules allow a provider agency to be reimbursed for two consecutive attempted deliveries per month per individual when the individual or responsible party is not home to accept it. The proposal allows a provider agency to be reimbursed for two attempted deliveries per month per individual and the attempted deliveries do not have to be on consecutive days.

The proposed amendments also clarify that DADS complies with rules that govern the Community-Based Alternatives (CBA) Program if HDM services to a person enrolled in the CBA Program are suspended.

The proposal clarifies other reasons a provider agency is required or has the discretion to suspend or recommend suspension of HDM services and the notification requirements for that action.

The proposed amendments also require a provider agency to notify an individual's DADS case manager if the individual or responsible party is not home to accept delivery of a meal for two consecutive service days or for three nonconsecutive service days in a calendar month. The amendments also delete denial of eligibility as a reason HDM services must be suspended, but require a provider agency to suspend services when an individual's case manager notifies the provider agency to do so. The proposal further clarifies that if an individual's services are terminated, a provider agency is prohibited from providing services on or after the effective date stated on a form from the individual's case manager.

For Title XX services, the proposal requires a provider agency to provide an individual with an opportunity to donate toward the cost of the individual's meals. This amendment is necessary because an individual must be provided this opportunity for DADS to qualify for supplemental funding for Title XX meals through the Nutrition Services Incentive Program.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §55.3 adds definitions for "DADS," "individual," "suspension of services," and "termination"; updates and clarifies definitions for "Home-Delivered Meals (HDM) Program," "provider agency," and "working days," and makes minor editorial changes for clarity and consistency.

The proposed amendment to §55.27 replaces "client" with "individual," adds that a provider agency must notify the individual's case manager if the individual or responsible party is not home to accept delivery of a meal for three nonconsecutive service days in a calendar month and makes minor editorial changes for clarity and consistency.

The proposed amendment to §55.33 deletes the requirement that a provider agency suspend Title XIX and Title XX services when an individual cannot be located and has been without services for more than two consecutive service days. In addition, denial of eligibility and a request to terminate services from the case manager have been removed as reasons that a provider agency must suspend services. The proposed amendment allows a provider agency to suspend Title XX services or recommend suspension of Title XIX services when an individual or responsible party is not home to accept delivery of a meal for two consecutive service days or for three nonconsecutive service days in a calendar month. The proposed amendment also sets forth the notification requirements if a provider agency suspends Title XX services or recommends a suspension of Title XIX services. The proposed amendment clarifies that DADS suspends services to an individual enrolled in the CBA Program in accordance with 40 Texas Administrative Code, Chapter 48, Subchapter J (relating to Community-Based Alternatives (CBA) Program). The proposed amendment also replaces "client" with "individual" and makes minor editorial changes for clarity and consistency.

The proposed amendment to §55.37 prohibits a provider agency from providing services on or after the effective date stated on a form from the individual's case manager and makes minor editorial changes.

The proposed amendment to §55.41 adds a provision, for Title XX services only, to require a provider agency to provide an individual with an opportunity to donate toward the cost of a meal. The amendment also allows a provider agency to be reimbursed for up to two failed deliveries per month per individual when a meal delivery is attempted, the individual or responsible party is not home to accept it, and the individual's services were not suspended or terminated by DADS or the provider agency on the dates of the two failed deliveries. The amendment also replaces "client" with "individual" and makes minor editorial changes.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because there are no additional cost to persons who are required to comply with the rules. The amendments could reduce HDM provider agencies' costs if they can avoid making more than three failed delivery attempts per individual per month to individuals who repeatedly fail to give notice to the provider that the individual is not home to receive the meal.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is more efficient use of public funds.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Armando Delgado at (512) 438-3226 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R01, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R01" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§55.3. Definitions.

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

(1) Adult--A person who is 18 years old or older or is an emancipated minor.

(2) Case manager--A DADS [~~Texas Department of Human Services (DHS)~~] employee who is responsible for case management activities. Activities include eligibility determination, [~~client~~] registration, assessment and reassessment of [~~client~~] need, service plan development, and intervention on an individual's [~~the client's~~] behalf.

(3) Client--An individual [~~A Community Care for Aged or Disabled (CCAD) or Community Based Alternatives (CBA) client, as defined in Chapter 48 of this title (relating to Community Care for Aged and Disabled), who is eligible to receive services under this chapter~~].

(4) Contract--The formal, written agreement between DADS [~~DHS~~] and a provider agency [~~an organization or entity~~] to provide services in the HDM Program [~~to DHS clients eligible under this chapter in exchange for reimbursement~~].

(5) Contract manager--A DADS [~~DHS~~] employee who is responsible for the overall management of the contract with the provider agency.

(6) DADS--The Department of Aging and Disability Services.

(7) [~~(6)~~] Dietary consultant--A dietitian who is licensed by the Texas State Board of Examiners of Dietitians; or a person with a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

(8) [~~(7)~~] Director--The person who is responsible for the overall operation of a provider agency.

(9) [~~(8)~~] Emancipated minor--A person who is under 18 years of age who has achieved or been granted the power and legal capacity of an adult. This includes a minor who has had the disabilities of minority removed by a court of law, or a minor who has been married, with or without parental consent.

(10) [~~(9)~~] Food service supervisor--The person who is responsible for supervising and managing the food preparation operations of a provider agency.

(11) [~~(10)~~] Home-Delivered Meals (HDM) Program--A program serving individuals receiving Community Based Alternatives Medicaid waiver services funded by Title XIX of the Social Security Act or individuals receiving Community Care Aged and Disabled services funded by Title XX of the Social Security Act and administered by DADS in which [~~that provides services through~~] a provider agency delivers meals to an individual [~~under a contract with DHS to eligible clients residing in the provider agency's service area~~].

(12) Individual--A person eligible to receive services under this chapter.

(13) [~~(11)~~] Meal transport carrier--A container that is used by the provider agency to transport home-delivered meals that may be easily damaged. The container must be enclosed and either insulated or equipped to maintain food temperature to protect the meals from contamination, crushing, or spillage.

(14) [~~(12)~~] Provider agency--An organization or entity that delivers meals to an individual in accordance with the contract and this chapter [~~contracts with DHS to provide HDM services~~].

(15) Suspension of services--A temporary cessation of HDM services by a program provider or DADS without loss of program or Medicaid eligibility.

(16) Termination--A DADS action that ends an individual's service authorization for the HDM Program.

(17) [~~(13)~~] Therapeutic medical diet--A menu supplied to an individual [~~a client~~] by a provider agency that includes:

(A) meals prepared without the addition of salt, seasoning, or flavoring; or

(B) meals that may deviate from the standard menu pattern as required by the individual's [~~client's~~] medical condition.

(18) [~~(14)~~] Working day [~~days~~]--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b) [~~Days that DHS is open for business~~].

§55.27. Service Requirements.

(a) A provider agency must deliver hot food within four hours of the time the hot food is removed from cooking or reheating equipment.

(b) A provider agency must prepare and package meals so that delivery is made within the required delivery period of 10:30 a.m. to 1:30 p.m. or as approved by the contract manager on a case-by-case basis.

(c) Food temperature of meals prepared and packaged for delivery at the preparation site must be below 41 degrees Fahrenheit for cold food items and above 140 degrees Fahrenheit for hot food items.

(d) A provider agency must provide meals according to DADS [~~the Texas Department of Human Services (DHS)~~] service authorization form.

(1) The provider agency must document each meal as being delivered or undelivered.

(2) The provider agency must deliver the meal to the individual [~~client~~] or responsible party.

(A) If the individual [~~client~~] or responsible party is not present to accept the meal, the provider agency must not leave the meal.

(B) The provider agency must handle undelivered meals in accordance with its policy on undelivered meals.

(C) The provider agency must document the meal as undelivered and document the reason it was unable to deliver the meal. Documentation must be maintained according to the terms of the contract. If there is no documentation available to support a reason acceptable to DADS [~~indicate an acceptable reason~~] for the meals being marked as undelivered, DADS [~~DHS~~] considers this a break in service.

(e) If an individual or responsible party is not home to accept delivery of a meal for [~~a provider agency cannot locate a client after~~] two consecutive service days or for three nonconsecutive service days in a calendar month [~~meal delivery attempts~~], the provider agency must notify the individual's [~~client's DHS~~] case manager within [~~no later than~~] one working day after the date of the last [~~second~~] unsuccessful delivery.

(1) The provider agency must notify the individual's [~~client's~~] case manager[~~,~~] orally or by fax[~~, that the client could not be located~~].

(2) If the provider agency notifies the case manager orally, the provider agency must send written notification to the case manager within five working days of the initial notification.

§55.33. Suspension of Services.

(a) For Title XIX and Title XX services, [~~A~~] provider agency must suspend an individual's services if [~~one of the following happens~~]:

(1) the individual [~~client~~] leaves the state or moves out of the provider agency's geographic service area;

(2) the individual [~~client~~] dies;

(3) the individual [~~client~~] is admitted to a hospital, nursing facility, or institution;

(4) the individual [~~client~~] or someone in the individual's [~~client's~~] home threatens the health or safety of a person delivering meals;

[~~(5) the client cannot be located and has been without services for more than two consecutive service days;~~]

[~~(6) the client's eligibility is denied; or~~]

(5) [~~(7)~~] the individual [~~client or case manager~~] requests that services be suspended; or [~~terminated.~~]

(6) the individual's case manager directs the provider agency to suspend the individual's services.

[~~(b) A provider agency may suspend services if one of the following happens:~~]

[~~(1) the client or someone in the client's home racially discriminates against the person delivering meals in the client's home; or~~]

[~~(2) the client or someone in the client's home sexually harasses the person delivering meals in the client's home.~~]

(b) [~~(c)~~] If a provider agency suspends Title XIX or Title XX services for a reason listed in subsection (a) of this section, the provider agency must notify the individual's case manager within [~~no later than~~] one working day after the suspension of services.

(1) The provider agency must notify the individual's [~~client's~~] case manager[~~,~~] orally or by fax[~~,~~] of the reason for the service suspension.

(2) If the provider agency notifies the case manager orally, the provider agency must send written notification to the case manager

within five working days after [~~of~~] the date of the oral [~~initial~~] notification.

(c) For Title XIX services, a provider agency may recommend to DADS that an individual's services be suspended and for Title XX services, a provider agency may suspend an individual's services if:

(1) the individual or someone in the individual's home racially discriminates against the person delivering meals to the individual's home;

(2) the individual or someone in the individual's home sexually harasses the person delivering meals to the individual's home; or

(3) the individual or responsible party is not home to accept delivery of a meal for two consecutive service days or for three nonconsecutive service days in a calendar month.

(d) If a provider agency recommends a suspension of Title XIX services for a reason listed in subsection (c) of this section, the provider agency must notify an individual's case manager as described in subsection (b)(1) and (2) of this section. DADS suspends services in accordance with Chapter 48, Subchapter J of this title (relating to Community Based Alternatives (CBA) Program).

(e) If a provider agency suspends Title XX services for a reason listed in subsection (c) of this section, the provider agency must notify an individual's case manager as described in subsection (b)(1) and (2) of this section.

§55.37. Termination of Services.

(a) If DADS terminates HDM services to an individual, the individual's [~~The~~] case manager sends the [~~must send the~~] provider agency:

(1) the Authorization for Community Care Services form for Title XX services;[~~,~~] or

(2) the Notification of Community Based Alternatives (CBA) Services form for Title XIX services[~~, indicating the date services are to be terminated~~].

(b) A provider agency must not provide HDM services on or after the effective date stated on the form from the case manager unless DADS notifies the provider agency that HDM services may be provided.

§55.41. Billing and Claims Payment.

(a) A provider agency must accept the contracted reimbursement rates as payment in full for the meals provided and seek no other reimbursements from any source, except as allowed by DADS [~~the Texas Department of Human Services (DHS)~~].

(b) For Title XX services, a [~~A~~] provider agency: [~~may accept contributions from DHS clients resulting from a general broad-based appeal for public donations, as long as the provider agency does not directly solicit donations from individual clients and as long as the provider agency is in compliance with the terms of the contract.~~]

(1) must provide an individual with an opportunity to donate toward the cost of a meal;

(2) must not require the individual to donate toward the cost of a meal;

(3) may provide the individual with a donation schedule that only suggests an amount based on income range of the program population being served, but may not determine an individual's donation amount using an individual's income;

(4) must protect the individual's privacy with respect to the individual's donations;

(5) must establish appropriate procedures to secure and account for all donations made; and

(6) must use all of an individual's donations to support or expand services for which the individual donated, in accordance with state and federal laws.

(c) DADS may reimburse a [~~A~~] provider agency [~~may be reimbursed~~] for up to two [~~consecutive~~] failed deliveries per month per individual if [~~client when~~]:

(1) a meal delivery is attempted;

(2) the individual [~~client~~] or responsible party is not home to accept it; and

(3) the individual's services were [~~have~~] not [~~been~~] suspended or terminated by DADS or the provider agency on the dates of the two failed deliveries.

(d) One unit of service is one meal per individual [~~client~~] per contracted day.

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 January 30, 2014.

TRD-201400391
Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 438-3734

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER O. FOSTER AND ADOPTIVE HOME DEVELOPMENT

40 TAC §700.1503

(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 Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §700.1503, concerning processing adoption applications, in its chapter governing Child Protective Services. Section 700.1503 is no longer needed because the prioritization of adoption applications is an outdated process that is no longer in use. Currently, all three application types are accepted and processed without priority being given to any one type.

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Henderson also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of repealing the section will be that rules will reflect current policy. There will be no effect on large, small, or micro-businesses because the proposed repeal does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

HHSC has determined that the proposed repeal 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Terri Parsons at (512) 438-4793 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-488, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

The repeal is proposed 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 HRC §40.002.

§700.1503. Processing Adoption Applications.

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 January 30, 2014.

TRD-201400376
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 438-3437

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CHAPTER 705. ADULT PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §705.2101; the repeal of §705.6101; and new §705.6101, in its Adult Protective Services (APS) chapter. Human Resources Code (HRC) §48.004 requires the Health and Human Services Executive Commissioner to, by rule, develop and maintain risk assessment criteria for use by the department. The assessment provides a method for determining whether an elderly person or person with a disability is at imminent risk of abuse, neglect, or exploitation or is in a state of abuse, neglect, or exploitation, and needs protective services. On a daily basis, APS specialists make numerous extremely complex decisions about the vulnerable clients they serve. Research in the APS field demonstrates that reliable and structured assessments are essential for supporting quality decisions. In order to support these vital decisions, APS partnered with the National Council on Crime and Delinquency (NCCD) to customize Structured Decision Making tools as part of a project named SHIELD: Strategies that Help Intervention and Evaluation Leading to Decisions. The underlying assumption of SHIELD is that the most effective way to protect and serve APS's vulnerable clients is to accurately identify high risk clients, prioritize them for intensive intervention, and deliver effective services appropriate to their needs.

Three assessments have been developed to achieve the SHIELD goals of client safety, reduction of potential recidivism of APS clients, and identification of client strengths and needs: (1) the Safety Assessment; (2) the Risk of Recidivism Assessment; and (3) the Strengths and Needs Assessment. The Safety Assessment assists APS specialists in identifying current danger factors and addressing immediate safety concerns. The Risk of Recidivism Assessment, performed after APS specialists have validated that abuse, neglect, or exploitation has occurred, determines the likelihood that a designated victim will return to APS as an alleged victim in the near future. Based on this assessment, APS will target post-investigative protective services to moderate and high risk clients. The Strengths and Needs Assessment assists APS specialists in identifying the strengths and needs of the client and caretaker, if any, in order to inform service planning. These assessments will provide APS specialists with a simple objective, and reliable process to assess client risk, support specialists' decisions, and increase consistency and accuracy in decision making, with the ultimate goal of improving outcomes for APS clients.

Additionally, clarification is needed to §705.2101, regarding investigative priorities, to be consistent with current APS practice. Investigation priorities determine the timeframes for APS specialists in conducting initial alleged victim interviews; they do not determine how alleged victims receive protective services as suggested by the language in the current section.

A summary of the changes follows:

The amendment to §705.2101 clarifies that the priorities of investigations pertain to timeframes for specialists in conducting face-to-face interviews. The priorities, which have not changed, are based on the severity and immediacy of an alleged threat to the life or physical safety of the alleged victim.

Section 705.6101 is repealed and proposed as new. In new §705.6101, the proposed changes incorporate the use of: (1) the Safety Assessment; (2) the Risk of Recidivism Assessment; and (3) the Strengths and Needs assessment. Current language is revised regarding consultations between the APS specialists and their supervisors. The title of this section is also being changed to more accurately describe the subject matter of this section.

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that APS will improve casework decision making, resulting in improved outcomes for the vulnerable clients APS serves. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendment, repeal, and new section 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Kathleen Dickens at (817) 583-6146 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-494, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER D. ELIGIBILITY

40 TAC §705.2101

The amendment is proposed 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 §40.002(b)(1).

§705.2101. How are investigations prioritized?

APS defines priorities for conducting initial face-to-face interviews with alleged victims. These priorities are based on the severity and immediacy of an alleged threat to the life or physical safety of the alleged victim. The initial face-to-face contact with the alleged victim is conducted according to the following priorities: [~~Alleged victims receive protective services according to the following priorities:~~]

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

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

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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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SUBCHAPTER L. RISK ASSESSMENT

40 TAC §705.6101

(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 Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed 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 HRC §40.021.

§705.6101. What is a risk assessment for in-home cases?

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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Cynthia O'Keeffe
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Department of Family and Protective Services
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40 TAC §705.6101

The new section is proposed 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 §48.004.

§705.6101. What assessments does APS use in an in-home case?

(a) APS uses assessments to determine whether an elderly person or individual with a disability is at imminent risk of abuse, neglect, or financial exploitation and needs protective services or is in a state of abuse, neglect, or financial exploitation and needs protective services.

(b) APS uses a series of three assessments:

(1) Safety Assessment: A safety assessment helps APS determine current danger factors and immediate interventions to mitigate them.

(2) Risk of Recidivism Assessment: If APS validates abuse, neglect, or financial exploitation, a risk of recidivism assessment helps APS determine whether the client is at low, moderate, or high risk of being an alleged victim within the next 12 months.

(3) Strengths and Needs Assessment: If APS validates abuse, neglect, or financial exploitation and provides protective services, a strengths and needs assessment helps APS to develop a service plan appropriate to the client's needs.

(c) Each assessment takes into consideration the following criteria, among others:

(1) Environmental conditions;

(2) Financial condition;

(3) Physical, medical, and mental health conditions;

(4) Social interaction and support; and

(5) Need for legal intervention.

(d) A caseworker must consult with a supervisor when:

(1) abuse, neglect, or financial exploitation is validated;

(2) the client has a current threat to his or her life or physical safety; and

(3) the client refuses to accept services or withdraws a previous acceptance of services.

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

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SUBCHAPTER J. RELEASE HEARINGS

40 TAC §705.4103

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §705.4103, relating to does the designated perpetrator have the right to appeal, in its Adult Protective Services chapter. The purpose of the amendment is to update the definition of an employee eligible for placement on the Employee Misconduct Registry to include a person who works for an individual employer participating in the consumer-directed service option. This change is required as a result of House Bill 2683, 83rd Legislature, which enacted a change to the definition of employee in Human Resources Code (HRC) §48.401.

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Henderson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be protection of the elderly and persons with disabilities. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed 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, does not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Michael Roberts at (512) 438-3182 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-493, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

The amendment is proposed 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 §48.401(3).

§705.4103. Does the designated perpetrator have the right to appeal?

(a) (No change.)

(b) If the designated perpetrator is an employee as defined in §711.1402 of this title (relating to How are terms in this subchapter defined?) [~~of a home and community support services agency (HCSSA)~~] and subject to placement on the Employee Misconduct Registry established under Health and Safety Code, Chapter 253, the perpetrator [~~he~~] may request a hearing as described in Chapter 711 [~~of this title (relating to Investigations in DADS and DSHS Facilities and Related Programs)~~], Subchapter O of this title (relating to Employee Misconduct Registry).

(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.

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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 711. INVESTIGATIONS IN DADS AND DSHS FACILITIES AND RELATED PROGRAMS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§711.1, 711.3, 711.7, 711.11, 711.23, 711.201, 711.401, 711.405, 711.409, 711.411, 711.417, 711.605, 711.611, 711.613, 711.801, 711.802, 711.1001, 711.1003, 711.1005, 711.1011, 711.1402, and 711.1403; and new §711.1012, in its Investigations in DADS and DSHS Facilities and Related Programs chapter. The purpose of the amendments and new section is to remove unclear examples of situations that are not investigated by Adult Protective Services, provide clarity as to requesting a review of finding or methodology, update outdated terminology, and implement House Bill (HB) 2683, 83rd Legislature, Regular Session, which adds a class of perpetrators who can be placed on the Employee Misconduct Registry.

A summary of the changes follows:

The amendment to §711.1 updates the term and abbreviation for a licensed intermediate care facility for individuals with an intellectual disability or related condition (ICF-IID).

The amendment to §711.3 updates terms and abbreviations related to community center and intermediate care facility for individuals with an intellectual disability or related condition (ICF-IID).

The amendment to §711.7 deletes examples of what Adult Protective Services (APS) does not investigate.

The amendments to §711.11 and §711.23 update references to Department of Aging and Disability Services (DADS) rules on restraints in state supported living center and ICF-IID settings.

The amendments to §§711.201, 711.401, 711.405, 711.409, 711.411, 711.417, 711.605, 711.611, 711.613, 711.801, and 711.802: (1) update the term and abbreviation for a licensed intermediate care facility for individuals with an intellectual disability or related condition (ICF-IID); and (2) update the abbreviation for home and community-based services to HCS.

The amendment to §711.417 deletes the graphic because it duplicates information in paragraph (2) of this section.

The amendment to §711.1001: (1) clarifies that an attorney representing an administrator or CEO of a facility may request a review of finding or methodology on behalf of the administrator or CEO; (2) updates the term and abbreviation for a licensed intermediate care facility for individuals with an intellectual disability or related condition (ICF-IID); and (3) updates the abbreviation for home and community-based services to HCS.

The amendment to §711.1003: (1) renames the form for requesting a review of finding or methodology to more clearly reflect that the form is used for both types of reviews; (2) updates the physical address for sending requests for reviews of finding because APS will receive requests more quickly if they come to a physical address rather than a Post Office Box; and (3) clarifies that if an administrator or CEO disagrees with both the methodology and finding in an investigation, the administrator or CEO should request a review of methodology.

The amendment to §711.1005 clarifies that the report discussed in this rule is the investigative report.

The amendment to §711.1011: (1) clarifies that an attorney representing an administrator or CEO of a facility may request a review of finding or methodology; (2) renames the form for requesting a review of finding or methodology to more clearly reflect the form is used for both types of reviews; and (3) updates the physical address for sending requests for reviews of finding because APS will receive requests more quickly if they come to a physical address rather than a Post Office Box.

New §711.1012 clarifies the deadline to challenge a methodological review decision.

The amendments to §711.1402 and §711.1403: (1) update the definition of an employee eligible for placement on the Employee Misconduct Registry to include an employee who works for an individual employer participating in the consumer-directed service option. This change is required by HB 2683; and (2) update the term and abbreviation for a licensed intermediate care facility for individuals with an intellectual disability or related condition (ICF-IID).

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased clarity in the sections and more perpetrators of abuse, neglect, and exploitation will be placed on the Employee Misconduct Registry as required by Human Resources Code, Chapter 48. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and new section 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Michael Roberts at (512) 438-3182 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-493, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. INTRODUCTION

40 TAC §§711.1, 711.3, 711.7, 711.11, 711.23

The amendments are proposed 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 Government Code §531.0227 and HRC §40.002(b)(1).

§711.1. What is the purpose of this chapter?

The purpose of this chapter is to:

(1) (No change.)

(2) describe Adult Protective Services investigations of allegations involving adults and children in the following programs:

(A) - (D) (No change.)

(E) licensed intermediate care facilities for individuals [~~persons~~] with intellectual disabilities and related conditions (ICF-IID) [~~(ICF-ID)~~]; and

(F) (No change.)

(3) - (5) (No change.)

§711.3. How are the terms in this chapter defined?

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

(1) - (7) (No change.)

(8) Community center--A community mental health center; community center for individuals with intellectual or developmental disabilities;[~~, community mental retardation center,~~] or community mental health center and community [~~mental retardation~~] center for individuals with intellectual or development disabilities, established under the Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(9) - (17) (No change.)

(18) Emergency Services in Licensed ICFs-IID [~~ICFs-ID~~]--Services provided by DADS if DADS determines, based on information from the DFPS investigator, that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation. DADS will file a petition for temporary care and protection of a resident.

(19) Facility--A state hospital, state supported living center, or Rio Grande State Center that is operated by DADS or DSHS, and unless the context indicates otherwise, licensed ICFs-IID [~~ICFs-ID~~].

(20) - (21) (No change.)

(22) ICF-IID [~~ICF-ID~~]--A licensed intermediate care facility for individuals with an intellectual disability or related conditions [~~persons with intellectual disabilities, also known as ICF-MR~~].

(23) - (25) No change.)

(26) Licensed ICF-IID [~~ICF-ID~~] CEO/Administrator Designee--The person designated to perform the duties of the CEO/Administrator for the purposes of the investigation when the CEO/Administrator is the alleged perpetrator in an investigation.

(27) - (28) (No change.)

(29) Non-serious physical injury (in Community Centers, Local Authorities, licensed ICFs-IID [~~ICFs-ID~~] and HCS Programs)--Any injury determined not to be serious by the appropriate medical personnel. Examples of non-serious physical injury include the following:

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

(30) - (38) (No change.)

(39) Serious physical injury (in Community Centers, Local Authorities, licensed ICFs-IID [~~ICFs-ID~~] and HCS Programs)--Any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include the following:

(A) - (G) No change.)

(40) - (42) No change.)

§711.7. What does APS not investigate under this chapter?

APS does not investigate:

(1) (No change.)

(2) general complaints, such as:

(A) - (E) (No change.)

(F) failure to provide care or services to a person served that does not result in emotional or physical harm to the person [~~(e.g., late diaper change, late dose of medication)~~] and that is determined not to place the person at risk for harm;

(G) situations in which a staff member other than the responsible staff member provided care or supervision to the person served and no harm came to the person served[~~, (e.g., assigned staff member sleeping on the job, or assigned staff walked away from post)~~]; or

(3) (No change.)

§711.11. How is physical abuse defined?

In this chapter, when the alleged perpetrator is an employee, agent, or contractor, physical abuse is defined as:

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

(3) the use of chemical or bodily restraints on a person served not in compliance with federal and state laws and regulations, including:

(A) (No change.)

(B) 40 TAC Chapter 3, Subchapter F (relating to Restraints) [~~5, Subchapter H, (relating to Use of Restraints in State Mental Retardation Facilities)~~];

(C) (No change.)

(D) 40 TAC Chapter 90, Subchapter C (relating to Standards for Licensure) [~~Facilities Serving Persons with Mental Retardation or Related Conditions)~~].

§711.23. What is not considered abuse, neglect, or exploitation?

Abuse, neglect, and exploitation do not include the following:

(1) the proper use of restraints and seclusion, including Prevention and Management of Aggressive Behavior (PMAB), and the approved application of behavior modification techniques as described in:

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

(C) 40 TAC Chapter 3, Subchapter F (relating to Restraints) [~~5, Subchapter H (relating to Use of Restraints in State Mental Retardation Facilities)~~]; and

(D) 40 TAC Chapter 90, Subchapter C (relating to Standards for Licensure) [~~Facilities Serving Persons with Mental Retardation or Related Conditions~~)];

(2) - (3) (No change.)

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

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Cynthia O'Keeffe
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SUBCHAPTER C. DUTY TO REPORT

40 TAC §711.201

The amendment is proposed 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 §40.002(b)(1).

§711.201. What is your duty to report if you are an employee, agent, or contractor of a facility, local authority, community center, or HCS [~~HCSW~~]?

If you know or suspect that a person served is being or has been abused, neglected, or exploited or meets other criteria specified in §711.5 of this title (relating to What does APS investigate under this chapter?), you must:

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

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

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SUBCHAPTER E. CONDUCTING THE INVESTIGATION

40 TAC §§711.401, 711.405, 711.409, 711.411, 711.417

The amendments are proposed 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 Government Code §531.0227and HRC §40.002(b)(1).

§711.401. Who and when does the investigator notify of an allegation and when is the identity of the reporter revealed?

(a) Except as provided in subsection (b) of this section, the investigator makes the following notifications, as appropriate:
Figure: 40 TAC §711.401(a)

(b) If the administrator or CEO is the alleged perpetrator, the investigator makes other notifications, in subsection (a) of this section, as appropriate, but instead of notifying the administrator or CEO:
Figure: 40 TAC §711.401(b)

§711.405. What action does the investigator take if the alleged perpetrator is a physician, dentist, registered nurse, licensed vocational nurse, or pharmacist for a state-operated facility or a licensed ICF-IID [~~ICF-ID~~] that maintains a peer review committee?

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

§711.409. What action does the investigator take if the alleged perpetrator is a physician, dentist, registered nurse, licensed vocational nurse, or pharmacist for a community center, local authority, licensed ICF-IID [~~ICF-MR~~] without a peer review committee, or HCS [~~HCSW~~]?

The investigator determines whether or not the allegation involves clinical practice.

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

§711.411. What action does the investigator take if the alleged perpetrator is a licensed professional other than a physician, dentist, registered nurse, licensed vocational nurse, or pharmacist for a community center, local authority, licensed ICF-IID, or HCS [~~ICF-MR, or HCSW~~]?

The investigator:

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

§711.417. When must the investigator complete the investigation?

Unless an extension is granted in accordance with §711.419 of this title (relating to What if the investigator cannot complete the investigation on time?), the investigator must complete the investigation within the following time frames:
[~~Figure: 40 TAC §711.417~~]

(1) If the investigation is in a state supported living center or the ICF-IID [~~ICF-MR~~] component of the Rio Grande State Center and the priority is I or II the investigator must complete the investigation within 10 calendar days of receipt of the allegation by DFPS.

(2) - (3) (No change.)

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

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SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §§711.605, 711.611, 711.613

The amendments are proposed 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 Government Code §531.0227 and HRC §40.002(b)(1).

§711.605. Who receives the investigative report?

(a) The investigator sends a copy of the investigative report to:

(1) (No change.)

(2) DADS State Office, if the investigation involves a state supported living center, HCS [~~HCSW~~], or licensed ICF-IID [~~ICF-MR~~];

(3) (No change.)

(4) the Office of the Inspector General when a person served at a state supported living center or the ICF-IID [~~ICF-MR~~] component of the Rio Grande State Center has been abused, neglected, or exploited in a manner that constitutes a criminal offense under any law;

(5) the following, if the administrator or contractor CEO is the perpetrator or alleged perpetrator:

(A) (No change.)

(B) State Supported Living Centers/the ICF-IID [~~ICF-MR~~] component of the Rio Grande State Center--the Assistant Commissioner of State Supported Living Centers at DADS.

(C) (No change.)

(D) HCS [~~HCSW~~] Programs--the HCS [~~HCSW~~] CEO/Administrator Designee.

(E) (No change.)

(F) Licensed ICFs-IID [~~ICFs-MR~~]--the licensed ICF-IID CEO/Administrator Designee [~~ICF-MR Administrator designee~~]; and

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

(b) (No change.)

§711.611. Is the victim or alleged victim, guardian, or parent notified of the finding?

Yes. The victim or alleged victim, guardian, or parent (if the victim or alleged victim is a child) is notified of the finding of the investigation and the method to appeal the finding, in accordance with the following rules of DADS and DSHS:

(1) (No change.)

(2) for state supported living centers and the ICF-IID [~~ICF-ID~~] component of the Rio Grande State Center--40 TAC §3.305(c) (relating to Completion of an Investigation);

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

(5) for licensed ICFs-IID [~~ICFs-ID~~]--40 TAC Chapter 90, Subchapter G (relating to Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations).

§711.613. Can the investigative report be released by the State Supported Living Centers, the State Hospitals, licensed ICFs-IID [~~ICFs-ID~~], local authorities, or HCSs?

Upon request, the investigative report (with any information concealed that would reveal the identities of the reporter and any person served who is not the victim or alleged victim) may be released:

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

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

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SUBCHAPTER I. PROVISION OF SERVICES

40 TAC §711.801, §711.802

The amendments are proposed 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 Government Code §531.0227 and §40.002(b)(1).

§711.801. What action does the investigator take if a person served by an HCS [~~HCSW~~] needs emergency services?

(a) If the investigator determines that a person served by an HCS [~~HCSW~~] is in immediate threat of serious physical harm or death as a result of abuse, neglect, or exploitation, then the investigator requests the HCS [~~HCSW~~], if appropriate, to take action to remove the

threat of physical harm or death. In deciding whether it is appropriate to request that the HCS [~~HCSW~~] take action, the investigator considers the following factors at a minimum:

(1) the ability of the HCS [~~HCSW~~] to take action in a timely manner;

(2) (No change.)

(3) location of the HCS [~~HCSW~~] site; and

(4) (No change.)

(b) If the investigator determines that it is not appropriate to request the HCS [~~HCSW~~] to take action or if the HCS [~~HCSW~~] does not respond appropriately to a request, then the investigator utilizes the resources of the APS In-home staff to provide emergency services necessary to prevent serious physical harm or death.

(c) The investigator informs Consumer Rights and Services of the investigator's determination that a person served by an HCS [~~HCSW~~] was in immediate threat of serious physical harm or death as a result of abuse, neglect, or exploitation, within 24 hours or the next working day of such determination.

§711.802. What action does the investigator take if a person served by a licensed ICF-IID [~~ICF-MR~~] needs emergency services?

(a) If the investigator determines that a person served by a licensed ICF-IID [~~ICF-MR~~] is in immediate threat of serious physical harm or death as a result of abuse, neglect, or exploitation, then the investigator requests the licensed ICF-IID [~~ICF-MR~~], if appropriate, to take action to remove the threat of physical harm or death. In deciding whether it is appropriate to request that the licensed ICF-IID [~~ICF-MR~~] take action, the investigator considers the following factors at a minimum:

(1) the ability of the licensed ICF-IID [~~ICF-MR~~] to take action in a timely manner;

(2) (No change.)

(3) location of the licensed ICF-IID [~~ICF-MR~~] site; and

(4) (No change.)

(b) If the investigator determines that it is not appropriate to request the licensed ICF-IID [~~ICF-MR~~] to take action or if the licensed ICF-IID [~~ICF-MR~~] does not respond appropriately to a request, then the investigator contacts the Department of Aging and Disability Services (DADS) Regulatory division and provides DADS with all information that DFPS believes makes it necessary for DADS to file a petition for temporary care and protection of a resident. If DADS determines, based on information from the DFPS investigator, that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation, DADS will file the petition.

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

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SUBCHAPTER K. REQUESTING A REVIEW OF FINDING IF YOU ARE THE ADMINISTRATOR OR CONTRACTOR CEO

40 TAC §§711.1001, 711.1003, 711.1005, 711.1011, 711.1012

The amendments and new section are proposed 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 Government Code §531.0227; and HRC §48.002(b)(1) and §48.255.

§711.1001. What if the administrator or contractor CEO wants to request a review of the finding or the methodology used to conduct the investigation?

(a) The administrator or contractor CEO or that person's legal representative may request a review of the finding or methodology used to conduct the investigation if he or she is not the perpetrator or alleged perpetrator.

(b) If the administrator is the perpetrator or alleged perpetrator, then the following may request a review:

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

(3) In HCS [~~HCSW~~] programs, the HCS [~~HCSW~~] CEO/Administrator Designee.

(4) In licensed ICFs-IID [~~ICFs-MR~~], the licensed ICF-IID CEO/Administrator Designee [~~ICF-MR Administrator designee~~].

(c) (No change.)

§711.1003. How is a review as described in §711.1001 of this title (relating to What if the administrator or contractor CEO wants to request a review of the finding or the methodology used to conduct the investigation?) requested?

(a) To request a review, the administrator or contractor CEO must:

(1) complete DFPS' "Request for Review of an APS Facility Investigation [~~Finding~~]" form; and

(2) send the completed "Request for Review of an APS Facility Investigation [~~Finding~~]" form and a copy of the investigative report as described in §711.603 of this title (relating to What is included in the investigative report?) to:

(A) the regional APS program administrator if the request is to challenge the methodology used to conduct the investigation; or

(B) the Assistant Commissioner of Adult Protective Services, 701 W. 51st St., Mail Code [~~DFPS, P.O. Box 149030,~~] E-561, Austin, Texas 78751[~~, 78714-9030~~], if the request is to challenge the finding.

(b) If the administrator or contractor CEO disagrees with both the methodology and finding, the administrator or contractor CEO should request a review of the methodology since the review of the methodology may result in a change to the finding. If the administrator

or contractor CEO disagrees with the decision(s) of the review of methodology, the administrator or contractor CEO may then challenge the methodological review decision(s) as described in §711.1011 of this title (relating to What if the administrator or contractor CEO wants to challenge the methodological review decision(s) made by the regional APS program administrator?).

§711.1005. Is there a deadline to request a review?

Yes. The deadline for requesting a review is the 30th calendar day from the day the investigative report was signed and dated by the investigator. DFPS will not accept a request for review received after the 30th calendar day from the day the investigative report was signed and dated by the investigator.

§711.1011. What if the administrator or contractor CEO wants to challenge the methodological review decision(s) made by the regional APS program administrator?

To challenge the methodological review decision(s) [~~decision~~], the administrator or contractor CEO or that person's legal representative must:

(1) complete DFPS' "Request for Review of an APS Facility Investigation [~~Finding~~]" form; and

(2) send the completed "Request for Review of an APS Facility Investigation [~~Finding~~]" form and a copy of the investigative report as described in §711.603 of this title (relating to What is included in the investigative report?) to the Assistant Commissioner of Adult Protective Services, 701 W. 51st St., Mail Code [~~DFPS, P.O. Box 149030,~~] E-561, Austin, Texas 78751[~~, 78714-9030~~].

§711.1012. Is there a deadline for the administrator or contractor CEO to challenge the methodological review decision(s) made by the regional APS program administrator?

Yes. The deadline for challenging the methodological review decision(s) made by the regional APS program administrator is the 30th calendar day from the latter of:

(1) the day the reviewed investigative report was signed and dated by the investigator; or

(2) the day the regional APS program administrator sends written notification of the methodological review decision(s).

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

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SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY

40 TAC §711.1402, §711.1403

The amendments are proposed 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 Government Code §531.0227 and HRC §48.401(3).

§711.1402. How are the terms in this subchapter defined?

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

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

(7) Employee--A person who: [~~performs services for an agency, whether as an employee, contractor, volunteer, or agent;~~]

(A) works for:

(i) an agency, whether as an employee contractor, volunteer or agent; or

(ii) an individual employer participating in the consumer-directed service option, as defined by Government Code §531.051;

(B) provides personal care services, active treatment, or any other personal services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Family Code §261.404, or an individual receiving services through the consumer-directed service option, as defined by Government Code §531.051; and

(C) is not licensed by the state to perform the services the person performs for the agency or the individual employer participating in the consumer-directed service option, as defined by Government Code §531.051;

(8) - (9) (No change.)

(10) Facility investigation--An investigation conducted by APS under Chapter 48, Subchapters F and H, Human Resources Code, that involves an employee of one of the following agency types:

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

(C) a licensed intermediate care facility for persons with intellectual disabilities and related conditions (ICF-IID) [~~(ICF-ID)~~];

(D) - (G) (No change.)

(11) - (12) (No change.)

(13) ICF-IID [~~ICF-ID~~]--An intermediate care facility for individuals with an intellectual disability or related condition [~~disabilities and related conditions~~]. A licensed ICF-IID [~~ICF-ID~~] is a privately owned and operated facility licensed by the Department of Aging and Disability Services under Chapter 252, Health and Safety Code. A state supported living center operated by DADS or DSHS is also an ICF-IID [~~ICF-ID~~]. A local authority may also operate an ICF-IID [~~ICF-ID~~];

(14) - (16) (No change.)

(17) Rio Grande State Center--A facility operated by the Department of State Health Services that provides in-patient mental health services and services through an ICF-IID [~~ICF-ID~~];

(18) (No change.)

(19) State supported living center--An ICF-IID [~~ICF-ID~~] operated by the Department of Aging and Disability Services.

§711.1403. To which investigations does this subchapter apply?

(a) This subchapter applies to APS investigations involving an employee as defined in §711.1402 of this title (relating to How are the terms in this subchapter defined?). [~~a person who:~~]

[~~(1) is an employee of an agency;~~]

[~~(2) provides personal care services, active treatment, or any other personal services to a person served by the agency; and~~]

[~~(3) is not licensed by the state to perform the services the employee performs for the agency.~~]

(b) Notwithstanding subsection (a) [~~(a)(3)~~] of this section, a certified nurse aide who commits reportable conduct while working for an agency is eligible to be reported to the EMR, as provided by §253.001(3), Health and Safety 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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CHAPTER 732. CONTRACTED SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§732.103, 732.109, 732.201, 732.240, 732.242, 732.257, 732.258, 732.261, 732.262, 732.284, and 732.305; and the repeal of §§732.243 - 732.255, 732.260, 732.263, 732.266, and 732.275, concerning general procedures and contract administration, in its Contracted Services chapter. The Federal Government has recently announced several revisions to the Office of Management and Budget (OMB) Circulars. Several DFPS rules in Title 40, Chapter 732 of the Texas Administration Code restate language from the OMB Circulars and require revision. However, to ensure that DFPS rules remain consistent with the OMB circulars as they are amended in the future, DFPS proposes rule amendments that will incorporate relevant OMB circulars by reference rather than by including duplicative language in Title 40, Chapter 732.

Additional changes are made to various rules in Chapter 732 to (1) reflect that the procurement function previously handled by DFPS has transferred to the Health and Human Services Commission (HHSC) and is carried out in accordance with relevant HHSC rules; (2) delete cross-references to rules that have been repealed or are being proposed for repeal; (3) clarify certain rules; (4) convert certain rules to the "question and answer" format used elsewhere in Chapter 732; (5) update the title of the head of DFPS from "executive director" to "commissioner"; and (6) make other, non-substantive technical corrections.

The amendment to §732.103 replaces the term "executive director" with "commissioner," adds volunteer to the list of entities DFPS does not regard as a contractor, and makes other grammatical corrections.

The amendment to §732.109 replaces the term "executive director" with "commissioner."

The amendment to §732.201 clarifies that HHSC conducts all DFPS purchases and removes references to repealed rules.

The amendment to §732.240 removes references to deleted rules and deletes language that unnecessarily duplicates language from OMB Circulars.

The amendments to §§732.242, 732.257, 732.284, and 732.305 change the titles to question/answer format and correct the agency name.

Sections 732.243 - 732.255 and 732.266 are repealed because the sections duplicate language from OMB Circulars.

The amendment to §732.258 changes the title to question/answer format and changes the term "executive director" to "commissioner."

Section 732.260 is repealed because it is it is now preempted by Government Code Chapter 2254. Additionally, HHSC now procures consultant contracts for DFPS.

The amendment to §732.261 changes the title to question/answer format and references the HHSC provider enrollment purchasing rule, 1 TAC §391.183 (relating to Enrollment Contracts).

The amendment to §732.262 changes the language to be in compliance with Government Code Chapter 441 and the DFPS Records Retention Schedule for Contracts (see http://www.dfps.state.tx.us/application/rmg/default.aspx).

Section 732.263 is repealed because DFPS contracts now control the content of this rule via the signed contract.

Section 732.275 is repealed because it is preempted by VPTS in Government Code Chapter 2155.

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the rules will reflect current procedures. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and repeals 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Jared Davis at (512) 438-5647 in DFPS's Legal Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-491, Department of Family and Protective Services E-611, P.O. Box

149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROCEDURES

40 TAC §732.103, §732.109

The amendments are proposed 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.

§732.103. How are the terms in this chapter defined?

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

(1) (No change.)

(2) Commissioner--The commissioner of the Texas Department of Family and Protective Services.

(3) [~~(2)~~] Contractor--An independent contractor who has entered into a contract directly with the Department. The term does not include:

(A) a contractor's subcontractor, officer, employee, agent, volunteer, or other person furnishing goods or services to a contractor; or

(B) an employee of the Department.

(4) [~~(3)~~] Counterclaim--A claim by the Department against the contractor based upon the same contract as that of the contractor's claim.

(5) [~~(4)~~] Day--A calendar day. If an act is required to occur on a date falling on a Saturday, Sunday, or holiday, the first working day following one of these days is the date to be counted as the required day for the act.

(6) [~~(5)~~] Department--The Texas Department of Family and Protective [~~and Regulatory~~] Services.

(7) [~~(6)~~] Event--An act or omission or a series of acts or omissions giving rise to a claim.

[~~(7) Executive Director--The director of the Department.~~]

(8) - (11) (No change.)

§732.109. How does the Department apply exceptions to its contracting rules?

Within this chapter and within other applicable statutes and rules, possible exceptions are listed. The Commissioner [~~Executive Director~~] or designee, applying the criteria in the statute or rule, may determine whether the exception applies. Some exceptions require specific procedures and documentation. Policies may require additional procedures and documentation.

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SUBCHAPTER L. CONTRACT ADMINISTRATION

40 TAC §§732.201, 732.240, 732.242, 732.257, 732.258, 732.261, 732.262, 732.284

The amendments are proposed 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.

§732.201. What is the purpose of contract administration?

(a) Contract administration deals with the [~~purchase and~~] administration of goods and services based on federal regulations and state law. The Department may implement additional requirements to meet the particular needs of certain program areas if those requirements do not conflict with the provisions of this chapter. The Health and Human Services Commission (HHSC) conducts all Department purchases for goods and services on the basis of the best value to the State and the Department, in accordance with HHSC [~~the Health and Human Services Commission~~] purchasing rules located at 1 TAC Chapter 391 (relating to Purchase of Goods and Services by Health and Human Services Agencies).

(b) Sections 732.271 - 732.273 [~~and §§732.275 - 732.277~~] of this title (relating to Settlement of Subcontract Claims, Notice to Contractor of Determination, and Submission of Evidence[~~, Abeyance and Removal of Current or Potential Contractual Rights, Causes and Conditions for Removal of Contractual Rights and for Abeyance, and Notice Requirements for Removal of Contractual Rights and for Abeyance~~)] do not apply to Title XIX funds.

§732.240. What are the general principles of allowable and unallowable costs?

(a) In cost reimbursement contracts, the Department reimburses its contractors only for costs (both direct and indirect) which

are allowable, reasonable, necessary, and properly allocated to the specific contract. The cost guidelines, principles, and definitions for allowable and unallowable costs (both direct and indirect) for purposes of preparing budgets, for expenditure purposes, and for cost-reporting purposes are the same. Those guidelines are published in federal and state regulations. Contractors receiving Title IV-E funding on a cost reimbursement basis are required to be in compliance with 45 Code of Federal Regulations (CFR) Part 74 and 48 CFR Part 31 regarding the use and expenditure of Title IV-E funds. Contractors receiving Title IV-B funding on a cost reimbursement basis are required to be in compliance with 45 CFR Part 92 regarding the use and expenditure of Title IV-B funds. All purchased client services contractors (both for-profits and nonprofits) who have cost reimbursement contracts are required to be in compliance with Office of Management and Budget (OMB) Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations) [~~and this section and §§732.242 - 732.255 of this title (relating to Contract Administration) regarding the guidelines for use and expenditure of funds received from the Department, which consist of federal and/or state revenues~~]. If the contractor is a governmental entity, the contractor shall remain in compliance with OMB Circular A-87 (Cost Principles for State and Local Governments). If the contractor is either a for-profit entity or a nonprofit entity, the contractor is required to be in compliance with OMB Circular A-122 (Cost Principles for Nonprofit Organizations). In the event of any conflict or contradiction between or among the regulations referenced in this subsection, the regulations shall control in the following order of precedence:

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

(3) state regulations [~~- this section, §732.241 of this title (relating to What happens if a cost is not allowable?) and §§732.242 - 732.255 of this title (relating to Contract Administration)~~]; and

(4) (No change.)

[~~(b) Only those items that represent an actual cash outlay, or the compensation for the use of buildings, other capital improvements, and equipment on hand through a use allowance or depreciation are allowable. The value of donated goods or services (in-kind) are unallowable. However, depreciation or a use allowance on a donated building, donated capital improvements, or donated equipment subject to ownership requirements and/or donor-imposed conditions is allowable. Contractors shall not use revenues from the Department to finance activities other than those activities specifically allowable under their contract with the Department. Unallowable uses of contract revenues from the Department include, but are not limited to, inter-fund loans/transfers, interdepartmental loans/transfers, inter-company loans/transfers, and employee loans not considered salary advances.~~]

(b) [~~(c)~~] Costs budgeted, expended, used, and/or reported by a contractor and/or paid by the Department must be consistent with generally accepted accounting principles (GAAP), which are those principles approved by the American Institute of Certified Public Accountants (AICPA). Internal Revenue Services (IRS) laws and regulations do not necessarily apply in the preparation of budgets, the expenditure, and/or use of funds received from the Department, and/or the reporting of costs to the Department. In cases where there are differences between the Department's rules, GAAP, IRS, or other authorities, the Department's rules take precedence.

(c) [~~(d)~~] The contractor's accounting system must include an accurate and consistent method for gathering statistical information that properly relates the costs incurred to the units of service rendered.

(d) [~~(e)~~] The contractor is responsible for designing and implementing fiscal policies and ensuring that financial data are collected, recorded, and analyzed as part of the delivery of service under a contract with the Department.

(e) [~~(f)~~] Costs incurred under less-than-arms-length (related-party) transactions are allowable only up to the cost to the related party (see OMB Circulars A-87 and A-122). However, the cost must not exceed the price of comparable services, equipment, facilities, or supplies that could be purchased or leased elsewhere. The purpose of this principle is twofold: to avoid the payment of a profit factor to the contractor through the related organization (whether related by common ownership or control), and to avoid payment of artificially-inflated costs which may be generated from less-than-arms-length bargaining. The related organization's costs include all reasonable costs, direct and indirect, incurred in the furnishing of services, equipment, facilities, and supplies to the contractor. The intent is to treat the costs incurred by the related organization as if they were incurred by the contractor itself. An exception is provided to the general rule applicable to related organizations and applies if the contractor demonstrates by convincing evidence to the satisfaction of the Department that certain criteria have been met. Those criteria are:

(1) The related organization is a bona fide separate corporation and not merely an operating division of the contractor's organization;

(2) A majority of the related organization's business activity of the type carried on with the contractor is transacted with other organizations not related to the contractor or the related organization by common ownership or control and there is an open, competitive market for the type of services, equipment, facilities, or supplies furnished by the related organization. In determining whether the business activities are of a similar type, it is important also to consider the scope of the business activity. The requirement that there be an open, competitive market is intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well-informed buyers and sellers; [~~and~~]

(3) The charge to the contractor is in line with the charge for such services, equipment, facilities, or supplies in the open, competitive market and no more than the charge made under comparable circumstances to others by the related organization for such services, equipment, facilities, or supplies; and[.]

(4) [~~(g)~~] In determining whether a contractor is related to a supplying organization, the tests of common ownership and control are to be applied separately. Related to a contractor means that the contractor to a significant extent is associated or affiliated with, has control of, or is controlled by the organization furnishing the services, equipment, facilities, or supplies. Common ownership exists if an individual or individuals posses any ownership or equity in the contractor and the supplying organization. Control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. If the elements of common ownership or control are not present in both organizations (i.e., the contractor and the supplying organization), then the organizations are deemed not to be related to each other. The existence of an immediate family relationship will create a conclusive presumption of relatedness through control or attribution of ownership or equity interests where the significance tests are met. The following persons are considered immediate family: husband and wife; natural parent, child, and sibling; adopted child and adoptive parent; stepparent, stepchild, stepsister, and stepbrother; father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law; grandparent and grandchild; uncles and aunts by blood or marriage; nephews and nieces by blood or marriage; and first cousins by blood or marriage:[.]

(A) [(1)] A determination as to whether an individual (or individuals) or organization possesses ownership or equity in the contractor and the supplying organization, so as to consider the organizations related by common ownership, will be made on the basis of the facts and circumstances in each case. This rule applies whether the contractor or supplying organization is a sole proprietorship, partnership, corporation, trust or estate, or any other form of business organization, proprietary or nonprofit. In the case of a nonprofit organization, ownership or equity interest will be determined by reference to control of the organization or to an interest in the assets of the organization; for example, a reversionary interest provided for in the articles of incorporation of a nonprofit organization.

(B) [(2)] The term control includes any kind of control, whether or not it is legally enforceable and however it is exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise. The facts and circumstances in each case must be examined to ascertain whether legal or effective control exists. Since a determination made in a specific case represents a conclusion based on the entire body of facts and circumstances, such determination should not be used as a precedent in other cases unless the facts and circumstances are substantially the same. Organizations, whether proprietary or nonprofit, are considered to be related through control of their directors or officers in common.

(5) [(h)] Disclosure of all less-than-arms-length (related-party) transactions is required for all costs budgeted, expended, used, and/or reported by the contractor, including related-party transactions occurring at any level in the contractor's organization. The contractor must make available, upon request, adequate documentation to support the costs incurred by the related party. Such documentation could include an identification of the related organization's total costs, the basis of allocation of direct and indirect costs to the contractor, and other business entities served. If a contractor fails to provide adequate documentation to substantiate the cost to the related organization, then the cost is unallowable.

(f) [(i)] Direct costing must be used whenever reasonably possible. Direct costing means that costs, direct or indirect, incurred for the benefit of, or directly attributable to, a specific business component must be directly charged to that particular business component. For direct costs as defined in OMB Circulars A-122 and A-87, direct costing is required. For indirect costs as defined in OMB Circulars A-122 and A-87, it is necessary to allocate these costs either directly or as a pool of costs across those business components sharing in the benefits of those costs. If cost allocation is necessary, contractors must use reasonable methods of allocation and must be consistent in their use of allocation methods across all program areas and business entities in which the contractor has an interest (see OMB Circulars A-87 and A-122).

[(1) Each employee is required (see OMB Circulars A-122 and A-87) to have time or activity sheets. Time or activity sheets must be prepared at least monthly and must coincide with one or more pay periods. The sheets must account for the total activity for which the employee is compensated and which is required to fulfill the employee's obligation to the contractor. If an employee performs only one function and only performs that one function for one contract/program area, then that employee's time or activity sheet can include the minimum information: name, date, beginning time, ending time, total time worked, appropriate signature(s), and accounting for paid and unpaid leave time.]

[(2) Direct care staff must be directly costed between program areas (business components) based upon their time or activity sheets (not a time study). If a direct care employee performs more than one function, performs one function for more than one contract/program area, and/or performs more than one function for more than one contract/program area, the sheets must account for those different functions and/or contracts/program areas. These sheets should be the documentation for the percentages of salaries budgeted to the various contracts. In other words, if a counselor works on a contractor's nonresidential contract and for one or more of the contractor's residential contracts, the percentage of that counselor's salary in the nonresidential budget should be based upon the results of sheets for a recent historical period prior to the submission of the budget. The actual amounts charged to the nonresidential contract for that counselor should be based upon the counselor's sheets during the contract period, with a reconciliation to the contract's budget. If the counselor's actual time is less than that budgeted, the contractor is reimbursed based upon the actual time. If the counselor's actual time is more than that budgeted, the contractor is reimbursed based upon the budgeted amount. The counselor's sheets for that contract period then become the basis for the estimates used for the next year's contract budget.]

[(3) Any cost allocation method should be a reasonable reflection of the actual business operations. Allocation methods that do not reasonably reflect the actual business operations and resources expended toward each unique business entity are not acceptable. An indirect allocation method approved by some other department, program, or governmental entity is not automatically approved by the Department. The purpose of cost allocation of shared indirect costs is to ensure that those costs are properly and accurately recorded within each program area, so that each program receives its fair share of those shared indirect costs which benefit that program and so that each program's costs are properly identified (direct and indirect). There are three basic methods for allocating shared (pooled) indirect costs: units of service, cost-to-cost, and functional.]

[(A) To use the units-of-service cost allocation method, each of your program areas would have to deliver the same type of services (i.e., equivalent services) and would have to be measured with the same units of service (i.e., equivalent units). If your program areas (business components) do not have equivalent units of equivalent services, you must use a cost-to-cost or functional allocation method for shared indirect costs that are not directly chargeable to a specific program area (business component).]

[(B) Cost-to-cost allocation methods merely calculate a program's percentage of a specified cost basis and use that percentage to then calculate that program's share of indirect costs. Shared indirect costs are always allocated first to each program area, then any unallowable shared indirect costs are removed from (or separately reported for) each program area for purposes of contracting with the Department. In this manner, it is ensured that 100% (and only 100%) of the total shared indirect costs have been allocated across the various program areas. The specific cost bases for a cost-to-cost allocation methodology include: salaries; salaries, payroll taxes and employee benefits; salaries and contract labor; salaries, payroll taxes, employee benefits, and contract labor; all direct program costs; and all direct program costs minus building costs. These shared indirect costs must be allocated across all the program areas which benefit from these shared indirect costs. If there are some shared indirect costs that benefit only a portion of the corporation's program areas, then an allocation method must be used to properly allocate that subset of the total shared indirect costs to those program areas benefiting from those shared indirect costs. In such complex financial systems, these subsets of shared indirect costs become part of the basis for allocating the shared administration costs benefiting all program areas. For example, if a contractor has a subset of shared indirect costs that only benefit the contractor's residential programs, that subset could be allocated based upon units of service. When allocating on a cost-to-cost basis those shared indirect costs benefiting all program areas (business components) for the contractor, the cost basis for each of the contractor's residential programs would in-

clude the residential program's direct care costs and its allocated share of the subset of shared indirect costs.]

[(C) Functional cost allocation for an administrative staff person can be based upon a time study. Time studies can only be used to allocate administrative time and cannot be used to allocate direct care time. In other words, if an administrative employee also performs direct care duties, that employee must have time sheets (not a time study) to document his/her direct care time.]

[(i) The baseline for allocation using a time study can be calculated upon time sheets recording daily time/effort for an entire month.]

[(ii) Daily time sheets are then completed for a randomly-selected period throughout the remainder of the fiscal year. That "randomly-selected period" could be a randomly-selected week each quarter, randomly-selected two days per month, or other time period which would result in time sheets representing at least 20 days per year, in addition to the baseline.]

[(iii) A contractor can use the results of the baseline time study for allocating the employee's salary for the remainder of the year and make any necessary adjustments required from the results of the randomly-selected periods during the last month of the year or a contractor can allocate the employee's salary each month based upon the results of that month's time study.]

[(iv) A contractor must have its time study methodology and procedures in writing.]

[(D) Other shared indirect costs may be more accurately allocated based upon a functional methodology rather than a cost-to-cost allocation method.]

[(i) Maintenance staff costs could be functionally allocated, based upon the percentage (or dollar amounts) of work orders performed for the various program areas.]

[(ii) If one program pays its employees weekly and another program pays its employees monthly, payroll costs could be functionally allocated based upon each program's pro rata share of the number of payroll checks issued.]

[(4) Each cost allocation method will be reviewed on a case-by-case basis to ensure that the allocated costs fairly and reasonably represent the operations of the contractor. If in the course of an audit it is determined that the cost allocation method does not fairly and reasonably represent the operations of the contractor, then an adjustment to the allocation method will be made.]

[(5) Cost allocation methods must be clearly and completely documented in the contractor's work papers, with details as to how pooled costs are allocated to each segment (component) of the business entity, for both contracted and non-contracted programs.]

(g) [(j)] Allowable [This rule section does not apply to residential child-care contracts because the principles of allowable] and unallowable costs for residential child-care contracts are governed by 1 TAC Chapter 355 (relating to Reimbursement Rates).

§732.242. What is the policy concerning start-up costs? [Start-up Costs.]

(a) (No change.)

(b) Contractors with cost reimbursement contracts that are expanding into a new service area or are just beginning to provide services may, if allowed by program-specific policy and with appropriate Texas Department of Family and Protective [and Regulatory] Services (DFPS) [(TDPRS)] approvals, budget and bill for start-up costs. Hiring and orienting staff, purchasing equipment and supplies, and recruiting eligible clients are included.

(c) (No change.)

(d) Every effort should be made to contract with contractors that will not require DFPS [TDPRS] to provide start-up costs.

(e) (No change.)

§732.257. How are unit rates established? [Unit Rates.]

(a) (No change.)

(b) The contract manager should periodically review the negotiated unit rate to propose operational adjustments within the contracted rate, if necessary, and to review the contractor's financial ability to comply with the terms of the contract. Adjustments to the rate may be made by mutual agreement between Texas Department of Family and Protective [and Regulatory] Services and the contractor, subject to applicable limitations.

§732.258. Can an employee or officer of DFPS have financial interest in a firm or corporation acting as a private consultant? [Financial Interest by Officer/Employee of the Texas Department of Protective and Regulatory Services.]

(a) A department officer or staff who has a financial interest in a firm or corporation acting as a private consultant must report the financial interest to the Commissioner [executive director] within 10 days after the consultant submits an offer to the department.

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

§732.261. How does a potential contractor apply for enrollment? [Application for Enrollment.]

Potential contractors (providers) must request an application for enrollment from the Texas Department of Family and Protective [and Regulatory] Services through the Health and Human Services Commission in accordance with 1 TAC §391.183 (relating to Enrollment Contracts) [means established by the respective department program area].

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

§732.262. What records must a contractor keep and supply to the Department?

(a) (No change.)

(b) The contractor must keep financial and supporting documents, statistical records, and any other records pertinent to the services for which a claim or cost report was submitted to the department or its agent. The records and documents must be kept for a minimum of five years [3 years and 90 days] after the end of the contract period. [or for 3 years after the end of the federal fiscal year in which services were provided (if a provider agreement/contract has no specific termination date in effect).] If any litigation, claim, or audit involving these records begins before the five [3] year period expires, the provider must keep the records and documents for not less than five years after [3 years and 90 days or until] all litigation, claims, or audit finds are resolved. The case is considered resolved when a final order is issued in litigation, or the department and contractor enter into a written agreement. [The contractor must keep records of nonexpendable property acquired under the contract for 3 years after the final disposition of the property.] In this section, contract period means the beginning date through the ending date specified in the original agreement/contract; extensions are considered separate contract periods.

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

§732.284. What is the time limit and options for responding [Time Limit and Options for Responding] to the Texas Department of Family and Protective [and Regulatory] Services?[.]

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

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

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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 §§732.243 - 732.255, 732.260, 732.263, 732.266, 732.275

(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 Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed 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 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.

§732.243. Employee Compensation.
§732.244. Consumable Supplies.
§732.245. Food Expenses.
§732.246. Equipment.
§732.247. How may depreciation and use allowances be calculated?
§732.248. Transportation of Clients.
§732.249. Insurance.
§732.250. Rental Costs.
§732.251. Space Rental.
§732.252. Renovations and Remodeling.
§732.253. Janitorial Services.
§732.254. Telephone.
§732.255. Professional Fees.
§732.260. Consultant Contracts Amendments.
§732.263. Response to Inquiries.
§732.266. Reduction or Nonrenewal of Block Grant Contracts.
§732.275. Abeyance and Removal of Current or Potential Contractual Rights.

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

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SUBCHAPTER M. AUDITING

40 TAC §732.305

The amendments are proposed 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.

§732.305. Must contractors obtain prior approval before procuring an audit? [~~Prior Approval.~~]

Contractors are required to obtain the Texas Department of Family and Protective [~~and Regulatory~~] Services' (DFPS's) [(~~PRS'~~)] approval before procuring an audit performed according to the Single Audit Act of 1984, if DFPS [~~PRS~~] is expected to participate in the cost of the audit.

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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Cynthia O'Keeffe
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CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§744.501, 744.2501, 744.3255, and 744.3553; new §744.2579 and §744.2581; and the repeal of §744.3257, in its Minimum Standards for School-Age and Before or After-School Programs chapter. The purpose of the changes is to: (1) implement Senate Bill (SB) 64 passed during the 83rd Legislature, Regular Session, which requires a school-age and before or after-school program to develop policy regarding vaccine-preventable diseases; (2) update requirements related to annual sanitation inspections; (3) clarify requirements regarding outdoor loose-fill surfacing materials; and (4) require special considerations for children with special needs in emergency preparedness plan requirements.

SB 64 amended the Human Resources Code (HRC) by adding §42.04305, requiring a school-age and a before or after-school program that is not operated in the home of the permit holder, the director, or a caregiver to develop and implement a policy outlining which vaccines for vaccine-preventable diseases that an employee must receive based on the level of risk the employee presents to children due to the employee's contact with children.

The Department of State Health Services (DSHS) notified Licensing that DSHS would no longer conduct sanitation inspections at child-care operations after February 15, 2013, in areas where there is not a local health authority. In March 2013, DSHS sent a letter to each child-care operation that was previously inspected by DSHS to notify the provider that: (1) DSHS would no longer conduct sanitation inspections; and (2) the letter from DSHS would serve as acceptable documentation to demonstrate to Licensing that a sanitation inspection is not available from DSHS. The proposed amendments remove language that allows a state agency to conduct the annual sanitation inspection and add a requirement for school-age and before or after-school programs to obtain a letter from a state or local sanitation official or a county judge stating that an inspection is not available where the operation is located. For operations that are located in areas where there is no local health authority available to conduct the annual sanitation inspection, Licensing will evaluate the operation's compliance with health-related minimum standards during routine monitoring inspections and continue to consult with DSHS when issues arise that require the expertise of the DSHS environmental health/general sanitation division to address public health risks.

Section 744.3255, which became effective in September 2010, increased the minimum amount of loose-fill surfacing material in playground equipment use zones from six inches to nine inches; however, §744.3257 allows school-age and before or after-school programs licensed prior to September 1, 2010, five years from the effective date of §744.3255 to add the three additional inches of loose-fill surfacing material. The proposed rules repeal the "grandfathering" rule at §744.3257 and transfer the substance of that rule to §744.3255, to clarify that school-age and before or after-school programs licensed prior to September 1, 2010, must continue to maintain at least six inches of loose-fill surfacing material until September 1, 2015, at which point these operations must come into compliance with the minimum requirement of at least nine inches of loose-fill surfacing materials.

Based on national recommendations from the organization, Save the Children, and the publication of the American Academy of Pediatrics and the American Public Health Association, *Caring For Our Children, 3rd Ed.,* Licensing is proposing amendments that require school-age and before or after-school programs to include in their emergency preparedness plan how children with special needs will be evacuated in the event of an emergency.

A summary of the changes follows: The amendment to §744.501 supports implementation of HRC §42.04305 by: (1) clarifying that the operation's policy on immunization requirements required under §744.501(9) relates specifically to requirements for children; and (2) adding a new requirement under §744.501(23) to include policy on vaccine-preventable diseases for employees, unless the operation is in the home of the permit holder, the director, or a caregiver.

The amendment to §744.2501: (1) removes the reference to a state sanitation official being able to conduct the annual sanitation inspection; and (2) requires the operation to maintain and make available to Licensing the required documentation when a sanitation inspection is not available.

New §744.2579 defines "vaccine-preventable disease" in accordance with HRC §42.04305(a)(2).

New §744.2581 outlines what the operation's policy regarding vaccine-preventable diseases must include in accordance with HRC §42.04305(c) and (d).

The amendment to §744.3255 clarifies that operations licensed prior to September 1, 2010, must maintain at least six inches of loose-fill surfacing material in playground equipment use zones until September 1, 2015, at which point the operation must maintain the minimum amount of nine inches loose-fill surfacing material.

Section 744.3257 is repealed and its substance is added to §744.3255(a).

The amendment to §744.3553 adds a requirement that the operation's emergency preparedness plan must specify how children with limited mobility or who otherwise may need assistance in an emergency will be evacuated and relocated to a designated safe area or alternate shelter in the event of an emergency.

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that children will have greater protection and operations will have access to clearer information. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. A fiscal impact review was conducted in 2010 concerning the playground surfacing changes proposed during the April 16, 2010, council meeting. At that time, Licensing identified the proposed rules concerning the playground surfacing changes as potentially having an adverse economic impact on providers. The proposed changes to §744.3255 and the repeal of §744.3257 concerning requirements for outdoor loose-fill surfacing materials are not anticipated to have a fiscal impact because Licensing is only clarifying the intent of the rules that were effective September 1, 2010. There is no anticipated economic cost to persons who are required to comply with the proposed sections beyond those that were previously identified in April 2010.

HHSC has determined that the proposed amendments, new sections, and repeal 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Elizabeth Rodriguez at (512) 438-5043 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-492, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register*.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 4. OPERATIONAL POLICIES

40 TAC §744.501

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.04305.

§744.501. What written operational policies must I have?

You must develop written policies that at a minimum address each of the following:

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

(9) Immunization requirements for children;

(10) - (20) (No change.)

(21) Emergency preparedness plan; [~~and~~]

(22) Procedures for conducting health checks, if applicable; and[~~.~~]

(23) Vaccine-preventable diseases for employees, unless your operation is in the home of the permit holder, the director, or a caregiver. The policy must address the requirements outlined in §744.2581 of this title (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

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 January 29, 2014.

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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SUBCHAPTER K. HEALTH PRACTICES
DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §744.2501

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.0443, as added by Acts 2003, 78th Leg., Chapter 709, §1, eff. September 1, 2003.

§744.2501. Must my operation have an annual sanitation inspection?

(a) (No change.)

(b) If an inspection is required, a [~~state or~~] local sanitation official must conduct the inspection. [~~If an inspection is not available, you must provide documentation of this from a state or local sanitation official or county judge.~~]

(c) If an inspection is not available from a local sanitation official, you must:

(1) Obtain documentation from a state or local sanitation official or county judge stating that an inspection is not available; and

(2) Maintain this documentation at the operation and make it available to us upon request.

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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Cynthia O'Keeffe
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For further information, please call: (512) 438-3437

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DIVISION 3. ILLNESS AND INJURY

40 TAC §744.2579, §744.2581

The new sections are proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The new sections implement HRC §40.002(b)(3) and §42.04305.

§744.2579. What is a vaccine-preventable disease for the purpose of this division?

A vaccine-preventable disease is a disease that is included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

§744.2581. What must a policy for protecting children from vaccine-preventable diseases include?

A policy for protecting the children in your care from vaccine-preventable diseases must:

(1) Specify any vaccines that you have determined an employee must have for vaccine-preventable diseases based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(2) Require each employee to receive each specified vaccine that the employee is not exempt from having;

(3) Include procedures for verifying whether an employee has complied with your policy;

(4) Include procedures for an employee to be exempt from having a required vaccine because of:

(A) Medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention (CDC); or

(B) Reasons of conscience, including a religious belief;

(5) Include procedures that an exempt employee must follow to protect children in your care from exposure to disease, such as the use of protective medical equipment, including gloves and masks, based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(6) Prohibit discrimination or retaliatory action against an exempt employee, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action for purposes of this section;

(7) Outline how you will maintain a written or electronic record of each employee's compliance with or exemption from your policy; and

(8) State the disciplinary actions you may take against an employee who fails to comply with your policy.

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

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SUBCHAPTER N. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT
DIVISION 4. SURFACING

40 TAC §744.3255

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§744.3255. How should outdoor loose-fill surfacing materials be installed?

(a) If you use loose-fill surfacing materials in your outdoor active play space, you must install and maintain nine inches or more of uncompressed loose-fill material in the use zones. However, if you were licensed before September 1, 2010, you only have to maintain at least six inches of loose-fill surfacing materials until September 1, 2015; after which date you must maintain at least nine inches of uncompressed loose-fill surfacing materials.

(b) - (e) (No change.)

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

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40 TAC §744.3257

(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

Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The repeal implements HRC §40.002(b)(3).

§744.3257. If my outdoor surfacing does not currently meet the requirements in this division, will I be given additional time to comply?

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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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 438-3437

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SUBCHAPTER P. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §744.3553

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§744.3553. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, including:

(A) (No change.)

(B) How children will be relocated to the designated safe area or alternate shelter, including but not limited to specific procedures for evacuating children with limited mobility or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

(C) - (E) (No change.)

(2) - (3) (No change.)

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

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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 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.37, 745.347, 745.8805, and 745.8837; and new §745.8994, concerning miscellaneous changes, in its Licensing chapter. The purpose of the amendments and new sections is to: (1) provide consistency with the Human Resources Code (HRC) Chapter 42; (2) clarify at what point an initial permit is no longer valid when a non-expiring permit is denied; (3) clarify under what circumstances an operation or controlling person for an operation is entitled to an administrative review; and (4) specify what training qualifies as continuing education for renewal of an administrator's license.

The amendment to §745.37 conforms the description of a listed family home with the statutory definition of "family home," by changing "nine consecutive weeks" to "three or more consecutive weeks" and adding that a home that otherwise meets the description of a listed family home if the home provides care for at least four hours a day for 40 or more days in a period of 12 months.

The amendment to §745.347 clarifies that an initial permit expires not only when Licensing issues a non-expiring license but at the point in time that Licensing denies a non-expiring permit.

The amendment to §745.8805 clarifies that an administrative review may not be requested when an administrative penalty is issued against an operation or a controlling person for an operation.

The amendment to §745.8837 removes the language "of a residential child-care operation" to clarify that a controlling person at any operation can request a due process hearing if an administrative penalty is imposed against the person or the person is designated as a controlling person of an operation whose permit has been revoked or surrendered following a notice of intent to revoke the permit. The language of the current rule was drafted when the controlling-person law only applied to residential child-care operations.

New §745.8994 specifies the types of training courses that qualify as continuing education for renewal of an administrator's license issued under Chapter 42, Human Resources Code. Train-

ing courses may include: (1) training directly relevant to the type of administrator's license that is being renewed; and (2) training that was completed as an attendee, but not as a presenter. The rule also states that the same training completed more than once during the renewal period may only be counted once towards the renewal of an administrator's license.

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that: (1) DFPS will be in compliance with the Human Resources Code; (2) child-care operations will be able to receive the most up to date Licensing information via the DFPS website; and (3) providers will have greater clarification concerning: the date an initial permit expires when a non-expiring permit is denied; the appeal rights of operations and controlling persons for an operation; and the types of training courses that qualify for the renewal of an administrator's license issued under Chapter 43, Human Resources Code. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and new sections 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Christy Dees at (512) 438-3264 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-489, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

40 TAC §745.37

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.002(17).

§745.37. What specific types of operations does Licensing regulate?

The charts in paragraphs (1), (2), and (3) of this section list the types of operations for child day care and residential child care that we regulate. Child-placing agencies and foster homes verified by a child-placing agency are included in the residential child-care chart.

(1) (No change.)

(2) Types of Child Day-Care Operations on and after September 1, 2003.

Figure: 40 TAC §745.37(2)

(3) (No change.)

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

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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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SUBCHAPTER D. APPLICATION PROCESS DIVISION 7. THE DECISION TO ISSUE OR DENY A PERMIT

40 TAC §745.347

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.051.

§745.347. How long is an initial permit valid?

An initial permit is valid for six months from the date we issue it. We may renew it up to an additional six months. You may only have an initial permit for a maximum of one year. The initial permit expires when we issue or deny you a non-expiring one, even if the six-month period for initial permit has not yet expired at the time the non-expiring permit is issued or denied.

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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Cynthia O'Keeffe
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SUBCHAPTER M. ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS
DIVISION 1. ADMINISTRATIVE REVIEWS

40 TAC §745.8805

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§745.8805. Under what circumstances may I request an administrative review?

(a) You may request an administrative review when:

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

(4) We take remedial action against your operation, subject to the limitations in subsection (b) of this section [~~however, remedial actions initially implemented through a court order and emergency suspensions and closures conducted pursuant to §42.073 of the Human Resources Code are not subject to an administrative review~~];

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

(b) You may not request an administrative review to challenge: [~~Automatic suspension or revocation is not subject to administrative review.~~]

(1) An automatic suspension or revocation of your permit;

(2) A remedial action initially implemented through a court order;

(3) An emergency suspension or closure pursuant to the Human Resources Code §42.073; or

(4) An administrative penalty against you or your operation.

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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Cynthia O'Keeffe
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DIVISION 2. DUE PROCESS HEARINGS

40 TAC §745.8837

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§745.8837. Who can request the due process hearing?

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

(d) A controlling person [~~of a residential child-care operation~~] can request a due process hearing if an administrative penalty is imposed against that controlling person [~~him~~].

(e) A person [~~that we designate as a controlling person of a residential child-care operation~~] can request a due process hearing when Licensing designates that person as a controlling person as provided under §745.905 of this title (relating to When will Licensing designate someone at my child-care operation as a controlling person?) [~~for that designation~~].

(f) (No change.)

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

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Cynthia O'Keeffe
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Department of Family and Protective Services
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SUBCHAPTER N. ADMINISTRATOR LICENSING
DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

40 TAC §745.8994

The new section is proposed 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; 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; and HRC §43.005, which authorizes the adoption of rules for the administration of Chapter 43 of the Human Resources Code.

The new section implements HRC §43.009.

§745.8994. What training qualifies as continuing education for renewal of my administrator's license?

(a) For renewal of your administrator's license, you may count training that:

(1) Is directly relevant to the type of administrator's license that you are seeking to renew; and

(2) You completed as an attendee. You may not count training you presented.

(b) If you have taken the same training more than once during the renewal period, you may only count the training once for the renewal of your license.

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

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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 proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.501, 746.3401, 746.4907, and 746.5202; new §§746.2428, 746.3609, and 746.3611; and the repeal of §746.4908, in its Minimum Standards for Child-Care Centers chapter. The purpose of the changes is to: (1) implement Senate Bill (SB) 64 passed during the 83rd Legislature, Regular Session, which requires a licensed child-care center to develop policy regarding vaccine-preventable diseases; (2) update requirements related to annual sanitation inspections; (3) clarify requirements regarding outdoor loose-fill surfacing materials; (4) require special considerations for children with special needs in emergency preparedness plan requirements; and (5) add further clarification on providing a safe sleep environment for infants younger than 12 months of age.

SB 64 amended the Human Resources Code (HRC) by adding §42.04305, requiring a licensed child-care center that is not operated in the home of the permit holder to develop and implement a policy outlining which vaccines for vaccine-preventable diseases that an employee must receive based on the level of risk the employee presents to children due to the employee's contact with children.

The Department of State Health Services (DSHS) notified Licensing that DSHS would no longer conduct sanitation inspections at child-care operations after February 15, 2013, in areas where there is not a local health authority. In March 2013, DSHS sent a letter to each child-care operation that was previously inspected by DSHS to notify the provider that: (1) DSHS would no longer conduct sanitation inspections; and (2) the letter from DSHS would serve as acceptable documentation to demonstrate to Licensing that a sanitation inspection is not available from DSHS. The proposed amendments remove language that allows a state agency to conduct the annual sanitation inspection and add a requirement for child-care centers to obtain a letter from a state or local sanitation official or a county judge stating that an inspection is not available where the operation is located. For operations that are located in areas where there is no local health authority available to conduct the annual sanitation inspection, Licensing will evaluate the operation's compliance with health-related minimum standards during routine monitoring inspections and continue to consult with DSHS when issues arise that require the expertise of the DSHS environmental health/general sanitation division to address public health risks.

Section 746.4907, which became effective in December 2010, increased the minimum amount of loose-fill surfacing material in playground equipment use zones from six inches to nine inches when the height of the highest designated play surface in the playground use zone is greater than five feet; however, §746.4908 allows child-care centers licensed prior to December 1, 2010, five years from the effective date of §746.4907 to add the three additional inches of loose-fill surfacing material. The proposal repeals the "grandfathering" rule at §746.4908, and transfers the substance of that rule to §746.4907, to clarify that child-care centers licensed prior to December 1, 2010, must continue to maintain at least six inches of loose-fill surfacing material until December 1, 2015, at which point these operations must come into compliance with the minimum requirement of at least nine inches of loose-fill surfacing materials when the height of the highest designated play surface in the playground use zone is greater than five feet.

Based on national recommendations from the organization, Save the Children, and the publication of the American Academy of Pediatrics and the American Public Health Association, *Caring for Our Children, 3rd Edition,* Licensing is proposing amendments that require child-care centers to include in their emergency preparedness plan how children with special needs will be evacuated in the event of an emergency.

The proposed changes related to safe sleep practices add further clarification on providing a safe sleep environment for infants younger than 12 months of age based on recommendations from *Caring for Our Children, 3rd Edition,* and the American Academy of Pediatrics. The change clarifies that a swaddled infant may not be laid down to sleep or rest on any surface. Swaddling is not recommended in group child-care settings where there are often multiple caregivers who may each swaddle differently and each is responsible for supervising several infants at a time. There is evidence that swaddling a child incorrectly can increase the risk of serious health outcomes, such as suffocation, overheating, and hip dysplasia.

A summary of the changes follows:

The amendment to §746.501 supports implementation of HRC §42.04305 by:

(1) clarifying that the operation's policy on immunization requirements required under §746.501(9) is regarding children; and (2) adding a new requirement under §746.501(27) to include policy on vaccine-preventable diseases for employees, unless the operation is in the home of the permit holder.

New §746.2428 prohibits swaddled infants from being laid down to sleep or rest on any surface at any time. This new section is consistent with safe sleep practices endorsed by the American Academy of Pediatrics.

The amendment to §746.3401: (1) removes the reference to a state sanitation official being able to conduct the annual sanitation inspection; and (2) requires the operation to maintain and make available to Licensing the required documentation when a sanitation inspection is not available.

New §746.3609 defines "vaccine-preventable disease" in accordance with HRC §42.04305(a)(2).

New §746.3611 outlines what the operation's policy regarding vaccine-preventable diseases must include in accordance with HRC §42.04305(c) and (d). An operation that is in the home of the permit holder does not have to have this policy.

The amendment to §746.4907 clarifies that operations licensed prior to December 1, 2010, must maintain at least six inches of loose-fill surfacing material in playground use zones until December 1, 2015, at which point the operation must maintain the minimum amount of nine inches of loose-fill surfacing material when the height of the highest designated play surface in the playground use zone is greater than five feet.

Section 746.4908 is repealed and its substance is added to §746.4907(f).

The amendment to §746.5202 adds a requirement that the operation's emergency preparedness plan must specify how children who are younger than 24 months of age, who have limited mobility or who otherwise may need assistance in an emergency, will be evacuated and relocated to a designated safe area or alternate shelter in the event of an emergency.

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that children will have greater protection and operations will have access to clearer information. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. A fiscal impact review was conducted in 2010 concerning the playground surfacing changes proposed during the April 16, 2010, council meeting. At that time, Licensing identified the proposed rules concerning the playground surfacing changes as potentially having an adverse economic impact on providers. The proposed change to §746.4907 and repeal of §746.4908 concerning requirements for outdoor loose-fill surfacing materials are not anticipated to have a fiscal impact because Licensing is only clarifying the intent of the rules that were effective December 1, 2010. There is no anticipated economic cost to persons who are required to comply with the proposed sections beyond those that were previously identified in April 2010.

HHSC has determined that the proposed amendments, new sections, and repeal 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Elizabeth Rodriguez at (512) 438-5043 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-492, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 4. OPERATIONAL POLICIES

40 TAC §746.501

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.04305.

§746.501. What written operational policies must I have?

You must develop written policies that at a minimum address each of the following:

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

(9) Immunization requirements <u>for children</u>;

(10) - (24) (No change.)

(25) Preventing and responding to abuse and neglect of children, including:

(A) - (D) (No change.)

(E) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention; [~~and~~]

(26) Procedures for conducting health checks, if applicable<u>; and</u>[.]

<u>(27) Vaccine-preventable diseases for employees, unless your center is in the home of the permit holder. The policy must address the requirements outlined in §746.3611 of this title (relating to What must a policy for protecting children from vaccine-preventable diseases include?).</u>

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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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

40 TAC §746.2428

The new section is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The new section implements HRC §40.002(b)(3).

§746.2428. May I swaddle an infant to help the infant sleep?

No. You may not lay a swaddled infant down to sleep or rest on any surface at any time.

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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Cynthia O'Keeffe
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Department of Family and Protective Services
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SUBCHAPTER R. HEALTH PRACTICES
DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §746.3401

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.0443, as added by Acts 2003, 78th Leg., ch. 709, Sec. 1, eff. Sept. 1, 2003.

§746.3401. Must my child-care center have an annual sanitation inspection?

(a) (No change.)

(b) If an inspection is required, a [~~state or~~] local sanitation official must conduct the inspection. [~~If an inspection is not available, you must provide documentation of this from a state or local sanitation official or county judge.~~]

(c) If an inspection is not available from a local sanitation official, you must:

(1) Obtain documentation from a state or local sanitation official or county judge stating that an inspection is not available; and

(2) Maintain this documentation at the center and make it available to us upon request.

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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Cynthia O'Keeffe
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Department of Family and Protective Services
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DIVISION 3. ILLNESS AND INJURY

40 TAC §746.3609, §746.3611

The new sections are proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The new sections implement HRC §40.002(b)(3) and §42.04305.

§746.3609. What is a vaccine-preventable disease for the purpose of this division?

A vaccine-preventable disease is a disease that is included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

§746.3611. What must a policy for protecting children from vaccine-preventable diseases include?

A policy for protecting the children in your care from vaccine-preventable diseases must:

(1) Specify any vaccines that you have determined an employee must have for vaccine-preventable diseases based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(2) Require each employee to receive each specified vaccine that the employee is not exempt from having;

(3) Include procedures for verifying whether an employee has complied with your policy;

(4) Include procedures for an employee to be exempt from having a required vaccine because of:

(A) Medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention (CDC); or

(B) Reasons of conscience, including a religious belief;

(5) Include procedures that an exempt employee must follow to protect children in your care from exposure to disease, such as the use of protective medical equipment, including gloves and masks, based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(6) Prohibit discrimination or retaliatory action against an exempt employee, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action for purposes of this section;

(7) Outline how you will maintain a written or electronic record of each employee's compliance with or exemption from your policy; and

(8) State the disciplinary actions you may take against an employee who fails to comply with your policy.

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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Cynthia O'Keeffe
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Department of Family and Protective Services
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SUBCHAPTER U. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT

DIVISION 5. SURFACING

40 TAC §746.4907

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§746.4907. How should outdoor loose-fill surfacing materials be installed?

(a) Subject to the requirements in subsection (f) of this section, you must install and maintain loose-fill [~~Loose-fill~~] surfacing materials [~~must be installed and maintained~~] to a depth of:

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

(b) - (e) (No change.)

(f) If you were licensed before December 1, 2010, you only have to maintain at least six inches of loose-fill surfacing materials until December 1, 2015, after which date you must comply with subsection (a)(2) of this section when the height of the highest designated play surface is greater than five feet.

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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Cynthia O'Keeffe
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Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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40 TAC §746.4908

(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 Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The repeal implements HRC §40.002(b)(3).

§746.4908. If my playground surfacing does not currently meet these requirements, will I be given additional time to comply?

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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Cynthia O'Keeffe
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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §746.5202

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§746.5202. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, including:

(A) (No change.)

(B) How children will be relocated to the designated safe area or alternate shelter, including specific procedures for evacuating children who are under 24 months of age, who have limited mobility, or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

(C) - (E) (No change.)

(2) - (3) (No change.)

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

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§747.201, 747.501, and 747.5003; and new §§747.2328, 747.3409, and 747.3411, in its Minimum Standards for Child-Care Homes chapter. The purpose of the changes is to: (1) implement Senate Bill (SB) 64 passed during the 83rd Legislature, Regular Session, which requires a child-care home to develop policy regarding vaccine-preventable diseases; (2) require special considerations for children with special needs in emergency preparedness plan requirements; (3) add further clarification on providing a safe sleep environment for infants younger than 12 months of age; and (4) change the definition of primary caregiver.

SB 64 amended the Human Resources Code (HRC) by adding §42.04305 requiring a licensed child-care home that is not operated in the home of the provider to develop and implement a policy outlining which vaccines for vaccine-preventable diseases an employee must receive based on the level of risk the employee presents to children due to the employee's contact with children. Most child-care homes are in the home of the primary caregiver, so most child-care homes would not have to have this policy.

Based on national recommendations from the organization, Save the Children, and from the publication of the American Academy of Pediatrics and the American Public Health Association, *Caring for Our Children, 3rd Edition,* Licensing is proposing amendments that require child-care homes to include in their emergency preparedness plans how children with special needs will be evacuated in the event of an emergency.

The proposed changes related to safe sleep practices add further clarification on providing a safe sleep environment for infants younger than 12 months of age based on recommendations from *Caring for Our Children, 3rd Edition,* and the American Academy of Pediatrics. The change clarifies that a swaddled infant may not be laid down to sleep or rest on any surface. Swaddling is not recommended in group child-care settings where there are often multiple caregivers who may each swaddle differently and each is responsible for supervising several infants at a time. There is evidence that swaddling a child incorrectly can increase the risk of serious health outcomes, such as suffocation, overheating, and hip dysplasia.

A summary of the changes follows:

The amendment to §747.201 changes the definition of "primary caregiver" so that the permit holder of a registered or licensed child-care home does not have to be the primary caregiver of the home. The purpose of this change is to allow the permit holder to incorporate or form another type of business entity.

The amendment to §747.501 supports implementation of HRC §42.04305 by adding a new requirement under §747.501(12) to include policy on vaccine-preventable diseases for employees if the licensed child-care operation is not in the employee's home.

New §747.2328 prohibits swaddled infants from being laid down to sleep or rest on any surface at any time. This new section is consistent with safe sleep practices endorsed by the American Academy of Pediatrics.

New §747.3409 defines "vaccine-preventable disease" in accordance with HRC §42.04305(a)(2).

New §747.3411 outlines what the operation's policy regarding vaccine-preventable diseases must include in accordance with HRC §42.04305(c) and (d). The operation would only have to have this policy if it is not in the provider's home. Most child-care homes are in the home of the primary caregiver, so most child-care homes would not have to have this policy.

The amendment to §747.5003 adds a requirement that the operation's emergency preparedness plan must specify how children who are younger than 24 months of age, who have limited mobility or who otherwise may need assistance in an emergency, will be evacuated and relocated to a designated safe area or alternate shelter in the event of an emergency.

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that children will have greater protection and child-care homes will have greater flexibility with respect to their business structure. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and new sections 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Elizabeth Rodriguez at (512) 438-5043 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-492, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 1. PRIMARY CAREGIVER

40 TAC §747.201

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§747.201. Who is a primary caregiver?

(a) The primary caregiver is the person responsible for ensuring that the home operates in compliance with [~~ultimate authority and responsibility for the child-care home's overall operation and compliance with~~] these minimum standards and the licensing laws. The primary caregiver of a [~~must be the permit holder for the~~] licensed or registered child-care home[~~, and~~] must live in the home where care is provided, unless the home was licensed as a group day care home prior to September 1, 2003. Refer to §747.111 of this title (relating to What is a licensed child-care home?).

(b) (No change.)

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

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Cynthia O'Keeffe
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Department of Family and Protective Services
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DIVISION 4. OPERATIONAL POLICIES

40 TAC §747.501

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.04305.

§747.501. What written operational policies must I have?

You must develop written policies that at a minimum address each of the following:

(1) - (9) (No change.)

(10) Your emergency preparedness plan; [~~and~~]

(11) Procedures for conducting health checks, if applicable; and[.]

(12) Vaccine-preventable diseases for employees if your licensed child-care home is not in your home. The policy must address the requirements outlined in §747.3411 of this title (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

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

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SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

40 TAC §747.2328

The new section is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The new section implements HRC §40.002(b)(3).

§747.2328. May I swaddle an infant to help the infant sleep?

No. You may not lay a swaddled infant down to sleep or rest on any surface at any time.

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

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SUBCHAPTER R. HEALTH PRACTICES

DIVISION 3. ILLNESS AND INJURY

40 TAC §747.3409, §747.3411

The new sections are proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The new sections implement HRC §40.002(b)(3) and §42.04305.

§747.3409. What is a vaccine-preventable disease for the purpose of this division?

A vaccine-preventable disease is a disease that is included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

§747.3411. What must a policy for protecting children from vaccine-preventable diseases include?

A policy for protecting the children in your care from vaccine-preventable diseases must:

(1) Specify any vaccines that you have determined an employee must have for vaccine-preventable diseases based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(2) Require each employee to receive each specified vaccine that the employee is not exempt from having;

(3) Include procedures for verifying whether an employee has complied with your policy;

(4) Include procedures for an employee to be exempt from having a required vaccine because of:

(A) Medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention (CDC); or

(B) Reasons of conscience, including a religious belief;

(5) Include procedures that an exempt employee must follow to protect children in your care from exposure to disease, such as the use of protective medical equipment, including gloves and masks, based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(6) Prohibit discrimination or retaliatory action against an exempt employee, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action for purposes of this section;

(7) Outline how you will maintain a written or electronic record of each employee's compliance with or exemption from your policy; and

(8) State the disciplinary actions you may take against an employee who fails to comply with your policy.

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

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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §747.5003

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§747.5003. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, including:

(A) (No change.)

(B) How children will be relocated to the designated safe area or alternate shelter, including specific procedures for evacuating children who are under 24 months of age, who have limited mobility, or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

(C) - (E) (No change.)

(2) - (3) (No change.)

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

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Cynthia O'Keeffe
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Department of Family and Protective Services
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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.43, 748.105, 748.235, 748.303, and 748.3001; and new 748.241, in its Minimum Standards for General Residential Operations chapter. The purpose of the changes is to: (1) implement Senate Bill (SB) 64 passed during the 83rd Legislature, Regular Session, which requires a general residential operation to develop policy regarding vaccine-preventable diseases; (2) update requirements related to annual sanitation inspections; and (3) require special considerations for children with special needs in emergency preparedness plan requirements.

SB 64 amended the Human Resources Code (HRC) by adding §42.04305, requiring a general residential operation that is not operated in the home of the permit holder, the administrator, or a caregiver to develop and implement a policy outlining which vaccines for vaccine-preventable diseases that employees must receive based on the level of risk the employee presents to children due to the employee's contact with children.

The Department of State Health Services (DSHS) notified Licensing that DSHS would no longer conduct sanitation inspections at general residential operations after February 15, 2013, in areas where there is not a local health authority. In March 2013, DSHS sent a letter to each child-care operation that was previously inspected by DSHS to notify the provider that: (1) DSHS would no longer conduct sanitation inspections; and (2) the letter from DSHS would serve as acceptable documentation to demonstrate to Licensing that a sanitation inspection is not available from DSHS. The proposed amendments remove language that allows a state agency to conduct the annual sanitation inspection and add a requirement for general residential operations to obtain a letter from a state or local sanitation official or a county judge stating that an inspection is not available where the operation is located. For operations that are located in areas where there is no local health authority available to conduct the annual sanitation inspection, Licensing will evaluate the operation's compliance with health-related minimum standards during routine monitoring inspections and continue to consult with DSHS when issues arise that require the expertise of the DSHS environmental health/general sanitation division to address public health risks.

Based on national recommendations from the organization, Save the Children, and the publication of the American Academy of Pediatrics and the American Public Health Association, *Caring For Our Children, 3rd Ed.,* Licensing is proposing amendments that require general residential operations to include in their emergency preparedness plan how children with special needs will be evacuated in the event of an emergency.

A summary of the changes follows:

The amendment to §748.43 defines "vaccine-preventable disease" in accordance with HRC §42.04305(a)(2). Subsequent definitions are renumbered.

The amendment to §748.105 adds the new requirement under §748.105(9) to include policy on vaccine-preventable diseases for employees, unless the operation is in the home of the permit holder, the administrator, or a caregiver.

The amendments to §748.235 add the following requirements to the operation's written plans and procedures for handling disasters and emergencies: (1) employees must know the procedures for notifying parents; and (2) the operation's emergency preparedness plan must specify that in the event of an emergency: (a) how children who are younger than 24 months of age, who have limited mobility or who otherwise may need assistance in an emergency will be evacuated and relocated to a designated safe area or alternate shelter; and (b) how the operation will ensure that medications or medical equipment will be made available to children.

New §748.241 outlines what the operation's policy regarding vaccine-preventable diseases must include in accordance with HRC §42.04305(c) and (d). An operation that is in the home of the permit holder, the administrator, or a caregiver would not have to have this policy.

The amendment to §748.303 corrects the title of cross-referenced §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?).

The amendment to §748.3001: (1) removes the reference to a state sanitation official being able to conduct the annual sanitation inspection; and (2) requires the operation to maintain and make available to Licensing the required documentation when a sanitation inspection is not available.

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that children will have greater protection and operations will have access to clearer information. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and new section 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Elizabeth Rodriguez at (512) 438-5043 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-492, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §748.43

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.04305.

§748.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) - (50) (No change.)

(51) Vaccine-preventable disease--A disease that is included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(52) [~~(51)~~] Volunteer--A person who provides:

(A) Child-care services, treatment services, or programmatic services under the auspices of the operation without monetary compensation, including a "sponsoring family;" or

(B) Any type of services under the auspices of the operation without monetary compensation when the person has unsupervised access to a child in care.

(53) [~~(52)~~] Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

(54) [~~(53)~~] Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

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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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION
DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §748.105

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.04305.

§748.105. What responsibilities do I have for personnel policies and procedures?

You must:

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

(7) Ensure that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child are informed in writing of their responsibility to maintain child confidentiality; [~~and~~]

(8) Either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?); and[~~.~~]

(9) Develop and implement written policy for vaccine-preventable diseases, unless your operation is in the home of the permit holder, the administrator, or a caregiver. The policy must address the requirements outlined in §748.241 of this title (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

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 5. POLICIES AND PROCEDURES

40 TAC §748.235, §748.241

The amendment and new section are proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment and new section implement HRC §40.002(b)(3) and §42.04305.

§748.235. What child-care policies must I develop?

You must develop policies that describe:

(1) - (19) (No change.)

(20) Written plans and procedures for handling disasters and emergencies, such as fire, severe weather, and transportation emergencies. Employees must know the procedures for addressing disasters and emergencies including evacuation procedures, supervision of children, emergency notification of parent, and contacting emergency help. The administrator or designee in charge of the operation must know what action to take in responding to a transportation emergency call. Your plans must include the following: [~~A copy of these plans and procedures must be available for our staff to review.~~]

(A) How all children will be relocated to a designated safe area or alternate shelter, including specific procedures for evacuating children who are under 24-months of age, who have limited mobility, or who otherwise may need assistance in an emergency, such as children who have mental, visual or hearing impairments, or a medical condition that requires assistance; and

(B) How you will ensure medications or medical equipment will be made available to children with special needs or medical conditions.

§748.241. What must a policy for protecting children from vaccine-preventable diseases include?

A policy for protecting the children in your care from vaccine-preventable diseases must:

(1) Specify any vaccines that you have determined an employee must have for vaccine-preventable diseases based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(2) Require each employee to receive each specified vaccine that the employee is not exempt from having;

(3) Include procedures for verifying whether an employee has complied with your policy;

(4) Include procedures for an employee to be exempt from having a required vaccine because of:

(A) Medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention (CDC); or

(B) Reasons of conscience, including a religious belief;

(5) Include procedures that an exempt employee must follow to protect children in your care from exposure to disease, such as the use of protective medical equipment, including gloves and masks,

based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(6) Prohibit discrimination or retaliatory action against an exempt employee, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action for purposes of this section;

(7) Outline how you will maintain a written or electronic record of each employee's compliance with or exemption from your policy; and

(8) State the disciplinary actions you may take against an employee who fails to comply with your policy.

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 January 29, 2014.

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 438-3437

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SUBCHAPTER D. REPORTS AND RECORD KEEPING
DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

40 TAC §748.303

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§748.303. When must I report and document a serious incident?

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

(c) You must report and document the following types of serious incidents involving your operation, an employee, a professional level service provider, or a volunteer to the following entities within the specified time frame:
Figure: 40 TAC §748.303(c)

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

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SUBCHAPTER O. SAFETY AND EMERGENCY PRACTICES
DIVISION 1. SANITATION AND HEALTH PRACTICES

40 TAC §748.3001

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.0443, as added by Acts 2003, 78th Leg., ch. 709, Sec.1, eff. Sept. 1, 2003.

§748.3001. When must I have an annual sanitation inspection?

(a) A [~~state or~~] local sanitation official must conduct a sanitation inspection of your operation:

(1) (No change.)

(2) At least once every 12 months from the date of the last sanitation inspection.

(b) Each inspection must meet regulations set by the [~~Department of State Health Services or~~] local health department ordinances.

(c) If an inspection is not available from a local sanitation official, you must:

(1) Obtain documentation from a state or local sanitation official or a county judge stating that an inspection is not available; and

(2) Maintain this documentation at the operation and make it available to us upon request.

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 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.503, 749.1813, and 749.2907; and new §749.539, in its Minimum Standards for Child-Placing Agencies chapter. The purpose of the changes is to: (1) update the name of a rule that is cross-referenced in another rule; (2) require special considerations for children with special needs in emergency preparedness plan requirements; and (3) add further clarification on providing a safe sleep environment for infants younger than 12 months of age.

Based on national recommendations from the organization, Save the Children, and the publication of the American Academy of Pediatrics and the American Public Health Association, *Caring For Our Children, 3rd Ed.,* Licensing is proposing amendments that require child-placing agencies to include in their emergency preparedness plan how children with special needs will be evacuated in the event of an emergency.

The proposed changes related to safe sleep practices add further clarification on providing a safe sleep environment for infants younger than 12 months of age based on recommendations from *Caring for Our Children, 3rd Edition,* and the American Academy of Pediatrics.

A summary of the changes follows: The amendment to §749.503 corrects the title of cross-referenced §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?).

New §749.539 requires child-placing agencies to maintain a copy of each current foster home's disaster and emergency plan at the child-placing agency or in a central administratively designated location.

The amendment to §749.1813: (1) adds additional examples of loose bedding, such as blankets and sleep positioning devices; and (2) increases the age of children that the standard applies to from six months to 12 months.

The amendment to §749.2907 requires that the operation's emergency preparedness plan must specify that in the event of an emergency: (1) how children who are younger than 24 months of age, who have limited mobility or who otherwise may need assistance in an emergency, will be evacuated and relocated to a designated safe area or alternate shelter; and (2) how the operation will ensure that that medications or medical equipment will be made available to children.

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that children will have greater protection and operations will have access to clearer information. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and new section 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Elizabeth Rodriguez at (512) 438-5043 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-492, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

40 TAC §749.503

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§749.503. When must I report and document a serious incident?

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

(d) You must report and document the following types of serious incidents involving your agency, one of your foster homes, an employee, contract staff, or a volunteer to the following entities within the specified time frame:
Figure: 40 TAC §749.503(d)

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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Cynthia O'Keeffe
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Department of Family and Protective Services
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 438-3437

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DIVISION 2. OPERATION RECORDS

40 TAC §749.539

The new section is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The new section implements HRC §40.002(b)(3).

§749.539. Where must I maintain foster home disaster and emergency plans?

You must maintain a copy of each current foster home disaster and emergency plan at the agency or in a central administratively designated location.

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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Cynthia O'Keeffe
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SUBCHAPTER K. FOSTER CARE SERVICES: DAILY CARE, PROBLEM MANAGEMENT
DIVISION 1. ADDITIONAL REQUIREMENTS FOR INFANT CARE

40 TAC §749.1813

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§749.1813. What types of equipment may a foster home not use with infants?

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

(c) Soft bedding, [~~A foster home may not use soft bedding,~~] such as blankets, sleep positioning devices, stuffed toys, quilts, pillows, bumper pads, and comforters may not be used in a crib for an infant younger than 12 months of age [~~six months old or younger~~].

(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.

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Cynthia O'Keeffe
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For further information, please call: (512) 438-3437

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SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT
DIVISION 1. HEALTH AND SAFETY

40 TAC §749.2907

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3).

§749.2907. What disaster and emergency plans must each foster home have?

(a) Each foster home must have written plans and procedures for handling potential disasters and emergencies, such as fire, severe weather emergencies, and transportation emergencies. Each plan must include:

(1) Procedures for relocating children to a designated safe area or alternate shelter including specific procedures for evacuating children who are under 24 months of age, who have limited mobility, or

who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairment, or a medical condition that requires assistance; and

(2) How you will ensure medications or equipment will be made available to children with special needs or medical conditions.

(b) (No change.)

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

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CHAPTER 750. MINIMUM STANDARDS FOR INDEPENDENT FOSTER HOMES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §750.43 and §750.105; and new §750.111, in its Minimum Standards for Independent Foster Homes chapter. The purpose of the proposal is to: implement Senate Bill (SB) 64 passed during the 83rd Legislature, Regular Session, which requires an independent foster home to develop policy regarding vaccine-preventable diseases. SB 64 amended the Human Resources Code (HRC) by adding §42.04305 requiring an independent foster home that is not operated in the foster group home's primary residence to develop and implement a policy outlining which vaccines for vaccine-preventable diseases that an employee must receive based on the level of risk the employee presents to children due to the employee's contact with children.

The amendment to §750.43 defines "vaccine-preventable disease" in accordance with HRC §42.04305(a)(2).

The amendment to §750.105 adds the new requirement to include policy on vaccine-preventable diseases for employees if the foster home is not the home of the permit holder or caregiver.

New §750.111 specifies what the operation's policy regarding vaccine-preventable diseases must include in accordance with HRC §42.04305(c) and (d).

Tracy Henderson, Acting Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that children will have greater protection. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and new section 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Elizabeth Rodriguez at (512) 438-5043 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-492, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §750.43

The amendment is proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment implements HRC §40.002(b)(3) and §42.04305.

§750.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?) and §749.43 of this title (relating to What do certain words and terms mean in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

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

(6) Vaccine-preventable disease--A disease that is included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

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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Cynthia O'Keeffe
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For further information, please call: (512) 438-3437

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SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION
DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §750.105, §750.111

The amendment and new section are proposed 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; 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; and HRC §42.042(a), which requires the adoption of rules to carry out the purposes of Chapter 42, Human Resources Code.

The amendment and new section implement HRC §40.002(b)(3) and §42.04305.

§750.105. What responsibilities do I have for personnel policies and procedures?

You must:

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

(6) Ensure that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child are informed in writing of their responsibility to maintain child confidentiality; [~~and~~]

(7) Either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?); and[~~.~~]

(8) Develop and implement written policy for vaccine-preventable diseases if you are a foster group home that is not located in your primary residence. The policy must address the requirements outlined in §750.111 of this title (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

§750.111. What must a policy for protecting children from vaccine-preventable diseases include?

A policy for protecting the children in your care from vaccine-preventable diseases must:

(1) Specify any vaccines that you have determined an employee must have for vaccine-preventable diseases based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(2) Require each employee to receive each specified vaccine that the employee is not exempt from having;

(3) Include procedures for verifying whether an employee has complied with your policy;

(4) Include procedures for an employee to be exempt from having a required vaccine because of:

(A) Medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention (CDC); or

(B) Reasons of conscience, including a religious belief;

(5) Include procedures that an exempt employee must follow to protect children in your care from exposure to disease, such as the use of protective medical equipment, including gloves and masks, based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(6) Prohibit discrimination or retaliatory action against an exempt employee, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action for purposes of this section;

(7) Outline how you will maintain a written or electronic record of each employee's compliance with or exemption from your policy; and

(8) State the disciplinary actions you may take against an employee who fails to comply with your policy.

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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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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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS
SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION

43 TAC §15.51, §15.55

The Texas Department of Transportation (department) proposes amendments to §15.51, Definitions; and §15.55, Construction Cost Participation.

EXPLANATION OF PROPOSED AMENDMENTS

The commission may require a local government to contribute local funds for state highway funding under Transportation Code, §222.053(b). However, Transportation Code, §224.005, requires the department to reimburse at least 90 percent of the value of right of way acquired by the local government at the

department's request. To comply with these requirements, the commission has adopted rules requiring local governments to contribute a minimum of ten percent of the right of way costs for most projects as provided in §15.55. It is difficult for the department to expand hurricane evacuation routes through a county, city, or other political subdivision that is unwilling or unable to contribute the required funding.

The amendments to §15.51 and §15.55 provide the department with greater flexibility in expanding hurricane evacuation routes through a county, city, or other political subdivision that will not or cannot contribute the required local funding.

Amendments to §15.51 define "Hurricane Evacuation Route."

Amendments to Figure: 43 TAC §15.55(c) add Hurricane Evacuation Route as a category for which contribution percentages are specified. This addition allows the department to provide preliminary engineering, construction engineering, construction funds, right of way acquisition, and utility relocation on Hurricane Evacuation Routes within a county, city, or other political subdivision without participation from the local government.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Janice Mullenix, Director, Contract Services Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Mullenix has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be enhanced safety for the citizens of Texas should a hurricane strike the Texas coast. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §15.51 and §15.55 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Evacuation Route Cost Participation." The deadline for receipt of comments is 5:00 p.m. on March 17, 2014. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 221; Chapter 222, Subchapter C; and Chapter 224.

§15.51. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Congestion Mitigation and Air Quality Improvement Program (CMAQ)--A federal program, established and administered in accordance with 23 United States Code §104 and federal regulations, which provides federal funds for a project in a non-attainment area that contributes to the attainment of a natural ambient air quality standard or will have certified benefits to air quality.

(3) Construction cost--All direct and indirect costs identified by the department's cost accounting system to a highway improvement project, other than for right of way acquisition, preliminary engineering, and construction engineering.

(4) Construction engineering cost/expenses--Engineering or project administration costs and expenses incurred, including indirect costs and expenses identified by the department's cost accounting system, on a highway improvement project after contract award.

(5) Department--The Texas Department of Transportation.

(6) District office--One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

(7) Economically disadvantaged county--As determined from data provided to the department by the Texas Comptroller of Public Accounts at the beginning of each fiscal year, a county that has, in comparison to other counties in the state:

(A) below average per capita taxable property value;

(B) below average per capita income; and

(C) above average unemployment.

(8) Eligible utilities--Costs of utility adjustments, required by a highway improvement project, that are eligible, in accordance with federal and state law, for reimbursement by the department.

(9) Executive director--The executive director of the department, or a designee.

(10) Farm and Ranch to Market (FM/RM) System Route--A road on the system of roads designated by the commission under Transportation Code, §201.104.

(11) Federal funds--Financial assistance provided by the federal government for highway improvement projects.

(12) Highway improvement project--A project which provides for the design, construction, improvement, or enhancement of a public road, including bridges, culverts, or other appurtenances related to public roads, either on or off the state highway system.

(13) Hurricane Evacuation Route--A designation given to a roadway that serves as the primary route for use by the public in the event of a hurricane or other evacuation event and includes appropriate signing, traffic flow indicators, and auxiliary travel lanes.

(14) [~~(13)~~] Local government--Any county, city, other political subdivision of this state, or special district that has the authority to finance a highway improvement project.

(15) [~~(14)~~] Local participation--Minimum financial assistance provided by a local government to participate in costs associated with highway improvement projects.

(16) [~~(15)~~] Matching funds/participation ratio--Those portions of funds required or chargeable for the contribution toward a highway improvement project's cost by a local government.

(17) [~~(16)~~] Metropolitan highway--A local road or street which compliments the state highway system, as designated by the commission.

(18) [~~(17)~~] Metropolitan planning organization (MPO)--An organization designated in certain urbanized areas to carry out the transportation planning process as required by 23 United States Code §134.

(19) [~~(18)~~] National Highway System (NHS)--A part of the National Intermodal Transportation System consisting of the National System of Interstate and Defense Highways and those principal arterial roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings as designated by the United States Congress by criteria set forth in federal law.

(20) [~~(19)~~] National System of Interstate and Defense Highways (Interstate Highway System)--A system of roads and bridges that constitute a part of the National Highway System designated by the United States Congress as essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.

(21) [~~(20)~~] Off-State Highway System Bridge Program--A federally mandated program by which federal funds are made available to replace or rehabilitate bridges under the jurisdiction of a local government and not on the state highway system.

(22) [~~(21)~~] Off-state highway system routes--Those routes not designated on the state highway system which are the responsibility of local governments.

(23) [~~(22)~~] Off-State Highway System Safe Routes to School Program--A program that makes federal funds available to improve bicycle and pedestrian safety of school age children in and around school areas on facilities under the jurisdiction of a local government and not on the state highway system.

(24) [~~(23)~~] Off-State Highway System Safety Program--A federally mandated program by which federal funds are made available for safety improvements to facilities under the jurisdiction of a local government and not on the state highway system.

(25) [~~(24)~~] On-State Highway System Bridge Program--A federally mandated program by which federal funds are made available to replace or rehabilitate bridges on the state highway system.

(26) [~~(25)~~] On-State Highway System Safe Routes to School Program--A program that makes federal or state funds available to improve bicycle and pedestrian safety of school age children in and around school areas on the state highway system.

(27) [~~(26)~~] On-State Highway System Safety Program--A federally mandated program by which federal or state funds are made available for safety improvements on the state highway system.

(28) [~~(27)~~] On-System Turnpike Project--A tolled state highway.

(29) [~~(28)~~] Phase 1 Trunk System Corridor--Corridors of the Texas Trunk System prioritized for project development by the commission.

(30) [~~(29)~~] Preliminary engineering cost/expenses--Costs and expenses incurred, including indirect costs and expenses identified by the department's cost accounting system, on a highway improvement project before contract award.

(31) [~~(30)~~] Principal Arterial Street System (PASS) Program--A commission-approved program to improve urban arterial streets designated on the state highway system to relieve major traffic corridors and enhance total system operations in urban areas over 200,000 in population.

(32) [~~(31)~~] Reconstruction--The primary activities involving the rebuilding of a segment of highway along the existing route as well as those associated with the acquisition of rights of way where necessary to upgrade to current standards.

(33) [~~(32)~~] Rehabilitation--The primary activities to restore, or re-establish in good condition, a segment of highway (not including the construction of additional travel lanes, other than high occupancy vehicle lanes or auxiliary lanes).

(34) [~~(33)~~] Reservoir agency--A public or private agency that has the authority to construct, maintain, or operate a reservoir facility.

(35) [~~(34)~~] Right of way costs--All direct and indirect costs identified by the department's cost accounting system for the acquisition of land or an interest in land necessary for the development of a highway improvement project (including access rights to abutting properties, eligible utility relocation/adjustment costs, and other direct expenses when specified in the agreement).

(36) [~~(35)~~] Right of way procurement--That process identified with the acquisition of real property, access rights, mineral rights, and easements permitted in accordance with state law for the construction of approved highway improvement projects.

(37) [~~(36)~~] State funds--Money received by the department, other than federal funds, funds in excess of minimum requirements, or local participation, to be expended for highway improvement projects.

(38) [~~(37)~~] State highway system--The system of highways in the state included in a comprehensive plan prepared by the department's executive director under the direction and with the approval of the commission in accordance with Transportation Code, §201.103.

(39) [~~(38)~~] State highway system routes--Those state numbered routes designated as a part of the state highway system.

(40) [~~(39)~~] State Park Road Program--A program by which state funds are utilized to construct roads within or adjacent to public facilities administered by the Texas Parks and Wildlife Department.

(41) [~~(40)~~] Statewide Mobility Corridor--A transportation corridor or network designated by the commission that provides for or substantially affects significant multi-regional, intrastate, or interstate travel needs.

(42) [~~(41)~~] Surface Transportation Program (STP)--A federal-aid program where states may obligate federal funds to projects related to certain public roads.

(43) [~~(42)~~] Texas Trunk System--A rural highway network as described in §16.56 of this title (relating to Texas Highway Trunk System).

(44) [~~(43)~~] Transportation Enhancement Program--A federally mandated program identified in §11.200 et seq. of this title (relating to Transportation Enhancement Program), providing federal funding for activities that enhance the intermodal transportation systems

and facilities within the state for the enjoyment of the users of those systems.

(45) [~~(44)~~] United States (U.S.) System Route--Those routes designated on the state highway system as U.S. highways and eligible for federal-aid funds as set forth in federal law and regulations.

(46) [~~(45)~~] Urban Road System--A commission designated system of routes that consist of the continuation of Farm to Market Roads in urban areas over 50,000 in population.

(47) [~~(46)~~] Urbanized area--As defined in 23 United States Code §101, an area with a population of 50,000 or more designated by the United States Bureau of Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, and subject to the approval of the United States Secretary of Transportation.

(48) [~~(47)~~] Utility relocation/adjustment costs--Costs of work related to the adjustment, relocation, and removal of utility facilities accomplished in accordance with §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C of this title (relating to Utility Accommodation).

§15.55. Construction Cost Participation.

(a) Required cost participation. The commission may require, request, or accept from a local government matching or other funds, rights-of-way, utility adjustments, additional participation, planning, documents, or any other local incentives.

(1) Participation ratios. Except as provided in subsections (b) and (d) of this section, the agreement between the local government and the department must include participation ratios as described in subsection (c) of this section.

(2) In-kind contributions. The department will accept in-kind contributions for local government matching or other funds only under agreements that do not include highway construction.

(b) Economically disadvantaged counties. In evaluating a proposal for a highway improvement project with a local government that consists of all or a portion of an economically disadvantaged county, the executive director shall, for those projects in which the commission is authorized by law to provide state cost participation, adjust the minimum local matching funds requirement after receipt of a request for adjustment under paragraph (3) of this subsection.

(1) Commission certification. The commission will certify a county as an economically disadvantaged county on an annual basis as soon as possible after the comptroller reports on the economic indicators listed under §15.51(7) of this subchapter (relating to Definitions).

(2) Local match adjustment. In determining the adjustment to the local matching funds requirement, and a local government's effort and ability to meet the requirement, the commission will consider a local government's:

(A) population level;

(B) bonded indebtedness;

(C) tax base;

(D) tax rate;

(E) extent of in-kind resources available; and

(F) economic development sales tax.

(3) Request for adjustment. The city council, county commissioners court, district board, or similar governing body of a local government that represents all or a portion of an economically disadvantaged county, shall submit a request for adjustment to the local district office of the department. The request will include, at a minimum:

(A) the proposed project scope;

(B) the estimated total project cost;

(C) a breakdown of the anticipated total cost by category (e.g., right-of-way, utility adjustment, plan preparation, construction);

(D) the proposed participation rate;

(E) the nature of any in-kind resources to be provided by the local government;

(F) the rationale for adjusting the minimum local matching funds requirement; and

(G) any other information considered necessary to support a request.

(4) Timing of determination. The executive director will determine whether to make an adjustment at the time the local government submits a proposal for a highway improvement project.

(5) Definition. For purposes of this subsection, "executive director" means the executive director or his or her designee, not below the level of district engineer or division or office director.

(c) Participation ratios. The following chart establishes federal, state, and local cost participation ratios for highway improvement projects, subject to the availability of funds to the department. In-kind participation will be valued as described in §15.52(6)(E) of this subchapter (relating to Agreements).
Figure: 43 TAC §15.55(c)

(d) Off-state highway system bridge program.

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

(A) Bridge--For an equivalent-match project, a bridge or other mainlane cross-drainage structure, including low water crossings (with or without conduit).

(B) Deficient bridge--A bridge having a structural load capacity or other safety condition that is inadequate.

(C) District engineer--The chief executive officer in each designated district office of the department.

(D) Equivalent-match project--A project in which the local government will improve the structural load capacity or other safety condition of off-state system bridges utilizing 100% local funds.

(E) Participation-waived project--An off-state system bridge project in which the state agrees to pay for local participation for eligible preliminary engineering, construction, and construction engineering costs as shown in subsection (c) of this section. This project must be authorized for development only, or for development and construction, on the department's approved Unified Transportation Program, satisfy minimum standards established by the department for off-state system bridges, and meet the additional requirements of this subsection.

(F) Safety work--Work performed as part of an equivalent-match project that improves the safety of the project. This work may include, but is not limited to, providing improved structural load capacity, improved hydraulic capacity, increased roadway width, adequate bridge rail, and adequate approach guardrail.

(2) Waiver. The district engineer may waive the requirement for a local government to provide the original 10% estimate of direct costs for preliminary engineering, construction engineering, and construction funds on the participation-waived project(s) if the local governmental body commits by written resolution or ordinance, as described in paragraph (4) of this subsection, to spend an equivalent amount of funds for structural improvement or other safety work on another bridge or bridges on the equivalent-match project(s) within its jurisdiction or the jurisdiction of a geographically adjacent or overlapping governmental unit. An equivalent amount includes, but is not limited to, expenditures for direct or indirect costs for structural improvement or other safety work on bridge(s) in the equivalent-match project(s). Work on one or more equivalent-match projects may be credited to one or more participation-waived projects.

(3) Eligibility. A local government is eligible for a waiver if:

(A) the construction contract for the participation-waived project has not been awarded;

(B) work on the equivalent-match project has not begun prior to approval of the waiver (approval of the waiver does not guarantee that the participation-waived project agreement will be executed);

(C) the local government is in compliance with load posting and closure regulations as defined in the National Bridge Inspection Standards under 23 C.F.R. §650.303;

(D) the bridge on the proposed equivalent-match project(s) is a deficient bridge, or a bridge that is weight restricted for school buses; and

(E) the equivalent-match project increases the structural load capacity of the existing bridge, replaces the bridge with a new bridge, or otherwise increases safety, with a minimum upgrade to safely carry expected school bus loading.

(4) Request for waiver. To request a waiver, a local government must provide a written request to the district engineer that includes the location(s), description of structural improvement or other safety work proposed, estimated cost for the equivalent-match project(s), and a copy of the local governmental body's resolution or ordinance. The resolution or ordinance must acknowledge assumption of all responsibilities for engineering and construction and complying with all applicable state and federal environmental regulations and permitting requirements for the bridge(s) on the equivalent-match project(s).

(5) Considerations. In approving a request for waiver, the district engineer will consider:

(A) the type of work proposed for the equivalent-match project(s);

(B) regional transportation needs; and

(C) past performance under this subsection.

(6) Approval. The district engineer will submit a letter to the local government indicating the district engineer's approval or disapproval of the waiver. If disapproved, the letter will state the reasons for disapproval. If the waiver is approved, the letter will state that the local government, for the equivalent-match project(s) will assume:

(A) all costs of the work;

(B) responsibility for complying with all applicable state and federal environmental regulations and permitting requirements; and

(C) responsibility for the engineering and construction necessary for completion of the work.

(7) Agreement and conditions.

(A) If the district engineer approves the waiver, the local government and the department will enter into an agreement for the participation-waived project as specified in §15.52 of this subchapter. One or more participation-waived project agreements can utilize one or more common or independent equivalent-match projects if the total equivalent-match project amount equals or exceeds the total remaining local participation amount being waived at the time the agreement is executed, and the common agreements are adequately cross-referenced. Previously executed agreements may be amended to incorporate these participation waiver provisions, or to utilize an additional equivalent-match project(s) for any outstanding amount not previously waived, provided the construction contract for the participation-waived project has not been awarded and the equivalent-match work has not begun.

(B) Local governments will be allowed a maximum of three years after the contract award of the participation-waived project(s) to complete structural or other safety improvements on the equivalent-match project(s). If more than one participation-waived project utilizes a common equivalent-match project, the time period allowed for completion of the equivalent-match project(s) will begin when the first of the participation-waived projects is awarded. The district engineer may specify a period less than three years for completion of equivalent-match projects if project specific conditions warrant. If specified, the shorter allowable work period must be explicitly stated in the agreement(s). No later than 30 days after completion, documentation of completion of the equivalent-match project(s) requirement will be provided by letter to the district engineer. If the local government fails to adequately complete the equivalent-match project(s), it will be excluded from future waivers under this subsection for a minimum of five years. The district engineer may grant an extension to the three-year completion requirement if a contract for the equivalent-match project(s) has been executed within that three years and the contract timeline for completion is reasonable. In the absence of information suggesting that a shorter or longer period is appropriate, two years or less will be presumed to be a reasonable time, for a maximum of five years to complete the equivalent-match project(s) following award of the programmed bridge. The granting of an extension to the three-year time limit must be done in writing in response to a written request to the district engineer from the local government. The extension approval must specify a new required completion date.

(C) With the approval of the district engineer, an equivalent-match project(s) may be substituted by subsequent amendment to the participation-waived project agreement(s). A substitution may be allowed for unforeseen circumstances, including but not limited to, an equivalent-match project that is selected for replacement under some other program of work. Work on the substituted equivalent-match project(s) must be completed within a maximum of three years after the award of the construction contract for the original participation-waived project.

(D) The local government is responsible for all of the direct cost of any participation-waived project cost item or portion of a cost item that is not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program under 23 U.S.C. §144 and 23 C.F.R. §650 Subpart D. The local government is also responsible for any costs resulting from changes made at the request of the local government.

(E) The local government will be responsible for 100% of right of way and utilities for the participation-waived project.

(F) A local government located in an economically disadvantaged county that receives an adjustment under subsection (b) of this section may participate in the provisions of this subsection in the amount of its reduced matching funds requirement.

(G) The department will not reimburse funds already received by the department under the terms of existing agreements. Funds already received for a specific project(s) may be credited against the local government's required participation for the subsequent participation-waived project agreement(s) for that same project(s).

(H) Any equivalent-match project(s) cost that is in excess of the local government's required participation for a specific participation-waived project agreement(s) cannot be credited for use on a future participation-waived project(s).

(I) Each equivalent-match project(s) must be specifically identified in the participation-waived project agreement(s) at the time of execution.

(J) The local government must pay its funding share of the estimated participation-waived project cost, as provided in §15.52(6)(A) of this subchapter, for any local participation balance that is remaining at the time the project agreement(s) is executed. This balance would include any remaining required local participation amount in excess of the amount waived as a result of credit for equivalent-match work to be performed as part of the agreement.

(8) Projects with neighboring states. Local cost participation is not required for a bridge connecting Texas with a neighboring state.

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 21. RIGHT OF WAY

The Texas Department of Transportation (department) proposes amendments to §§21.142, 21.149, 21.152, 21.159, 21.163 - 21.165, 21.167, 21.172 - 21.176, 21.179, 21.180, 21.182, 21.190 - 21.192, 21.251, 21.253, and 21.255, concerning Regulation of Signs Along Interstate and Primary Highways, and §§21.402, 21.409, 21.412 - 21.414, 21.416, 21.417, 21.421 - 21.425, 21.428, 21.433 - 21.435, 21.449, and 21.457, concerning Control of Signs Along Rural Roads.

EXPLANATION OF PROPOSED AMENDMENTS

The department proposes changes to the Outdoor Advertising Program rules to implement new legislation and to address various issues to improve enforcement and efficiency. The changes also clarify existing rules to better inform the public with the requirements of applying for and maintaining an outdoor advertising sign.

Senate Bill No. 162, 83rd Legislature, Regular Session, 2013, resulted in new requirements to ease the transition of service members and their families to civilian life by recognizing professional occupational licenses issued by other jurisdictions. Senate Bill 162 requires state agencies that issue occupational licenses to provide an expedited licensure for military service members, military spouses, and military veterans within one year of separation from the military. Licenses issued under this law expire 12 months after being issued. By the end of the 12 months, individuals are expected to meet Texas' requirements for the appropriate occupational license.

Amendments or additions to existing rules largely formalize current department policies or clarify and simplify the rules to streamline the processes. Where applicable, the rules regarding signs along rural roads were modified to maintain consistency with the regulation of signs along interstate and primary highways.

Amendments to §21.142, Definitions, modified the definitions of "Interchange," "Intersection," "Sign Structures," and "Visible." Definitions were added for "Maintain," "Permit," and "Processing Area." Based on questions from sign owners it was determined that it would be helpful to clarify and standardize these terms. Finally, terms necessary to comply with SB 162 were added to define the three categories of military status in the bill.

Amendments to §21.149, Nonprofit Sign Permit, adds economic development council signs to the list of nonprofit signs for which a permit may be issued. During the department's routine inventories a number of economic development signs were identified. The department has been allowing these signs on a local level and has determined that these signs are consistent with other types of nonprofit signs as long as the sign's message relates to general local economic inducement and provide no specific commercial identification. Any economic inducement message must be of a general nature, however. For example, the sign may say "Shop in old town," but not "Eat at Joe's."

Amendments to §21.152, License Application, added language to implement Senate Bill 162. These changes require the applicable military personnel to identify themselves for license processing purposes.

Amendments to §21.159, Permit Application, simplify the permit application. In preparation for the change-over to electronic filing, the amendments remove several requirements, such as a zoning map or city verification of zoning, and substitute a requirement to provide the appraisal district property tax ID number of the designated site. Changes to §21.159(c) limit the section's effect to those cities, such as Houston, whose authority to regulate signs is issued under Transportation Code, §391.068. The amendments also change the sketch requirements requiring only a sketch showing access to the sign location, as the department has found the other sketches to be unnecessary and duplicative.

Amendments to §21.163, Permit Application Review, clarify the application review process. To address document retention issues and to communicate better with sign owners, amendments to §21.163(b) add that if an application is rejected, a copy of the application will be sent to the applicant outlining the reasons for the rejection. The department does not return the original application and believes it will be helpful to the applicants to clearly state this position in the rules. To formalize current department

policy, §21.163(d) adds a review of correctness to insure that an application is not considered complete unless it has accurate information. Section 21.163(e) was added to formalize department policy regarding conditional approval of the application when an existing sign is in conflict with the requested location on the new application. If an applicant has indicated with his permit application that if the permit is issued, the applicant will remove an existing sign structure that conflicts with the new designated sign site, the department is able to provide a conditional approval in writing to the applicant if all other requirements of this division are met. These amendments will provide the applicant conditional approval for the new sign site before expending funds to remove the old sign structure.

Amendments to §21.164, Decision on Application, comport with changes made in §21.163. The amendments were added to formalize department policy regarding conditional approval of the application to accommodate problems caused by an existing sign as discussed above. Section 21.164(a) explains that the 45 day processing time for an application begins on the department's receipt of the application since the Office of Texas Comptroller handles the initial receipt to process the application fee. To ensure that the issuance of the permit plate indicates that the sign site and structure comply with the approved permit application, the changes to §21.164(b) provide that the permit plate will not be issued for an approved application until after the first inspection by the department. New subsection (c) provides that if an applicant removes the existing conflicting structure within 10 business days and provides proof such as photographs to the department, the department will issue a letter of approval with the permit number for the sign and a copy of the approved application to the applicant. This change corresponds with the change to §21.163 regarding conditional approval.

Amendments to §21.165, Sign Permit Plates, are necessary to coordinate with the changes to §21.163 and §21.164 regarding the application process. Added subsection (a) provides that a plate will be mailed only if, after inspection, the sign comports with the permit application as approved. This change will eliminate the issuance of permit plates for signs that are not erected in compliance with the approved permit.

Amendments to §21.167, Erection, Access and Maintenance from Private Property, modify current provisions to address inspection issues. Inspectors have had difficulty inspecting proposed sign sites because the applicants have been reluctant to provide access information on the application before the department approves the new permit. Section 21.167(a) is amended to add that the department will not issue a permit for a sign unless the applicant demonstrates by sketch that the sign can be erected and maintained from private property. New subsection (b) requires continued notification of access changes throughout the life of the sign permit. Failure to provide access information could lead to cancellation of the sign permit under §21.176. To align this section with other vegetation removal restrictions, subsection (c) was added so that if the department finds evidence that vegetation on the right of way has been destroyed, without department authorization, in order to access the sign site, the permit application will be denied.

Amendments to §21.172, Permit Renewals, provide that the department will inspect the sign site and the sign structure on or after the first anniversary date of permit issuance to ensure compliance with the rules and the approved application. This one year period matches the time the applicant has to install the sign and saves the department resources by eliminating the need to check multiple times for the completion of the sign. Section 21.172(e) increases the number of days the department has to provide a late renewal notice from 20 to 30 days to compensate for time taken by the Comptroller that receives the paperwork before the department receives it for processing.

Amendments to §21.173, Transfer of Permit, detail the transfer procedures to minimize administrative difficulties that may have been experienced by sign owners. Section 21.173(c) was modified to provide that the permit holder must send to the department a written request to transfer one or more sign permits in a form prescribed by the department accompanied by the transfer fee prescribed by §21.175. To add flexibility to the process, §21.173(g)(3) adds a third option allowing the department to approve the transfer of one or more sign permits from a transferor to a person who holds a license, with or without the signature of the transferor, if the person provides legal court order demonstrating the new ownership of the sign permit. Section 21.173(i) clarifies that the department will only transfer valid permits, since a sign with a lapsed permit violates §21.143 and should be removed under §21.198 rather than transferred.

Amendments to §21.174, Amended Permit, clarify the requirement that an amended permit must be obtained before work is commenced; this change minimizes the risk of administrative penalties caused by unauthorized changes to the sign structure. Changes also require an amended permit must be obtained to change the size of a sign face after it is built regardless of the dimensions of the sign face included in the permit application. If, after the one-year period for erection of a sign, the sign is built on a smaller scale than that authorized in the permit, only that part of the sign erected at the end of that period is eligible to be maintained. Any size changes to the sign after the time of inspection will need an amended permit. Other minor changes are made to clarify the intent of the rule and to coordinate with other changes to these rules.

Amendments to §21.175, Permit Fees, remove the maximum $2,500 fee for transferring permit during a single transaction because it has historically proven not to be necessary.

Amendments to §21.176, Cancellation of Permit, insure that the department has legal access to a sign. Section 21.176(a)(3) provides that a permit may be canceled if the sign is not accessible as depicted in permit application. Section 21.176(a)(8) clarifies that a sign may not be altered without first obtaining an amended permit. Additional format changes are made to conform with the changes in these rules.

Amendments to §21.179, Unzoned Commercial or Industrial Area, clarify that commercial or industrial activity must comprise a single, undivided area of activity. This should minimize administrative difficulties that may have been experienced by sign owners. Amended §21.179(c) provides that the regularly used buildings, parking lots, storage or processing areas of the activities may not be separated by more than 50 feet of non-commercial or non-industrial areas. Under the previous version of this rule, a residence could divide two commercial activities, yet the area would have been considered a commercial area. The new rule corrects this issue.

Amendments to §21.180, Commercial or Industrial Activity, add governmental activity as an equivalent to commercial and industrial activity because it meets all the state and federal requirements of a commercial or industrial activity. To minimize administrative difficulties that may have been experienced by sign owners, it also sets out the requirements to be considered a per-

manent building or structure, which is being affixed on pier and beam or concrete slab or not being on skids or axles and not having a towing device, such as hitch or tongue attached. Section 21.180(c)(4) formalizes department policy that the employee must work for the activity occurring at the site. This change is to address issues with businesses where the employee present at the site does not perform work or provide services for the activity taking place at the site.

Amendments to §21.182, Sign Face Size and Positioning, clarify that the department is not concerned about temporary protrusions that are included completely within the permitted sign face border, and as a result the regulation of temporary protrusions that are outside of the permitted sign face have been returned to the previous historical size limitation. The amendment to §21.182(c)(1) provides that the area of a sign is unaffected when a protrusion is located completely inside of the sign face border and trim as indicated on the sign permit. The amendments delete §21.182(c)(3) because this provision is no longer relevant. Section 21.182(c)(2) provides that the area of the a protrusion completely outside of the sign face border and trim as indicated on the sign permit may not exceed ten percent of the permitted sign face size as noted above. This change will minimize administrative difficulties experienced by sign owners and alleviate the need for department staff to measure portions of the sign included in the general measurement of the sign face. Amendments to §21.182(d) correct the area of two-face signs from 907 to 700 square feet to comply with the federal-state agreement. Amendments to §21.182(f) add that no sign may have a moveable protrusion unless authorized under division 2 of this subchapter, which relates to electronic signs. The intent is to prohibit moving parts on a sign designed to distract a motorist's attention and focus it on the sign.

Amendments to §21.190, Lighting of and Movement on Signs, makes changes to the language regarding protrusions within the sign face that can be operated as a digital or electronic display to state that the display can only include numeric characters. Signs with protrusions that display alphabetical characters will be subject regulation under division 2 of subchapter I, because they are considered to be electronic signs.

Amendments to §21.191, Repair and Maintenance, modifies subsection (c)(1) to provide that adding additional lights to a sign is considered to be a substantial change to the sign that requires an amended permit. The amendments also clarify that the amended permit must be obtained prior to making any substantial change to the sign structure. The current language led to confusion by stating that an amended permit application was necessary prior to the change. This change eliminates that confusion.

Amendments to §21.192, Permit for Relocation of Sign, formalize several department policies on relocation issues. Section 21.192(a) is amended to allow the department to issue a relocation permit to further the intended purposes of the Highway Beautification Act of 1965 (23 U.S.C. §§131, 136, 319). As an example, a sign owner has grandfathered sign that is very close to a park and it significantly detracts from the beauty of the park. That owner wants to add lighting, but cannot because of its status as a grandfathered sign. The department could offer a permit to relocate the sign to the owner under the amended §21.192(a). This would further the intent of the Beautification Act by removing a nonconforming sign that detracted from the natural beauty of a park at little cost to the department and create a conforming sign for the owner. Section 21.192(d) was added, to provide that if the permit holder of a sign that must be relocated due to a highway construction project desires to amend the sign structure, the permit holder must apply and receive the approved relocation permit from the department before filing for an amended permit. Amended §21.192(e)(1), (2) and (3) require a 5-foot setback to the land on which the sign's pole is located to be with consistent with other provisions in this subchapter. To minimize administrative difficulties that may have been experienced by sign owners, §21.192(f) formalizes department policy by providing that the relocation permit issued must be renewed in accordance with §21.172. Section 21.172(g) was added to provide increased flexibility for relocation permit holders by allowing one replacement relocation permit if the sign owner demonstrates to the satisfaction of the department good cause for the need of additional time to erect the sign or one change in the sign location.

Amendments to §21.251, Definition, provides that a sign is not an electronic sign solely because it contains a protrusion described by §21.190(g). This change is needed to correspond with changes to §21.190 regarding the allowable size of a protrusion.

Amendments to §21.253, Issuance of Permit, clarifies that the city's permission to erect an electronic sign is limited to the site specified in the permit application. This change minimizes administrative difficulties that may have been experienced by sign owners.

Amendments to §21.255, Location, clarifies that if a sign will be located within a certified city authorized to exercise control under §21.200, it is the certified city's sign spacing policies that will apply as long as the sign spacing does not violate the minimum requirements of the applicable Texas federal and state agreement. This change will eliminate confusion between the department and the certified city as to spacing issues for electronic signs.

Amendments to §21.402, Definitions, modifies the definitions of "Interchange," "Intersection," "Sign Structures," "Visible" and adds definitions for "Maintain," and "Processing Area" to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.409, Permit Application, correspond with the changes made in §21.159 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.412, Permit Application Review, correspond with the changes made in §21.163 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.413, Decision on Application, correspond with the changes made in §21.164 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.414, Sign Permit Plate correspond with the changes made in §21.165 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.416, Commercial or Industrial Activity correspond with the changes made in §21.180 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.417, Erection, Access and Maintenance from Private Property, correspond with the changes made in §21.167 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.421, Permit Renewals, correspond with the changes made in §21.172 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.422, Transfer of Permit, correspond with the changes made in §21.173 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.423, Amended Permit correspond with the changes made in §21.174 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.424, Permit Fees, correspond with the changes made in §21.175 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.425, Cancellation of Permit, correspond with the changes made in §21.176 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.428, Sign Face Size and Positioning, correspond with the changes made in §21.182 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.433, Lighting of and Movement on Signs, correspond with the changes made in §21.190 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.434, Repair and Maintenance, correspond with the changes made in §21.191 to maintain consistency between the primary and rural road outdoor advertising programs.

Amendments to §21.435, Permit for Relocation of Sign, correspond with the changes made in §21.192 to maintain consistency between the primary and rural road outdoor advertising programs. Section 21.435(a) is amended to allow the department to issue a relocation permit to further the intended purposes of the Highway Beautification Act of 1965 (23 U.S.C. §§131, 136, 319). As an example, a sign owner has grandfathered sign that is very close to a park and it significantly detracts from the beauty of the park. That owner wants to add lighting, but cannot because of its status as a grandfathered sign. The department could offer a permit to relocate the sign to the owner under the amended §21.435(a). This would further the intent of the Beautification Act by removing a nonconforming sign that detracted from the natural beauty of a park at little cost to the department and create a conforming sign for the owner.

Amendments to §21.449, License Application, add paragraph (4) to subsection (b) to implements Senate Bill 162. This change requires the applicable military personnel to identify themselves for license processing purposes.

Amendments to §21.457, Nonprofit Sign Permit, correspond with the changes made in §21.149 to maintain consistency between the primary and rural road outdoor advertising programs.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. John Campbell, Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Campbell has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will lessen administrative overhead and improve enforcement efforts by the department, making them more transparent to the public and predictable to sign owners. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on February 25, 2014, in the Ric Williamson Hearing Room, First Floor, Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Government and Public Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-6086 at least five working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on this proposed rulemaking may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Right of Way." The deadline for receipt of comments is 5:00 p.m. on March 17, 2014. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY HIGHWAYS

DIVISION 1. SIGNS

43 TAC §§21.142, 21.149, 21.152, 21.159, 21.163 - 21.165, 21.167, 21.172 - 21.176, 21.179, 21.180, 21.182, 21.190 - 21.192

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads; Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses; Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.142. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Erect--To construct, build, raise, assemble, place, affix, attach, embed, create, paint, draw, or in any other way bring into being or establish.

(4) Freeway--A divided, controlled access highway for through traffic. The term includes a toll road.

(5) Highway--The width between the boundary lines of a publicly maintained way any part of which is open to the public for vehicular travel.

(6) Interchange--A junction [~~system~~] of two or more [~~interconnecting~~] roadways, including frontage roads with on and off ramps, in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels without the crossing of traffic streams.

(7) Intersection--The common area at the junction of two highways that are on the primary system. The common area includes the area within the lateral boundary lines of the roadways.

(8) Interstate highway system--Highways designated officially by the commission and approved pursuant to 23 United States Code §103 as part of the national system of interstate and defense highways.

(9) License--An outdoor advertising license issued by the department.

(10) Main-traveled way--The traveled way of a highway that carries through traffic. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(11) Military Service Member--A person who is currently serving in the Armed Forces of the United States, in a reserve component of the United States, including the National Guard, or in the state military service of any service.

(12) Military spouse--A person who is married to a military service member who is currently on active duty.

(13) 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.

(14) [~~(11)~~] National Highway System--Highways designated officially by the commission and approved pursuant to 23 United States Code §103 as part of the national highway system.

(15) [~~(12)~~] Nonconforming sign--A sign that was lawfully erected but that no longer complies with a law or rule because of changed conditions or because the law or rule was amended after the sign was erected or that fails to comply with a law enacted or rule adopted after the sign was erected.

(16) [~~(13)~~] Nonprofit sign--A sign that is erected and maintained by a nonprofit organization under a permit issued under §21.149 of this division (relating to Nonprofit Sign Permit).

(17) Permit--Written authorization granted for the erection of a sign, subject to this subchapter and Transportation Code, Chapter 391.

(18) [~~(14)~~] Person--An individual, association, partnership, limited partnership, trust, corporation, or other legal entity.

(19) [~~(15)~~] Primary system--Highways designated by the commission as the federal-aid primary system and any highway on the National Highway System. The term includes all roads designated as part of the National Highway System as of 1991.

(20) Processing Area--An area where actions or operations are accomplished that contribute directly to a particular commercial or industrial purpose and are performed during established activity hours.

(21) [~~(16)~~] Public park--A public park, forest, playground, nature preserve, or scenic area designated and maintained by a political subdivision or governmental agency.

(22) [~~(17)~~] Regulated highway--A highway on the interstate highway system or primary system.

(23) [~~(18)~~] Rest area--An area of public land designated by the department as a rest area, comfort station, picnic area, or roadside park.

(24) Roadway--That portion of a road used for vehicular travel, exclusive of the sidewalk, berm, or shoulder.

(25) [~~(19)~~] Sign--An object that is designed, intended, or used to advertise or inform, including a sign, display, light, device, figure, painting, drawing, message, plaque, placard, poster, billboard, logo, or symbol.

(26) [~~(20)~~] Sign face--The part of the sign that contains advertising or information and is distinguished from other parts of the sign, including another sign face, by borders or decorative trim. The term does not include a lighting fixture, apron, or catwalk unless it displays a part of the advertising or information contents of the sign.

(27) [~~(21)~~] Sign structure--All of the interrelated parts and materials[~~, such as beams, poles, braces, apron, catwalk, and stringers,~~] that are used, designed to be used, or intended to be used to support or display advertising or information contents. The term includes, at a

minimum, beams, poles, braces, apron, frame, catwalk, stringers, and a sign face.

(28) [~~(22)~~] Visible--Capable of being seen whether or not legible or identified without visual aid by a person of normal visual acuity [~~read or identified by a person with normal visual acuity~~].

§21.149. Nonprofit Sign Permit.

(a) A nonprofit service club, charitable association, religious organization, chamber of commerce, economic development council, nonprofit museum, or governmental entity may obtain a permit under this section to erect or maintain a nonprofit sign.

(b) To qualify as a nonprofit sign, the sign must:

(1) advertise or promote only:

(A) a political subdivision in whose jurisdiction the sign is located or a political subdivision that is adjacent to such a political subdivision; or

(B) the entity that will hold the permit, but may only give information about the meetings, services, events, or location of the entity or provide a message that relates to promotion of all or a part of the political subdivision but that does not include identification of individual merchants; and

(2) comply with each sign requirement under this division from which it is not specifically exempted.

(c) An application for a permit under this section must be in a form prescribed by the department and must include, in detail, the content of the message to be displayed on the sign.

(d) After a permit is issued, the permit holder must obtain approval from the department to change the message of the sign. The department may issue an order of removal of the sign if the permit holder fails to obtain that approval.

(e) If a sign ceases to qualify as a nonprofit sign, the permit for the sign is subject to cancellation under §21.176 of this division (relating to Cancellation of Permit).

(f) If the holder of a permit issued under this section loses its nonprofit status or wishes to change the sign so that it no longer qualifies as a nonprofit sign the permit holder must:

(1) obtain a license under §21.153 of this division (relating to License Issuance) or §21.450 of this chapter (relating to License Issuance); and

(2) convert the sign permit to a permit for a sign other than a nonprofit sign and pay the original permit and renewal fees provided by §21.175 of this division (relating to Permit Fees).

§21.152. License Application.

(a) To apply for a license under this division, a person must file an application in a form prescribed by the department. The application must include at a minimum:

(1) the complete legal name, mailing address, and telephone number of the applicant; and

(2) designation of each county in which the applicant's signs are to be erected or maintained.

(b) The application must be signed, notarized, and filed with the department and be accompanied by:

(1) a fully executed outdoor advertiser's surety bond:

(A) in the amount of $2,500 for each county designated under subsection (a)(2) of this section up to a maximum of $10,000;

(B) payable to the commission to reimburse the department for removal costs of a sign that the license holder unlawfully erects or maintains; and

(C) in a form prescribed by the department, executed by a surety company authorized to transact business in this state;

(2) a duly certified power of attorney from the surety company authorizing the surety company's representative to execute the bond on the effective date of the bond; [~~and~~]

(3) the license fee prescribed by §21.156 of this division (relating to License Fees); and[~~.~~]

(4) if applicable, an indication that the applicant is a military service member, military spouse, or military veteran to ensure priority handling of application.

(c) The documentation and the fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.159. Permit Application.

(a) To obtain a permit for a sign, a person must file an application in a form prescribed by the department. The application must include, at a minimum:

(1) the complete name and address of the applicant;

(2) the original signature of the applicant;

(3) the proposed location and description of the sign;

(4) the complete legal name and address of the owner of the designated site;

(5) the appraisal district property tax identification number of the designated site [~~a statement of whether the requested sign is located within an incorporated city or within the city's extraterritorial jurisdiction~~];

(6) the original signature of the site owner [~~owner's~~] or the site owner's authorized representative, with appropriate documentation from the site owner authorizing the person to act as the site owner's representative [~~representative's original signature~~] on the application demonstrating:

(A) consent to the erection and maintenance of the sign; and

(B) right of entry onto the property of the sign location by the department or its agents; and

[~~(7) a document from the city that provides the city's current zoning map or the portion of that map applicable to the sign's location; and~~]

(7) [~~(8)~~] information that details how and the location from which the sign will be erected and maintained.

(b) If the sign is a nonprofit sign, the application must include verification of the applicant's nonprofit status.

(c) If the sign is to be located within the jurisdiction of a municipality, including the extraterritorial jurisdiction of the municipality, that is exercising its statutory authority to regulate outdoor advertising, a certified copy of the permit issued by the municipality must be submitted with the application unless documentation is provided to show that the municipality requires:

(1) the issuance of a department permit before the municipality's; or

(2) the erection of the sign within a period of less than twelve months after the date of the issuance of the municipal permit.

(d) The application must be:

(1) notarized;

(2) sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043; and

(3) accompanied by the fee prescribed by §21.175 of this division (relating to Permit Fees).

(e) The application must include a sketch that shows the means of access to the sign.[~~:~~]

[~~(1) the location of the poles of the sign structure;~~]

[~~(2) the exact location of the sign faces in relation to the sign structure;~~]

[~~(3) the means of access to the sign; and~~]

[~~(4) the distance from the buildings, landmarks, right of way line, other signs, and other distinguishable features of the landscape.~~]

§21.163. Permit Application Review.

(a) The department will consider permit applications in the order of the receipt of the applications.

(b) If an application is rejected [~~returned to an applicant~~] because it is not complete or has incorrect information, the application loses its priority position and a copy of the application will be sent to the applicant outlining the reasons the application was rejected.

(c) The department will hold an application that is for the same site as or a conflicting site with that of an application that the department previously received until the department makes a final decision on the previously received application [~~or returns it to the applicant~~]. The department will notify the applicant that the applicant's application is being held because an application for the same or a conflicting site was previously received. For the purposes of this subsection, the date of a final decision on an application is:

(1) the date of the final decision on an appeal under §21.170 of this division (relating to Appeal Process for Permit Denials); or

(2) if an appeal is not filed within the period provided by §21.170 of this division, on the 46th day after the date the denial notice was received under §21.164 of this division (relating to Decision on Application).

(d) The department will review the permit application for completeness, correctness, and compliance with all requirements of this division. Measurements will be taken at the site to determine if the sign placement meets the spacing and location requirements.

(e) If an applicant has indicated on the permit application that an existing sign structure that causes conflict with the new designated sign site will be removed, the department may provide a conditional approval in writing to the applicant if all other requirements of this division are met.

§21.164. Decision on Application.

(a) The department will make a decision on an application within 45 days after the date of receipt of the application by the Right of Way Division. If the decision cannot be made within the 45 day period, the department will notify the applicant of the delay and provide the reason for the delay and provide an estimate for when the decision will be made.

(b) If the permit application is approved, the department will issue a permit for the sign by sending a copy of the approved application [~~and a sign permit plate~~] to the applicant.

(c) If an applicant has received a conditional approval under §21.163(e) of this division (relating to Permit Application Review), the applicant must remove the existing conflicting structure and provide proof, such as photographs, to the department within 10 business days after the date that conditional approval is sent. Upon verification of the removal of the conflicting sign, the department will issue a letter of approval with the permit number for the sign and a copy of the approved application to the applicant.

(d) [~~(c)~~] If the permit application is not approved, the department will send a copy of the denied application and a notice that states the reason for the denial.

(e) [~~(d)~~] If the permit [~~an~~] application is denied, the department will notify the landowner identified on the permit application of the denial by written notice. The notice is for informational purposes only, and does not convey any rights to the landowner. The landowner may not appeal the denial unless the landowner is also the applicant.

§21.165. Sign Permit Plate.

(a) If, at the time of inspection, the sign is built in accordance with this division or Division 2 of this subchapter (relating to Electronic Signs), as appropriate, and the approved permit application, the department will mail the applicant the permit plate to attach to the sign structure.

(b) [~~(a)~~] On receipt of the sign permit plate, the [~~The~~] sign owner shall securely attach the sign permit plate to the part of the sign structure that is nearest to and visible from the closest right of way not later than the 30th day after the date that the permit plate is mailed to the sign owner.[~~:~~]

[~~(1) the sign is erected; or~~]

[~~(2) the permit is issued if the sign is lawfully in existence when the highway along which it is located becomes subject to this division.~~]

(c) [~~(b)~~] The sign permit plate may not be removed from the sign.

(d) [~~(c)~~] The sign permit plate must remain visible from the closest right of way at all times.

(e) [~~(d)~~] If a sign permit plate is lost or stolen or becomes illegible, the sign owner must submit to the department a request for a replacement plate on a form prescribed by the department accompanied by the replacement plate fee prescribed by §21.175 of this division (relating to Permit Fees).

(f) [~~(e)~~] Failure to apply for a replacement permit plate, [~~or~~] to attach a [~~the~~] plate to the sign structure as required in subsection (b) [~~(a)~~] of this section within 60 days after the department mails the permit plate, or to ensure visibility of an attached plate [~~date of receipt of written notification from the department that the permit plate is not attached or not visible~~] may result in the cancellation of the permit under §21.176 of this division (relating to Cancellation of Permit).

§21.167. Erection, Access and Maintenance from Private Property.

(a) The department will not issue a permit for a sign unless the applicant demonstrates in the permit application by sketch that it can be erected and maintained from private property with a clear path that is unobstructed.

(b) If at any time the means of access to the sign site and structure change on the private property from the original access depicted in

the permit application, the sign owner must provide an updated sketch of the new means of access to the sign site and sign structure to the department. Failure to provide a current sketch of the means of access to the sign may result in a cancellation of the permit under §21.176 of this division (relating to Cancellation of Permit).

(c) If the department finds evidence that vegetation on the right of way has been destroyed, without department authorization, in order to access the location designated as the sign site, the permit will be denied.

§21.172. Permit Renewals.

(a) To be continued in effect, a sign permit must be renewed annually.

(b) A permit is eligible for renewal if the sign for which it was issued continues to meet all applicable requirements of this division and Transportation Code, Chapter 391.

(c) To renew the permit, the permit holder must file with the department a written application in a form prescribed by the department accompanied by the applicable fees prescribed by §21.175 of this division (relating to Permit Fees). The application with all applicable fees must be received by the department before the 46th day after the date of the permit's expiration.

(d) A permit may not be renewed if the sign for which it was issued is not erected to the extent that it includes a sign face before the first anniversary of the date that the permit was issued.

(e) The department will provide a renewal notification to the license holder at least 30 days before the date of the permit expiration. If [~~and if~~] the permit is not renewed before it expires, not later than 30 [~~the department within 20~~] days after the date of expiration the department will provide notification to the license holder of the opportunity to file a late renewal with all applicable fees.

(f) The department will inspect the sign site and the sign structure on or after the first anniversary of the date of the permit's issuance.

(g) [~~(f)~~] If on the date of the inspection under subsection (f) of this section, [~~one year after the date the department issues the permit~~] the sign structure is not built to the full extent approved by the permit with respect to dimensions, lighting, height, or number of faces, the department will adjust the permit to reflect the dimensions, lighting, height, and number of faces of the sign structure as they exist on that date. The permit will be eligible for renewal only for the dimensions, lighting, height, and number of faces as adjusted by the department.

(h) [~~(g)~~] The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.173. Transfer of Permit.

(a) A sign permit may be transferred only with the written approval of the department.

(b) At the time of the transfer, both the transferor and the transferee must hold a valid license issued under §21.153 of this division (relating to License Issuance) or §21.450 of this chapter (relating to License Issuance), except as provided in subsections (e) - (g) of this section.

(c) The [~~To transfer one or more sign permits, the~~] permit holder must send to the department a written request to transfer a sign permit in a form prescribed by the department accompanied by the applicable fees prescribed by §21.175 of this division (relating to Permit Fees) [~~transfer fee~~].

(d) If the request is approved, the department will send to the transferor and to the transferee a copy of the approved permit transfer form.

(e) A permit issued to a nonprofit organization under §21.149 of this division (relating to Nonprofit Sign Permit) may be transferred to another nonprofit organization that does not hold a license issued under §21.153 of this division or §21.450 of this chapter if the sign will be maintained as a nonprofit sign.

(f) A permit issued to a nonprofit organization under §21.149 of this division may be converted to a regular permit and transferred to a person that is not a nonprofit organization if the transferee holds a license for the county in which the sign is located at the time of the transfer and the sign meets all requirements of this division.

(g) The department may approve the transfer of one or more sign permits from a transferor [~~whose license has expired~~] to a person who holds a license, with or without the signature of the transferor, if the person provides to the department:

(1) legal documents showing the sign has been sold; [~~and~~]

(2) documents that indicate that the transferor is dead or cannot be located; or[.]

(3) a court order demonstrating the new ownership of the sign permit.

(h) The department will not approve the transfer [~~of a permit~~] if cancellation of the permit is pending or has been abated awaiting the outcome of an administrative hearing.

(i) The department will approve a transfer only if the permit is valid.

(j) [~~(i)~~] The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.174. Amended Permit.

(a) To perform customary maintenance or to make substantial changes to the sign or sign structure under §21.191 of this division (relating to Repair and Maintenance) a permit holder must obtain an amended permit before initiating any action to the sign structure. To change the sign face of an existing permitted sign to an electronic sign under Division 2 of this subchapter (relating to Electronic Signs) a permit holder must obtain an amended permit.

(b) To obtain an amended permit, the permit holder must submit an amended permit application on a form prescribed by the department. The amended permit application must provide the information required under §21.159 of this division (relating to Permit Application) applicable to an amended permit and indicates the change from the information in the original application for the sign permit. The amended application is not required to contain the signatures of the land owner or city representative.

(c) The new sign face size, configuration, height, lighting, or location must meet all applicable requirements of this division and if the amended permit is to erect an electronic sign, the requirements of Division 2 of this subchapter.

(d) The holder of a permit for a nonconforming sign may apply for an amended permit to perform eligible customary maintenance under §21.191(b) of this division. An amended permit will not be issued for a substantial change as described by §21.191(c) of this division to a nonconforming sign.

(e) Making a change to a sign, except as provided by subsection (h) of this section, [~~that requires an amended permit~~] without first

obtaining an amended permit is a violation of this division[~~, except as provided by subsection (h) of this section~~] and will result in an administrative enforcement action.

(f) The department will make a decision on an amended permit application within 45 days of the date of the receipt of the amended permit application in the Right of Way Division. If the decision cannot be made within the 45 day period the department will notify the applicant of the delay, provide the reason for the delay and provide an estimate of when the decision will be made.

(g) If an amended permit application is denied, the applicant may file a request with the executive director for an appeal using the same procedures found in §21.170 of this division (relating to Appeal Process for Permit Denials).

(h) If maintenance or changes authorized under this section are being made on a conforming sign because of a natural disaster, the department may waive the requirement that the required amended permit be issued before the work begins. If the department grants a waiver under this subsection, the permit holder shall submit the amended permit application within 60 days after the date that the work is completed. If the maintenance or changes violate this section or the permit holder fails to submit the amended permit application as required by this subsection, the sign is subject to enforcement and removal actions.

(i) An amended permit is valid for one year after the date of the department's approval of the amended permit application. The provisions of this subchapter relating to a permit, including §21.172(f) of this division (relating to Permit Renewals), apply to the amended permit. The date of the department's approval of the amended permit application is considered to be the amended permit's date of issuance.

(j) The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

(k) If a sign is built with a smaller face than the size shown on the permit application or if the face is reduced in size after it is built, an amended permit will be required to increase the size of the face.

§21.175. Permit Fees.

(a) The amounts of the fees related to permits under this subchapter are:

(1) $100 for an original or amended permit for a sign;

(2) $100 for an original or amended permit issued under Division 2 of this subchapter for an electronic sign;

(3) $100 for an original permit for a sign that was lawfully in existence when the sign became subject to Transportation Code, Chapter 391;

(4) $75 for the renewal of a permit;

(5) $75 for the renewal of a permit issued under Division 2 of this subchapter for an electronic sign;

(6) $25 for the transfer of a permit [~~up to a maximum of $2,500 for a single transaction regardless of the location of the sign~~]; and

(7) $25 for a replacement sign permit plate.

(b) The original and renewal permit fee for a nonprofit sign permit is $10.

(c) In addition to the $75 annual renewal fee, an additional late fee of $100 is required for a renewal of a permit that is received before the 46th day after the permit expiration date.

(d) No fee is charged for the transfer of a permit issued to a nonprofit organization to another nonprofit under §21.173 of this division (relating to Transfer of Permit). The fee provided under subsection (a)(6) of this section applies to the conversion and transfer of a permit issued to a nonprofit organization to a person other than a nonprofit organization under §21.173 of this division.

(e) A fee prescribed by this section is payable by check, cashier's check, or money order. If a check or money order is dishonored upon presentment, the permit, renewal, or transfer is void.

§21.176. Cancellation of Permit.

(a) The department may [~~will~~] cancel a permit for a sign if the sign:

(1) is removed, unless the sign is removed and re-erected at the request of a condemning authority;

(2) is not maintained in accordance with this division or Transportation Code, Chapter 391;

(3) is not accessible as depicted in permit application;

(4) [~~(3)~~] is damaged beyond repair, as determined under §21.197 of this division (relating to Discontinuance of Sign Due to Destruction);

(5) [~~(4)~~] is abandoned, as determined under §21.181 of this division (relating to Abandonment of Sign);

(6) [~~(5)~~] is erected after the effective date of this section and is more than [~~not built within~~] twenty feet from [~~of~~] the location described in the permit application, or is built within twenty feet of the location described in the permit application but at a location that does not meet all spacing requirements of this chapter or [~~in accordance with the sketch or~~] other assertions contained in the permit application;

(7) [~~(6)~~] is repaired [~~or altered~~] without obtaining a required amended permit under §21.174 of this division (relating to Amended Permit);

(8) is altered in violation of this division or Transportation Code, Chapter 391;

(9) [~~(7)~~] is built by an applicant who uses false information on a material issue of the permit application;

(10) [~~(8)~~] is erected, repaired, or maintained in violation of §21.199 of this division (relating to Destruction of Vegetation and Access from Right of Way Prohibited);

(11) [~~(9)~~] has been made more visible by the permit holder clearing vegetation from the highway right of way in violation of §21.199 of this division;

(12) [~~(10)~~] is located in an unzoned commercial or industrial area and the department has evidence that an activity supporting the unzoned commercial or industrial area was created primarily or exclusively to qualify the area as an unzoned commercial or industrial area, and that no business has been conducted at the activity site within one year; or

(13) [~~(11)~~] does not have the permit plate properly attached under §21.165 of this division (relating to Sign Permit Plate).

(b) Before initiating an enforcement action under this section, the department will notify the sign owner in writing of the violation of subsection (a)(3) - (7) or (13) [~~(a)(5) or (11)~~] of this section and will give the sign owner 60 days to correct the violation, [~~and~~] provide proof of the correction, and if required, obtain an amended permit from the department.

(c) Upon determination that a permit should be canceled, the department will mail a notice of cancellation to the address of the record license holder. The notice must state:

(1) the reason for the cancellation;

(2) the effective date of the cancellation;

(3) the right of the permit holder to request an administrative hearing on the cancellation; and

(4) the procedure for requesting a hearing and the period for filing the request.

(d) A request for an administrative hearing under this section must be in writing and delivered to the department within 45 days after the date that the notice of cancellation is received.

(e) If timely requested, an administrative hearing will be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case) and the cancellation is abated until the cancellation is affirmed by order of the commission.

(f) A permit holder may voluntarily cancel a permit by submitting a request in writing after the sign has been removed. Subsections (c) - (e) of this section do not apply to a permit voluntarily canceled under this subsection.

(g) The department will notify the landowner identified on the permit application of a cancellation enforcement action. The notice is for informational purposes only, and does not convey any rights to the landowner. The landowner may not appeal the cancellation unless the landowner is also the holder of the permit.

§21.179. Unzoned Commercial or Industrial Area.

(a) An unzoned commercial or industrial area is an area that:

(1) is within 800 feet, measured from the nearest point along the edge of the highway right of way perpendicular to the centerline of the main-traveled way, of and on the same side of the highway as the principal part of at least two adjacent recognized governmental, commercial, or industrial activities that meet the requirements of subsection (c) of this section;

(2) is not predominantly used for residential purposes; and

(3) has not been zoned under authority of law.

(b) A part of the regularly used buildings, parking lots, or storage or processing areas of each of the governmental, commercial, or industrial activities must be within 200 feet of the highway right of way and a portion of the permanent building in which the activity is conducted must be visible from the main-traveled way.

(c) For governmental, commercial, or industrial activities to be considered adjacent for the purposes of subsection (a)(1) of this section, the regularly used buildings, parking lots, storage or processing areas of the activities may not be separated by: [~~a vacant lot, an undeveloped area that is more than 50 feet wide,~~]

(1) a road, or a street; or

(2) more than 50 feet of:

(A) vacant lot;

(B) undeveloped area; or

(C) a non-governmental, non-commercial, or non-industrial area.

(d) Two activities that occupy the same building qualify as adjacent activities for the purposes of subsection (a)(1) of this section, if:

(1) each activity:

(A) has at least 400 square feet of floor space dedicated to that activity; and

(B) is an activity that is customarily allowed only in a zoned commercial or industrial area;

(2) the two activities are separated by a dividing wall constructed from floor to ceiling;

(3) the two activities have access to the restroom facilities during all hours the activity is staffed or opened; and

(4) the two activities operate independently of one another.

(e) For the purposes of subsection (d) of this section, two separate product lines offered by one business are not considered to be two activities.

(f) To determine whether an area is not predominantly used for residential purposes under subsection (a)(2) of this section, not more than 50 percent of the area, considered as a whole, may be used for residential purposes. A road or street is considered to be used for residential purposes only if residential property is located on both of its sides. The area to be considered is the total of actual or projected frontage of the commercial or industrial activities plus 800 feet on each side of that frontage, measured along the highway right of way to a depth of 660 feet. The depth of an unzoned commercial or industrial area is measured from the nearest edge of the highway right of way perpendicular to the centerline of the main-traveled way of the highway.

(g) The length of an unzoned commercial or industrial area is measured from the outer edge of the regularly used building, parking lot, storage, or processing area of the commercial or industrial activity and along or parallel to the edge of the pavement of the highway. If the business activity does not front the highway, a projected frontage is measured from the outer edge of the regularly used building, parking lot, storage, or processing area to a point perpendicular to the centerline of the main-traveled way.

(h) A sign is not required to meet the requirements of subsection (d)(1)(A), (2), or (3) of this section or §21.180 of this division (relating to Commercial or Industrial Activity) to maintain conforming status if the permit for the sign was issued before the effective date of this section.

§21.180. Commercial or Industrial Activity.

(a) For the purposes of this division, a governmental, commercial or industrial activity is an activity that:

(1) is customarily allowed only in a zoned commercial or industrial area; and

(2) is conducted in a permanent building or structure permanently affixed to the real property that:

(A) has an indoor restroom, running water, functioning electrical connections, and permanent flooring, other than dirt, gravel, or sand;

(B) is visible from the traffic lanes of the main-traveled way;

(C) is not primarily used as a residence; and

(D) has at least 400 square feet of its interior floor space devoted to the activity.

(b) For the purposes of this subchapter, a building or structure is a permanent building or structure if it is affixed on pier and beam or a concrete slab and if it:

(1) is not on skids or axles; and

(2) does not have a towing device, such as hitch or tongue, attached.

(c) [~~(b)~~] The following are not commercial or industrial activities:

(1) agricultural, forestry, ranching, grazing, farming, and related activities, including the operation of a temporary wayside fresh produce stand;

(2) an activity that is conducted only seasonally;

(3) an activity that has not been conducted at its present location for at least 180 days;

(4) an activity that is not conducted by at least one person who works for the activity [~~business~~] at the activity site for at least 25 hours per week on at least five days per week;

(5) the operation or maintenance of:

(A) an outdoor advertising structure;

(B) a recreational facility, such as a campground, golf course, tennis court, wild animal park, or zoo, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(C) an apartment house or residential condominium;

(D) a public or private preschool, secondary school, college, or university, other than a trade school or corporate training campus;

(E) a quarry or borrow pit, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(F) a cemetery; or

(G) a place that is primarily used for worship;

(6) an activity that is conducted on a railroad right of way; and

(7) an activity that is created primarily or exclusively to qualify an area as an unzoned commercial or industrial area.

(d) [~~(c)~~] For the purposes of this section, a building is not primarily used as a residence if more than 50 percent of the building's square footage is used solely for the business activity.

(e) [~~(d)~~] A sign is not required to meet the requirements of subsection [~~subsections~~] (a)(2)(C) (as clarified by subsection (d) [~~(c)~~] of this section), (a)(2)(D), (c)(3) [~~(b)(3)~~], or (c)(4) [~~(b)(4)~~] of this section to maintain conforming status if the permit for the sign was issued before the effective date of this section.

§21.182. Sign Face Size and Positioning.

(a) A sign face may not exceed:

(1) 672 square feet in area;

(2) 25 feet in height; and

(3) 60 feet in length.

(b) For the purposes of this section, border and trim are included as part of the sign face, and the base, apron, supports, and other structural members, are excluded as part of the sign face.

(c) Notwithstanding the area limitation provided by subsection (a)(1) of this section, one or more temporary protrusions may be added to a sign, provided that[~~:~~]

[~~(1)~~] the sign face, including the protrusions, meets the height and length limitations of subsection (a) of this section and: [~~;~~]

(1) the area of a protrusion is located exclusively inside of the sign face border and trim; or

(2) the area of the protrusion is outside of the sign face border and trim, as indicated on the sign permit, and does not exceed 10 [~~35~~] percent of the permitted area. [~~indicated on the sign permit; and~~]

[~~(3) the sign face, including the area of the protrusions, does not exceed 907 square feet in area.~~]

[~~(d) The area is measured by the smallest square, rectangle, triangle, circle, or combination that encompasses the entire sign face.~~]

(d) [~~(e)~~] A sign may have two or more sign faces that are placed back-to-back, side-by-side, stacked, or in "V" type construction with not more than two faces presented in each direction. If such an arrangement is used, the sign structure or structures are considered to be one sign for all purposes. Two sign faces which together exceed 700 [~~907~~] square feet in area[~~, including temporary protrusions,~~] may not face in the same direction.

(e) [~~(f)~~] Two sign faces that face in the same direction may be presented as one face by covering both faces and the area between the faces with an advertisement, as long as the size limitations of subsection (a) of this section are not exceeded.

(f) A sign may not have a moveable protrusion unless authorized under Division 2 of this subchapter (relating to Electronic Signs).

§21.190. Lighting of and Movement on Signs.

(a) A sign may not contain or be illuminated by flashing, intermittent, or moving lights, including any type of screen using animated or scrolling displays, except that this subsection does not apply to a sign that only provides public service information, such as time, date, temperature, weather, or similar information.

(b) Except for a relocated sign, any new sign may be illuminated but only by:

(1) upward lighting of no more than 4 luminaires per direction of the sign face or faces of the structure; or

(2) downward lighting of no more than 4 luminaires per direction of the sign face or faces of the structure.

(c) Lights that are a part of or illuminate a sign:

(1) must be shielded, directed, and positioned to prevent beams or rays of light from being directed at any portion of the traveled ways of a regulated highway;

(2) may not be of such intensity or brilliance as to cause vision impairment of a driver of any motor vehicle on a regulated highway or otherwise interfere with the driver's operation of a motor vehicle; and

(3) may not obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(d) [~~A temporary protrusion on a sign may be animated only if it does not create a safety hazard to the traveling public.~~] A temporary protrusion may not be illuminated by flashing or moving lights or enhanced by reflective material that creates the illusion of flashing or moving lights.

(e) Reflective paint or reflective disks may be used on a sign face only if the paint or disks do not:

(1) create the illusion of flashing or moving lights; or

(2) cause an undue distraction to the traveling public.

(f) A neon light may be used on a sign face only if:

(1) the light does not flash;

(2) the light does not cause an undue distraction to the traveling public; and

(3) the permit for the sign specifies that the sign is an illuminated sign.

(g) This division does not prohibit a temporary protrusion area of the sign face that displays only [~~alphabetical or~~] numerical characters and that satisfies this subsection and the requirements of §21.182 of this division (relating to Sign Face Size and Positioning)[~~, relating to a temporary protrusion~~]. The display on the temporary protrusion may be a digital or other electronic display, but if so:

(1) it must consist of a stationary image;

(2) it may not change more frequently than four times in any 24 hour period; and

(3) the process of any change of display must be completed within two minutes [~~minute~~].

§21.191. Repair and Maintenance.

(a) The following are considered to be routine maintenance activities that do not require an amended permit:

(1) the replacement of nuts and bolts;

(2) nailing, riveting, or welding;

(3) cleaning and painting;

(4) manipulation of the sign structure to level or plumb it;

(5) changing of the advertising message;

(6) the replacement of minor parts if the materials of the minor parts are the same type as those being replaced and the basic design or structure of the sign is not altered;

(7) changing all or part of the sign face structure but only if materials similar to those of the sign face being replaced are used; and

(8) upgrading existing lighting for an energy efficient lighting system.

(b) The following are considered to be customary maintenance activities that may be made but require an amended permit before the initiation of such an activity:

(1) replacement of poles, but only if not more than one-half of the total number of poles of the sign structure are replaced in any 12 month period and the same material is used for the replacement poles; and

(2) adding a catwalk to the sign structure.

(c) The following are examples of substantial changes that may be made but require an amended permit [~~application~~] before the initiation of such an activity:

(1) adding lights to an un-illuminated sign or adding additional lights or adding more intense lighting to an illuminated sign whether or not the lights are attached to the sign structure;

(2) changing the number of poles in the sign structure;

(3) adding permanent bracing wires, guy wires, or other reinforcing devices;

(4) changing the material used in the construction of the sign structure, such as replacing wooden material with metal material;

(5) adding faces to a sign or changing the sign configuration;

(6) increasing the height of the sign;

(7) changing the configuration of the sign structure, such as changing a "V" sign to a stacked or back to back sign, or a single face sign to a back-to back sign; and

(8) moving the sign structure or sign face in any way unless the movement is made in accordance with §21.192 of this division (relating to Permit for Relocation of Sign).

(d) To add a catwalk to a sign structure the catwalk must meet Occupational Safety and Health Administration guidelines.

§21.192. Permit for Relocation of Sign.

(a) A sign may be relocated in accordance with this section, §21.193 of this division (relating to Location of Relocated Sign), §21.194 of this division (relating to Construction and Appearance of Relocated Sign), and §21.195 of this division (relating to Relocation of Sign within Municipality) if the sign is legally erected and maintained and will be within the highway right of way as a result of a highway construction project or if the sign is legally erected and maintained and the relocation will further the intended purposes of the Highway Beautification Act of 1965 (23 U.S.C. §§131, 136, 319).

(b) To relocate a sign under this section, the permit holder must obtain a new permit under §21.164 of this division (relating to Decision on Application), but the permit fee is waived.

(c) To receive a new permit to relocate a sign under this section, the permit holder must submit a new permit application that identifies that the application is for the relocation of an existing sign due to a highway construction project. The new location must meet all local codes, ordinances, and applicable laws.

(d) The permit holder must receive the permit approving the relocation of the existing sign before applying for an amended permit under §21.174 of this division (relating to Amended Permit) to change the sign structure.

(e) [~~(d)~~] Notwithstanding other provisions of this section, if only a part of a sign will be located within the highway right of way as a result of the construction project, the sign owner may apply to amend the existing permit for the sign to authorize:

(1) the adjustment of the sign face on a monopole sign that would overhang the proposed right of way and the required five foot setback from that location to the land on which the sign's pole is located, including adding a second pole if required to support the adjustment for a legal non-conforming monopole sign;

(2) the relocation of the poles and sign face of a multiple sign structure that is [~~are~~] located in the proposed right of way from the proposed right of way and the required five-foot setback to the land on which the other poles of the sign structure are located; or

(3) a reduction in the size of a sign structure that is located partially in the proposed right of way and the required five-foot setback so that the sign structure and sign face are removed from the proposed right of way and the required five-foot setback.

(f) [~~(e)~~] A permit application for the relocation of a sign must be submitted within 36 months after the earlier of the date the original sign was removed or the date the original sign was required to move. The sign owner is required to continue to renew the sign permit and pay the permit renewal fee for the sign to remain eligible for relocation. The relocation permit issued must be maintained in accordance with §21.172 of this division (relating to Permit Renewals).

(g) The department may make an exception to the requirement of §21.172(d) of this division, or approve one change in location for a permit issued under this section if:

(1) the permit is valid at the time of the request;

(2) the request is submitted within the period described by subsection (f) of this section; and

(3) the sign owner demonstrates to the satisfaction of the department good cause for the exception or change, 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.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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DIVISION 2. ELECTRONIC SIGNS

43 TAC §§21.251, 21.253, 21.255

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads; Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses; Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.251. Definition; Exception to Application of Division.

(a) In this division, "electronic sign" means a sign, display, or device that changes its message or copy by programmable electronic or mechanical processes.

(b) This division does not apply to a sign that is an electronic sign solely because it contains a temporary protrusion described by §21.190(g) of this subchapter (relating to Lighting of and Movement on Signs).

§21.253. Issuance of Permit.

(a) The department will issue a permit for an electronic sign if the application for the permit:

(1) satisfies the requirements of this division and any applicable requirements of Division 1 of this subchapter (relating to Signs); and

(2) has attached to it:

(A) a certified copy of the permit issued by the municipality that gives permission for the electronic sign at the site specified in the permit application; or

(B) if the municipality does not issue permits, a certified copy of written permission from the municipality for the electronic sign at the site specified in the permit application [~~from the municipality~~].

(b) A permit from the department is required for the erection of an electronic sign even if the requested sign location is within a city certified under §21.200 of this subchapter [~~chapter~~] (relating to Local Control).

§21.255. Location.

(a) An electronic sign may be located, relocated, or upgraded only along a regulated highway and within:

(1) the corporate limits of a municipality that allows electronic signs under its sign or zoning ordinance; or

(2) within the extraterritorial jurisdiction of a municipality described by paragraph (1) of this subsection that under state law has extended its municipal regulation to include that area.

(b) Two electronic signs may be located on the same sign structure if each sign face is visible only from a different direction of travel. An electronic sign may not be located within 1,500 feet of another electronic sign on the same highway if facing the same direction of travel or if the sign will be located in a political subdivision that is authorized to exercise control under §21.200 of this subchapter (relating to Local Control), the sign spacing may not violate the minimum spacing requirements of the applicable Texas federal and state agreement.

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

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Texas Department of Transportation
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SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

43 TAC §§21.402, 21.409, 21.412 - 21.414, 21.416, 21.417, 21.421 - 21.425, 21.428, 21.433 - 21.435, 21.449, 21.457

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on

primary roads; Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses; Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.402. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Erect--To construct, build, raise, assemble, place, affix, attach, embed, create, paint, draw, or in any way bring into being or establish.

(4) License--An outdoor advertising license issued by the department.

(5) [~~(4)~~] Main-traveled way--The through traffic lanes exclusive of frontage roads, auxiliary lanes, and ramps.

(6) Military service member--A person who is currently serving in the Armed Forces of the United States, in a reserve component of the United States, including the National Guard, or in the state military service of any service.

(7) Military spouse--A person who is married to a military service member who is currently on active duty.

(8) 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.

(9) Nonconforming sign--A sign that was lawfully erected but that no longer complies with a law or rule because of changed conditions or because the law or rule was amended after the sign was erected or that fails to comply with a law enacted or rule adopted after the sign was erected.

(10) Nonprofit sign--A sign that is erected and maintained by a nonprofit organization under a permit issued under §21.457 of this subchapter (relating to Nonprofit Sign Permit).

(11) [~~(5)~~] Permit--Written [~~The~~] authorization granted for the erection of a sign, subject to this subchapter and Transportation Code, Chapter 394.

(12) [~~(6)~~] Person--An individual, association, partnership, limited partnership, trust, corporation, or other legal entity.

(13) [~~(7)~~] Portable sign--A sign designed to be mounted on a trailer, bench, wheeled carrier, or other non-motorized mobile structure or on skids or legs.

(14) Processing Area--An area where actions or operations are accomplished that contribute directly to a particular commercial or industrial purpose and are performed during established activity hours.

(15) Public park--A public park, forest, playground, nature preserve, or scenic area designated and maintained by a political subdivision or governmental agency.

(16) [~~(8)~~] Rural road--A road, street, way, highway, thoroughfare, or bridge that is located in an unincorporated area and is not privately owned or controlled, any part of which is open to the public for vehicular traffic, and over which the state or any of its political subdivisions have jurisdiction.

(17) [~~(9)~~] Sign--A thing that is designed, intended, or used to advertise or inform, including a sign, display, light, device, figure, painting, drawing, message, plaque, placard, poster, billboard, logo, or symbol.

(18) [~~(10)~~] Sign face--The part of the sign that contains the advertising or information contents and is distinguished from other parts of the sign and another sign face by borders or decorative trim. The term does not include a lighting fixture, apron, or catwalk unless it displays a part of the advertising or information contents of the sign.

(19) [~~(11)~~] Sign structure--All of the interrelated parts and materials [~~, such as beams, poles, braces, apron, catwalk, and stringers,~~] that are used, designed to be used, or intended to be used to support or display advertising or information contents. The term includes at a minimum, beams, poles, braces, apron, frame, catwalk, stringers, and a sign face.

(20) Visible--Capable of being seen whether or not legible or identified without visual aid by a person of normal visual acuity.

§21.409. Permit Application.

(a) To obtain a permit for a sign, a person must file an application in a form prescribed by the department. The application at a minimum must include:

(1) the complete name and address of the applicant;

(2) the original signature of the applicant;

(3) the proposed location and description of the sign;

(4) the complete legal name and address of the owner of the designated site;

(5) the appraisal district property tax identification number of the designated site [~~a statement of whether the requested sign is located within an incorporated city or a city's extraterritorial jurisdiction~~];

(6) the original signature of the site owner [~~owner's~~] or the site owner's authorized representative, with appropriate documentation from the site owner authorizing the person to act as the site owner's representative [~~representative's original signature~~] on the application demonstrating:

(A) consent to the erection and maintenance of the sign; and

(B) right of entry onto the property of the sign location by the department or its agents;

(7) information that details how and the location from which the sign will be erected and maintained; and

(8) additional information the department considers necessary to determine eligibility.

(b) The application must be:

(1) notarized;

(2) sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043; and

(3) accompanied by the fee prescribed by §21.424 of this subchapter (relating to Permit Fees).

(c) The application must include a sketch that shows the means of access to the sign.[:]

[(1) the location of the poles of the sign structure;]

[(2) the exact location of the sign faces in relation to the sign structure;]

[(3) the means of access to the sign; and]

[(4) the distance from the buildings, landmarks, right of way line, other signs, and other distinguishable features of the landscape.]

§21.412. Permit Application Review.

(a) The department will consider permit applications in the order of the receipt of the applications.

(b) If an application is rejected [returned to an applicant] because it is not complete or has incorrect information, the application loses its priority position and a copy of the application will be sent to the applicant outlining the reasons the application was rejected.

(c) The department will hold an application that is for the same site as or a conflicting site with that of an application that the department previously received until the department makes a final decision on the previously received application [or returns it to the applicant]. The department will notify the applicant that the applicant's application is being held because an application for the same or a conflicting site was previously received. For the purposes of this subsection, the date of a final decision on an application is:

(1) the date of the final decision on an appeal under §21.418 of this subchapter (relating to Appeal Process for Permit Denials); or

(2) if an appeal is not filed within the period provided by §21.418 of this subchapter, on the 46th day after the date the denial notice was received under §21.413 of this subchapter (relating to Decision on Application).

(d) The department will review the permit application for completeness, correctness, and compliance with all requirements of this subchapter. Measurements will be taken at the site to determine if the sign placement meets the spacing and location requirements.

(e) If an applicant has indicated on the permit application that an existing sign structure that causes conflict with the new designated sign site will be removed, the department may provide a conditional approval in writing to the applicant if all other requirements of this subchapter are met.

§21.413. Decision on Application.

(a) The department will make a decision on an application within 45 days of the date of receipt of the application by the Right of Way Division. If the decision cannot be made within the 45 day period, the department will notify the applicant of the delay providing the reason for the delay, and provide an estimate of when the decision will be made.

(b) If the permit application is approved, the department will issue a permit for the sign by sending a copy of the approved application [and a sign permit plate] to the applicant.

(c) If an applicant has received a conditional approval under §21.163(e) of this chapter (relating to Permit Application Review), the applicant must remove the existing conflicting structure and provide proof, such as photographs, to the department within 10 business days after the date that conditional approval is sent. Upon verification of the removal of the conflicting sign, the department will issue a letter of approval with the permit number for the sign and a copy of the approved application to the applicant.

(d) [(c)] If the permit application is not approved, the department will send a copy of the denied application and a notice that states the reason for the denial.

(e) [(d)] If the permit [an] application is denied, the department will notify the landowner identified on the permit application of the denial by written notice. The notice is for informational purposes only, and does not convey any rights to the landowner. The landowner may not appeal the denial unless the landowner is also the applicant.

§21.414. Sign Permit Plate.

(a) If, at the time of inspection, the sign is built in accordance with this chapter and the approved permit application, the department will mail the applicant the permit plate to attach to the sign structure.

(b) [(a)] On receipt of the sign permit plate, the [The] sign owner shall securely attach the sign permit plate to the part of the sign structure that is nearest to the rural road and visible from the closest right of way not later than the 30th day after the date that the permit plate is mailed to the sign owner [the sign is erected].

(c) [(b)] The sign permit plate may not be removed from the sign.

(d) [(c)] The sign permit plate must remain visible from the closest right of way at all times.

(e) [(d)] If a sign permit plate is lost or stolen or becomes illegible, the sign owner must submit to the department a request for a replacement plate in a form prescribed by the department accompanied by the replacement plate fee prescribed by §21.424 of this subchapter (relating to Permit Fees).

(f) [(e)] Failure to apply for a replacement permit plate, to [or] attach a [the] plate to the sign structure as required in subsection (b) [(a)] of this section within 60 days after [of] the department mails the permit plate or to ensure visibility of an attached plate [date of written notification from the department that the permit plate is not visible or attached] may result in an enforcement action under §21.425 or §21.426 of this subchapter (relating to Cancellation of Permit and Administrative Penalties, respectively).

§21.416. Commercial or Industrial Activity.

(a) For the purposes of this subchapter, a governmental, commercial or industrial activity is an activity that:

(1) is customarily allowed only in a zoned commercial or industrial area; and

(2) is conducted in a permanent building or structure affixed to the real property that:

(A) has an indoor restroom, running water, functioning electrical connections, and permanent flooring, other than dirt, gravel, or sand;

(B) is visible from the traffic lanes of the main-traveled way;

(C) is not primarily used as a residence;

(D) has at least 400 square feet of its interior floor space devoted to the activity; and

(E) is within 200 feet of the highway right of way.

(b) For the purposes of this subchapter, a building or structure is a permanent building or structure if it is affixed on pier and beam or a concrete slab and if it:

(1) is not on skids or axles; and

(2) does not have a towing device, such as hitch or tongue, attached.

(c) [~~(b)~~] The following are not commercial or industrial activities:

(1) agricultural, forestry, ranching, grazing, farming, and related activities, including the operation of a temporary wayside fresh produce stand;

(2) an activity that is conducted only seasonally;

(3) an activity that has not been conducted at its present location for at least 180 days;

(4) an activity that is not conducted by at least one person who works for the activity [~~business~~] at the activity site for at least 25 hours per week on at least five days per week;

(5) the operation or maintenance of:

(A) an outdoor advertising structure;

(B) a recreational facility, such as a campground, golf course, tennis court, wild animal park, or zoo, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(C) an apartment house or residential condominium;

(D) a public or private preschool, secondary school, college, or university, other than a trade school or corporate training campus;

(E) a quarry or borrow pit, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(F) a cemetery; or

(G) a place that is primarily used for worship;

(6) an activity that is conducted on a railroad right of way; and

(7) an activity that is created primarily or exclusively to qualify an area as an unzoned commercial or industrial area.

(d) [~~(c)~~] For the purposes of this section, a building is not primarily used as a residence if more than 50 percent of the building's square footage is used solely for the business activity.

(e) [~~(d)~~] A sign is not required to meet the requirements of subsection [~~subsections~~] (a)(2)(C) (as clarified by subsection (d) [~~(c)~~] of this section), (a)(2)(D), (c)(3) [~~(b)(3)~~], or (c)(4) [~~(b)(4)~~] of this section to maintain conforming status if the permit for the sign was issued before the effective date of this section.

§21.417. Erection, Access and Maintenance from Private Property.

(a) The department will not issue a permit for a sign unless the applicant demonstrates in the permit application by sketch that it can be erected or maintained from private property with a clear path that is unobstructed.

(b) If at any time the means of access to the sign site and structure change on the private property from the original access depicted in the permit application, the sign owner must provide an updated sketch of the new means of access to the sign site and sign structure to the department. Failure to provide a current sketch of the means of access to the sign may result in a cancellation of the permit under §21.425 of this subchapter (relating to Cancellation of Permit).

(c) If the department finds evidence that vegetation on the right of way has been destroyed, without department authorization, in order to access the location designated as the sign site, the permit will be denied.

§21.421. Permit Renewals.

(a) To continue in effect, a permit must be renewed annually.

(b) A permit is eligible for renewal if the sign for which it was issued continues to meet all applicable requirements of this subchapter and Transportation Code, Chapter 394.

(c) To renew the permit, the permit holder must file with the department a written application in a form prescribed by the department accompanied by the applicable fees prescribed by §21.424 of this subchapter (relating to Permit Fees). The application with all applicable fees must be received by the department before the 46th day after the date of the permit expiration.

(d) A permit may not be renewed if the sign for which it was issued is not erected to the extent that it includes a sign face before the first anniversary of the date the permit was issued.

(e) The department will provide a renewal notification to the licensee at least 30 days before the date of the permit expiration. If [~~and if~~] the permit is not renewed before it expires, not later than 30 [~~the department within 20~~] days after the date of expiration the department will provide notification to the license holder of the opportunity to file a late renewal with all applicable fees.

(f) The department will inspect the sign site and the sign structure on or after the first anniversary of the date of permit's issuance.

(g) [~~(f)~~] If on the date of the inspection under subsection (f) of this section [~~one year after the date the department issues the permit,~~] the sign structure is not built to the full extent approved by the permit with respect to dimensions, lighting, height, or number of faces, the department will adjust the permit to reflect the dimensions, lighting, height, and number of faces of the sign structure as they exist on that date. The permit will be eligible for renewal only for the dimensions, lighting, height, and number of faces as adjusted by the department.

(h) [~~(g)~~] The documentation and the fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.422. Transfer of Permit.

(a) A sign permit may be transferred only with the written approval of the department.

(b) The [~~To transfer one or more sign permits, the~~] permit holder must send to the department a written request to transfer a sign permit in a form prescribed by the department accompanied by the applicable fees [~~prescribed transfer fee~~] prescribed by §21.424 of this subchapter (relating to Permit Fees).

(c) At the time of the transfer, both the transferor and the transferee must hold a valid license issued under §21.153 of this chapter (relating to License Issuance) or §21.450 of this subchapter (relating to License Issuance), except as provided by subsections (f) - (h) of this section.

(d) The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

(e) If the request is approved, the department will send to the transferor and to the transferee a copy of the approved permit transfer form.

(f) A permit issued to a nonprofit organization under §21.457 of this subchapter (relating to Nonprofit Sign Permit) may be transferred to another nonprofit organization that does not hold a license issued under §21.153 of this chapter or §21.450 of this subchapter, if the sign will be maintained as a nonprofit sign.

(g) A permit issued to a nonprofit organization under §21.457 of this subchapter may be converted to a regular permit and transferred to a person that is not a nonprofit organization if the transferee holds a license for the county in which the sign is located at the time of the transfer and the sign meets all of the requirements of this subchapter.

(h) The department may approve the transfer of one or more sign permits from a transferor [~~whose license has expired~~] to a person who holds a license, with or without the signature of the transferor, if the person provides to the department:

(1) legal documents showing the sign has been sold; [~~and~~]

(2) documents that indicate that the transferor is dead or cannot be located; or[~~.~~]

(3) a court order demonstrating the new ownership of the sign permit.

(i) The department will not approve the transfer [~~of a permit~~] if cancellation of the permit is pending or has been abated awaiting the outcome of an administrative hearing.

(j) The department will approve a transfer only if the permit is valid.

§21.423. Amended Permit.

(a) To perform customary maintenance or to make substantial changes to the sign or sign structure under §21.434 of this subchapter (relating to Repair and Maintenance) a permit holder must obtain an amended permit before initiating any action to the sign structure.

(b) To obtain an amended permit, the permit holder must submit an amended permit application on a form prescribed by the department. The amended permit application must provide the information [~~that provides the information~~] required under §21.409 of this subchapter (relating to Permit Application) [~~that is~~] applicable to an amended permit and indicates the change from the information in the original application for the sign permit. The amended application is [~~permit will~~] not required to obtain [~~require~~] the signature of the land owner [~~or city representative~~].

(c) The new sign face size, configuration, height, lighting, or location must meet all applicable requirements of this subchapter.

(d) The holder of a permit for a nonconforming sign may apply for an amended permit to perform eligible customary maintenance under §21.434 of this subchapter. An amended permit will not be issued for a substantial change, as described by §21.434(c) of this subchapter, to a nonconforming sign.

(e) Making a change to a sign, except as provided by subsection (h) of this section, [~~that requires an amended permit~~] without first obtaining an amended permit is a violation of this subchapter and will result in an administrative enforcement action.

(f) The department will make a decision on an amended permit application within 45 days of the date receipt of the amended permit application in the Right of Way Division. If the decision cannot be made within the 45 day period the department will notify the applicant of the delay, provide the reason for the delay, and provide an estimate for when the decision will be made.

(g) If an amended permit application is denied, the applicant may file a request with the executive director for an appeal using the same procedures found in §21.170 of this chapter (relating to Appeal Process for Permit Denials).

(h) In the event of a natural disaster the department may waive the requirement that a required amended permit be issued prior to the repair of a conforming sign. If the department waives this requirement the amended permit must be submitted within 60 days of the completion of the repairs. If the repairs are in violation of these rules or the permit holder fails to submit the amended permit application the sign is subject to enforcement and removal actions.

(i) An amended permit is valid for one year after the date of the department's approval of the amended permit application. The provisions of this subchapter relating to a permit, including §21.421(g) [~~§21.421(f)~~] of this subchapter (relating to Permit Renewals), apply to the amended permit. The date of the department's approval of the amended permit application is considered to be the amended permit's date of issuance.

(j) The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

(k) If a sign is built with a smaller face than the size shown on the permit application or if the face is reduced in size after it is built, an amended permit will be required to increase the size of the face.

§21.424. Permit Fees.

(a) The amounts of the fees related to permits under this subchapter are:

(1) $100 for an original or amended permit for a sign;

(2) $75 for the renewal of a permit;

(3) $25 for the transfer of a permit [~~up to a maximum of $2,500 for a single transaction regardless of the location of the sign~~]; and

(4) $25 for a replacement sign permit plate.

(b) In addition to the $75 annual renewal fee, an additional late fee of $100 is required for a renewal of a permit that is received before the 46th day after the permit expiration date.

(c) A fee prescribed by this section is payable by check, cashier's check, or money order. If a check or money order is dishonored upon presentment, the permit, renewal, or transfer is void.

§21.425. Cancellation of Permit.

(a) The department may [~~will~~] cancel a permit for a sign if the sign:

(1) is removed, unless the sign is removed and re-erected at the request of a condemning authority;

(2) is not maintained in accordance with this subchapter or Transportation Code, Chapter 394;

(3) is not accessible as depicted in permit application;

(4) [~~(3)~~] is damaged beyond repair, as determined under §21.439 of this subchapter (relating to Discontinuance of Sign Due to Destruction);

(5) [~~(4)~~] is abandoned, as determined under §21.427 of this subchapter (relating to Abandonment of Sign);

(6) [(5)] is erected after the effective date of this section and is more than twenty [not built within 20] feet from [of] the location described in the permit application, or is built within twenty [20] feet of the location described in the permit application but at a location that does not meet all spacing requirements of this chapter or [in accordance with the sketch or] other assertions contained in the permit application;

(7) [(6)] is repaired [or altered] without obtaining a required amended permit under §21.423 of this subchapter (relating to Amended Permit);

(8) is altered in violation of this subchapter or Transportation Code, Chapter 394;

(9) [(7)] is built by an applicant who uses false information on a material issue of the permit application;

(10) [(8)] is erected, repaired, or maintained in violation of §21.441 of this subchapter (relating to Destruction of Vegetation and Access from Right of Way Prohibited);

(11) [(9)] has been made more visible by the permit holder clearing vegetation from the highway right of way in violation of §21.441 of this subchapter;

(12) [(10)] is in an unzoned commercial or industrial area and the department has evidence that an activity supporting the unzoned commercial or industrial area was created primarily or exclusively to qualify the area as an unzoned commercial or industrial area and that no business has been conducted at the activity site within one year; or

(13) [(11)] does not have the permit plate properly attached under §21.414 of this subchapter (relating to Sign Permit Plate).

(b) Before initiating an enforcement action under this section, the department will notify a sign owner in writing of a violation of subsection (a)(3) - (7) or (13) [(a)(5) or (11)] of this section and will give the sign owner 60 days to correct the violation, [and] provide proof of the correction, and if required, obtain an amended permit from [to] the department.

(c) Upon determination that a permit should be canceled, the department will mail a notice of cancellation to the address of the record license holder. The notice must state:

(1) the reason for the cancellation;

(2) the effective date of the cancellation;

(3) the right of the permit holder to request an administrative hearing on the cancellation; and

(4) the procedure for requesting a hearing and the period for filing the request.

(d) A request for an administrative hearing under this section must be in writing and delivered to the department within 45 days after the date that the notice of cancellation is received.

(e) If timely requested, an administrative hearing will be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case) and the cancellation will be abated until the cancellation is affirmed by order of the commission.

(f) A permit holder may voluntarily cancel a permit by submitting a request in writing after the sign for which the permit was issued has been removed. Subsections (c) - (e) of this section do not apply to a permit voluntarily canceled under this subsection.

(g) The department will notify the landowner identified on the permit application of a cancellation enforcement action. The notice is for informational purposes only, and does not convey any rights to the landowner. The landowner may not appeal the cancellation unless the landowner is also the permit holder.

§21.428. Sign Face Size and Positioning.

(a) An off-premise sign face may not exceed:

(1) 672 square feet in area;

(2) 25 feet in height; and

(3) 60 feet in length.

(b) For the purposes of subsection (a) of this section, border and trim are included as part of the sign face, and the base, apron, supports, and other structural members are excluded as part of the sign face.

(c) Notwithstanding the area limitation provided by subsection (a)(1) of this section, one or more temporary protrusions may be added to a sign, provided that[:]

[(1)] the sign face, including the protrusions, meets the height and length limitations of subsection (a) of this section and:[:]

(1) the area of a protrusion is located exclusively inside of the sign face border and trim; or

(2) the area of the protrusion is outside of the sign face border and trim, as indicated on the sign permit, and does not exceed 10 [35] percent of the permitted area. [indicated on the sign permit; and]

[(3) the sign face, including the area of the protrusions, does not exceed 907 square feet in area.]

[(d) The area is measured by the smallest square, rectangle, triangle, circle, or combination that encompasses the entire sign face.]

(d) [(e)] A sign may not be erected that has more than two faces fronting a particular direction of travel on the main-traveled way.

(e) [(f)] A sign erected in a back-to-back or V-type configuration, may have only one face fronting a particular direction of travel.

(f) [(g)] A sign face that exceeds 454 square feet in area, including cutouts, may not be stacked on or placed side by side with another sign face. Two sign faces may not be stacked or placed side by side if combined they exceed 700 [907] square feet in area.

(g) [(h)] A sign face may consist of commercial electronic variable message signs (CEVMS), otherwise referred to as rotating slat signs or tri-vision signs, provided that the rotation is completed within one second and the message is stationary for at least 10 seconds following a rotation.

(h) A sign may not have a moveable protrusion in this subchapter.

[(i) If a sign is built with a smaller face than the size shown on the permit application or if the face is reduced in size after it is built, an amended permit will be required to increase the size of the face.]

§21.433. Lighting of and Movement on Signs.

(a) A sign may not contain or be illuminated by any flashing, intermittent, or moving lights, including any type of screen using animated or scrolling displays, [light] except that this subsection does not apply to a sign that only provides public service information, such as time, date, temperature, or weather, or similar information.

(b) Except for a relocated sign, any new sign may be illuminated but only by:

(1) upward lighting of no more than four luminaires per direction of the sign face or faces of the structure; or

(2) downward lighting of no more than four luminaires per direction of the sign face or faces of the structure.

(c) Lights that are a part of or illuminate a sign:

(1) must be shielded, directed, and positioned to prevent beams or rays of light from being directed at any portion of the traveled ways of a regulated rural road;

(2) may not be of such intensity or brilliance as to cause vision impairment of a driver of any motor vehicle on a regulated rural road or otherwise interfere with the driver's operation of a motor vehicle; and

(3) may not obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(d) [~~A temporary protrusion on a sign may be animated only if it does not create a safety hazard to the traveling public.~~] A temporary protrusion may not be illuminated by flashing or moving lights or enhanced by reflective material that creates the illusion of flashing or moving lights.

(e) Reflective paint or reflective disks may be used on a sign face only if the paint or disks do not:

(1) create the illusion of flashing or moving lights; or

(2) cause an undue distraction to the traveling public.

(f) A neon light may be used on a sign face only if:

(1) the light does not flash;

(2) the light does not cause an undue distraction to the traveling public; and

(3) the permit for the sign specifies that the sign is an illuminated sign.

(g) This subchapter does not prohibit a temporary protrusion area of the sign face that displays only [~~alphabetical or~~] numerical characters and that satisfies this subsection and the requirements of §21.428 of this subchapter (relating to Sign Face Size and Positioning) [~~relating to a temporary protrusion~~]. The display on the temporary protrusion may be a digital or other electronic display, but if so:

(1) it must consist of a stationary image;

(2) it may not change more frequently than four times in any 24 hour period; and

(3) the process of any change of display must be completed within two minutes.

§21.434. Repair and Maintenance.

(a) The following are considered to be routine maintenance activities that do not require an amended permit:

(1) the replacement of nuts and bolts;

(2) nailing, riveting, or welding;

(3) cleaning and painting;

(4) manipulation of the sign structure to level or plumb it;

(5) changing of the advertising message;

(6) the replacement of minor parts if the materials of the minor parts are the same type as those being replaced and the basic design or structure of the sign is not altered;

(7) changing all or part of the sign face structure but only if materials similar to those of the sign face being replaced are used; and

(8) upgrading existing lighting for an energy efficient lighting system.

(b) The following are considered to be customary maintenance activities that may be made but require an amended permit prior to the initiation of such an activity:

(1) replacement of poles, but only if not more than one-half of the total number of poles of the sign structure are replaced in any 12 month period and the same material is used for the replacement poles; and

(2) adding a catwalk to the sign structure.

(c) The following are examples of substantial changes that may be made but require an amended permit [~~application~~] before the initiation of such an activity:

(1) adding lights to an un-illuminated sign or adding additional lights or adding more intense lighting to an illuminated sign whether or not the lights are attached to the sign structure;

(2) changing the number of poles in the sign structure;

(3) adding permanent bracing wires, guy wires, or other reinforcing devices;

(4) changing the material used in the construction of the sign structure, such as replacing wooden material with metal material;

(5) adding faces to a sign or changing the sign configuration;

(6) increasing the height of the sign;

(7) changing the configuration of the sign structure, such as changing a "V" sign to a stacked or back to back sign, or a single face sign to a back-to back sign; and

(8) moving the sign structure or sign face in any way unless the movement is made in accordance with §21.435 of this subchapter (relating to Permit for Relocation of Sign).

(d) To add a catwalk to a sign structure the catwalk must meet Occupational Safety and Health Administration guidelines.

§21.435. Permit for Relocation of Sign.

(a) A sign may be relocated in accordance with this section, §21.436 of this subchapter (relating to Location of Relocated Sign), and §21.437 of this subchapter (relating to Construction and Appearance of Relocated Sign) if the sign is legally erected and maintained and will be within the highway right of way as a result of a construction project or if the sign is legally erected and maintained and the relocation will further the intended purposes of the Highway Beautification Act of 1965 (23 U.S.C. §§131, 136, 319).

(b) To relocate a sign under this section, the permit holder must obtain a new permit under §21.409 of this subchapter (relating to Permit Application), but the permit fee is waived.

(c) To receive a new permit to relocate a sign, the permit holder must submit a new permit application that identifies that the application is for the relocation of an existing sign due to a highway construction project. The new location must meet all local codes, ordinances, and applicable laws.

(d) The permit holder of a sign that must be relocated due to a highway construction project desires to amend the sign structure by following the §21.423 of this subchapter (relating to Amended Permit), they must apply and receive the approved relocation permit from the department before filing for an amended permit.

(e) [~~(d)~~] Notwithstanding other provisions of this section, if only a part of a sign will be located within the highway right of way as a result of the construction project, the sign owner may apply to amend an existing permit for the sign to authorize:

(1) the adjustment [~~relocation~~] of the sign face on [~~of~~] a monopole sign that would overhang the proposed right of way and the required five foot setback from that location to the land on which the sign's pole is located, including adding a second pole if required to support the adjustment for a legal non-conforming monopole sign;

(2) the relocation of the poles and sign face of a multiple sign structure that is [~~are~~] located in the proposed right of way from the proposed right of way and the required five foot setback to the land on which the other poles of the sign structure are located; or

(3) a reduction in the size of a sign structure that is located partially in the proposed right of way and the required five foot setback so that the sign structure and sign face are removed from the proposed right of way and the required five foot setback.

(f) [~~(e)~~] A permit for the relocation of a sign must be submitted within 36 months from the earlier of the date the original sign was removed or the date the original sign was required to move. The sign owner is required to continue to renew the sign permit and pay the permit renewal fee for the sign to remain eligible for relocation. A permit issued under this section is subject to §21.421 of this subchapter (relating to Permit Renewal).

§21.449. License Application.

(a) To apply for a license under this subchapter, a person must file an application in a form prescribed by the department. The application must include at a minimum:

(1) the complete legal name, mailing address, and telephone number of the applicant; and

(2) designation of each county in which the applicant's signs are to be erected or maintained.

(b) The application must be signed, notarized, and filed with the department and be accompanied by:

(1) a fully executed outdoor advertiser's surety bond:

(A) in the amount of $2,500 for each county designated under subsection (a)(2) of this section up to a maximum of $10,000;

(B) payable to the commission to reimburse the department for removal costs of a sign that the license holder unlawfully erects or maintains; and

(C) in a form prescribed by the department, executed by a surety company authorized to transact business in this state;

(2) a duly certified power of attorney from the surety company authorizing the surety company's representative to execute the bond on the effective date of the bond; [~~and~~]

(3) the license fee prescribed by §21.453 of this subchapter (relating to License Fees); and[~~.~~]

(4) an indication that the applicant is a military service member, military spouse, or military veteran to ensure priority handling of application.

(c) The documentation and fee required under this section must be sent by certified or regular mail to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.457. Nonprofit Sign Permit.

(a) A nonprofit service club, charitable association, religious organization, chamber of commerce, economic development council, nonprofit museum, or governmental entity may obtain a permit under this section to erect or maintain a nonprofit sign.

(b) To qualify as a nonprofit sign, the sign must:

(1) advertise or promote:

(A) a political subdivision in whose jurisdiction the sign is located or a political subdivision that is adjacent to such a political subdivision; or

(B) the entity that will hold the permit, but may only give information about the meetings, services, events, or location of the entity or provide a message that relates to promotion of all or a part of the political subdivision but that does not include identification of individual merchants; and

(2) comply with each sign requirement under this subchapter from which it is not expressly exempted.

(c) An application for a permit under this section must be in a form prescribed by the department and must include, in detail, the content of the message to be displayed on the sign.

(d) After a permit is issued, the permit holder must obtain approval from the department to change the message of the sign. The department may issue an order of removal of the sign if the permit holder fails to obtain that approval.

(e) If a sign ceases to qualify as a nonprofit sign, the permit for the sign is subject to cancellation under §21.425 of this subchapter (relating to Cancellation of Permit).

(f) If the holder of a permit issued under this section loses its nonprofit status or wishes to change the sign so that it no longer qualifies as a nonprofit sign the permit holder must:

(1) obtain a license under §21.153 of this chapter (relating to License Issuance) or §21.450 of this subchapter (relating to License Issuance); and

(2) convert the sign permit to a permit for a sign other than a nonprofit sign and pay the original permit and renewal fees provided by §21.424 of this subchapter (relating to Permit Fees).

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 January 31, 2014.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: March 16, 2014
For further information, please call: (512) 463-8683

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Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

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

1 TAC §64.9, §64.13

The Office of the Attorney General and its Crime Victim Services Division adopt amendments to Chapter 64, §64.9 and §64.13, concerning Standards of Operation for Local Court-Appointed Volunteer Advocate Programs. The amendments to §64.9 are adopted without changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7389) and will not be republished. The amendments to §64.13 are adopted with changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7389) and will be republished.

The purpose of the amendments is to update §64.9 and §64.13. The nature of the positions sought in court appointed volunteer advocate programs necessitates close proximity and interaction with minor children. These amendments are necessary to add clarity to the requirements for contracts and standards of operations for local programs and requirements for volunteer, employee, and director eligibility.

Summary of Comments and Agency Response

Comments pertaining to §64.13(e)(2) were received from Texas CASA and CASA of Travis County, Inc. Both commenters suggested that §64.13(e)(2) be changed to allow certain felonies, after 10 years, to not be a complete bar for consideration for a volunteer, employee or director position. The OAG agrees and made changes to the proposed subsection as well as additional changes to §64.1(e)(3) - (6) and (8) for clarification regarding other offenses.

The amendments are adopted under Texas Family Code §264.602, requiring the OAG to contract with a volunteer advocate program that provides advocacy services to abused or neglected children and to adopt rules developing standards for that statewide organization.

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

§64.13. Operation of Local Program.

(a) Personnel.

(1) Volunteers:

(A) volunteers must be a minimum of 18 years of age;

(B) duties of volunteers may include, but are not limited to, reviewing applicable records, facilitating prompt and thorough review of the case, interviewing appropriate parties in order to make recommendations regarding the child's best interests, attending court hearings, and making written recommendations to the court concerning the outcome that would be in the child's best interest;

(C) volunteers may not:

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

(ii) give therapeutic counseling;

(iii) make placement arrangements for a child;

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

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

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

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

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

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

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

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

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

(2) Employees:

(A) employees must be a minimum of 18 years of age;

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

(3) Board of Directors:

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

(B) the bylaws of the local program shall include a rotation of directors, as well as term limits for directors and executive committee officers;

(C) directors must be at least of 18 years of age; and

(D) at least one director from each local program should attend annual training provided by the statewide organization or a national association.

(b) Training.

(1) Board of Directors: A local program shall provide annual orientation for new directors and ongoing education for incumbent directors which must include information on:

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

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

(C) the court and child welfare system; and

(D) program governance.

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

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

(B) the operation of the court and the child welfare system; and

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

(3) The training program must consist of at least thirty (30) hours of pre-service training and twelve (12) hours of in-service training per year.

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

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

(c) Administrative Matters.

(1) Requirements: A local program must:

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

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

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

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

(A) the local program's goals and objectives with an action plan and timeline for meeting those goals and objectives;

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

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

(D) personnel policies and procedures;

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

(F) procedures for volunteer recruiting, screening, training and appointment to cases;

(G) policies for support and supervision of volunteers;

(H) a grievance procedure;

(I) a media/crisis communication plan;

(J) a fidelity bond;

(K) accounting procedures;

(L) a weapons prohibition policy approved by the statewide organization; and

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

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

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

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

(d) Application Process.

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

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

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

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

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

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

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

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

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

(2) 10-Year Bar for Certain Felony Offenses:

(A) A volunteer, employee, or director whose background check produces a conviction, guilty plea, plea of no contest, acceptance of deferred adjudication or pending charge that includes any grade of felony is in which less than 10 years have passed from the date of the offense is barred from being a volunteer, employee or director.

(B) A volunteer, employee, or director whose background check produces a conviction, guilty plea, plea of no contest, acceptance of deferred adjudication or pending charge that includes any grade of felony in which 10 years or more have passed from the date of the offense and the offense is not described under paragraph (3) of this subsection may be reviewed by the local program to determine eligibility for a volunteer, employee or director position.

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

(A) Chapter 19, Penal Code;

(B) Chapter 20, Penal Code;

(C) Chapter 20A, Penal Code;

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

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

(F) Chapter 25, Penal Code;

(G) Section 28.02, Penal Code;

(H) Chapter 29, Penal Code;

(I) Section 30.02, Penal Code;

(J) Section 33.021, Penal Code;

(K) Section 42.072, Penal Code;

(L) Chapter 43, Penal Code;

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

(N) Section 48.02, Penal Code;

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

(P) Chapter 71, Penal Code; or

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

(4) 5-Year Bar for Driving or Boating While Intoxicated: A volunteer, employee, or director whose background check produces a conviction, guilty plea, plea of no contest, acceptance of deferred adjudication or pending charge under Section 49.04 or 49.06, Penal Code, in which 5 years or more have passed from the date of the offense may be reviewed by the local program to determine eligibility for a volunteer, employee or director position.

(5) Other Offenses: A volunteer, employee, or director whose background check produces a conviction, guilty plea, plea of no contest, acceptance of deferred adjudication or pending charge that is not an offense described under paragraph (2), (3), or (4) of this subsection may be considered by the local program to determine eligibility for a volunteer, employee or director position.

(6) Pending Charge: If the volunteer, employee, or director has a pending charge described under paragraph (2), (3), or (4) of this subsection, a new review of the applicant may be made if the charge is dismissed or a finding of not guilty or other determination of innocence is entered.

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

(8) Contact with Disqualified Individuals: A volunteer, employee, or director shall be barred if the volunteer, employee, or director knowingly or intentionally places a child through the actions of the volunteer, employee, or director in contact with a person whose criminal history involves an offense described under paragraph (2) or (3) of this subsection.

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

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

(11) Consent and Release Forms: The refusal to execute consent and release forms necessary to conduct a criminal background check shall disqualify an individual from serving as a volunteer, director, or employee.

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

(1) Conduct:

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

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

(2) Confidentiality:

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

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

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

(A) prohibits any personal, business or financial interest that renders a volunteer, director, or employee unable or potentially

unable to perform the duties and responsibilities assigned to that volunteer, director, or employee in an efficient and impartial manner; and

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

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 3, 2014.

TRD-201400433
Katherine Cary
General Counsel
Office of the Attorney General
Effective date: February 23, 2014
Proposal publication date: October 25, 2013
For further information, please call: (512) 936-1207

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING
SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.13

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §33.13, relating to Process to Apply for License or Permit, without changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7403).

The rule as amended conforms to the requirements of Senate Bill 1035, 83rd Legislature, Regular Session, which amended Alcoholic Beverage Code §61.09 to require license applications to be filed directly with the commission instead of with the county. This rule as amended: (1) adds a requirement in subsection (b)(4) that an applicant for a license provide proof of newspaper publication as part of the pre-qualification packet; (2) adds a requirement in subsection (c) that an application will be considered incomplete and withdrawn if additional requested information is not timely provided; and (3) adds subsection (g) to provide that five percent of the license fees collected for each license issued in a county will be transmitted by the commission to the county tax assessor in the month following the issuance of the license.

No comments were received.

The amendment is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 29, 2014.

TRD-201400371
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: February 18, 2014
Proposal publication date: October 25, 2013
For further information, please call: (512) 206-3489

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CHAPTER 41. AUDITING
SUBCHAPTER E. IDENTIFICATION STAMPS

16 TAC §41.72

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of §41.72, relating to Invalidation of Stamps, as proposed in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8729).

The commission recently amended §41.71, Identification Stamps and Local Distributor's Records, to address the requirements regarding identification stamps for both a holder of a local distributor's permit and a retail permittee. That rule change became effective on October 24, 2013. Section 41.72 contains the same requirements regarding identification stamps for retail permittees that are now found in amended §41.71. There is no need to duplicate the requirements for retail permittees in two rules. Since the need for §41.72 no longer exists, the commission repeals the section.

Section 41.72 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the rule no longer exists and that it should be repealed.

No comments were received.

The repeal is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

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 January 29, 2014.

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Martin Wilson
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Texas Alcoholic Beverage Commission
Effective date: February 18, 2014
Proposal publication date: December 6, 2013
For further information, please call: (512) 206-3489

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 216. CONTINUING COMPETENCY

22 TAC §§216.1 - 216.3, 216.5 - 216.11

Introduction. The Texas Board of Nursing (Board) adopts amendments to Chapter 216, §§216.1 - 216.3 and §§216.5 - 216.11, concerning Continuing Competency. The amendments are adopted without changes to the proposed text as published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8742) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §§301.151, 301.303, 301.305, 301.306, and 301.307 and the Health and Safety Code §323.004(b-1) and §323.0045 and are necessary to implement the requirements of Senate Bill (SB) 1058 and SB 1191, both enacted by the 83rd Texas Legislature, Regular Session, and effective September 1, 2013. The adopted amendments also amend the definition of the term "advanced practice registered nurse" for consistency with the Advanced Practice Registered Nurse Consensus Model of the National Council of State Boards of Nursing, correct outdated references and minor typographical errors in the rule text, and replace the term "continuing education" with "continuing nursing education", as appropriate throughout the rule text.

SB 1058

During the past legislative session, the Legislature passed two bills, SB 1058 and SB 1191, affecting continuing education requirements for nurses in this state. SB 1058 created new continuing education requirements related to nursing jurisprudence and nursing ethics and older adult or geriatric care. Under SB 1058, nurses must complete at least two, but no more than four, hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third, two-year licensing period. Additionally, SB 1058 requires nurses whose practice includes older adult or geriatric populations to complete at least two, but no more than six, hours of continuing education relating to older adult or geriatric populations or to maintain certification in an area of practice relating to older adult or geriatric populations. Consistent with these statutory requirements, adopted new §216.3(g) requires every nurse, including APRNs, to complete at least two hours of continuing nursing education (CNE) relating to nursing jurisprudence and nursing ethics before the end of every third, two-year licensing period. The adopted new subsection also sets forth the information that the CNE course must contain. Specifically, the CNE course must contain information related to the Texas Nursing Practice Act, the Board's rules, including §217.11 of this title (relating to Standards of Nursing Practice), the Board's position statements, principles of nursing ethics, and professional boundaries. Further, under the adopted new subsection, completion of the CNE course may be used to fulfill a portion of the CNE requirements of §216.3. Because the content of the nursing jurisprudence and nursing ethics course must include information related to nursing standards, rules, and requirements that are specific to Texas, national certification may not be used to fulfill any portion of a nurse's CNE requirements under adopted new §216.3(g).

Adopted new subsection (h) requires nurses, including APRNs, whose practice includes older adult or geriatric populations to complete at least two contact hours of continuing education in every licensure cycle after January 1, 2014. The continuing education must include information relating to elder abuse, age related memory changes and disease processes, including chronic conditions, and end of life issues. The continuing education may also include information related to health maintenance and health promotion of the older adult or geriatric population. Like adopted new subsection (g), the continuing education required under adopted new subsection (h) may be used to fulfill a portion of a nurse's CNE requirements under §216.3. Unlike adopted new subsection (g), however, national certification related to older adult or geriatric populations that is approved by the Board may be used to fulfill the continuing education requirements of adopted new §216.3(h).

SB 1191

SB 1191, which was also passed during the 83rd Legislative Session, prescribes new training and/or continuing education requirements for nurses. Under SB 1191, all individuals who perform a forensic examination on a sexual assault survivor must have at least basic forensic evidence collection training or the equivalent education. Further, the individual must obtain this training or education prior to performing a forensic examination. The provisions of SB 1191 permit the completion of continuing medical or nursing education courses in forensic evidence collection that are approved or recognized by the appropriate licensing board to satisfy the bill's educational requirements.

SB 1191 is not the only statute that has been passed by the Texas Legislature that relates to forensic evidence collection education. Prior to the passage of SB 1191, the Texas Legislature passed SB 39 (effective September 1, 2005). SB 39 required individuals working in emergency room settings to complete at least two hours of continuing education relating to forensic evidence collection no later than September 1, 2008, or the second anniversary of the initial licensure of the individual, whichever occurred earlier.

The Board enacted rules to implement the requirements of SB 39 in February 2006. Those rules are located in existing §216.3(d). The adopted amendments to subsection (d) are intended to harmonize the new requirements of SB 1191 with the existing requirements of SB 39. The requirements of SB 1191 are broader than the requirements of SB 39 and apply to any individual who performs a forensic examination on a sexual assault survivor, in any setting. The requirements of SB 39 are more targeted and apply only to nurses working in emergency room settings.

Consistent with the provisions of SB 1191, adopted §216.3(d)(1) reiterates that the educational requirements of SB 1191 may be met through the completion of CNE that meets the requirements of the subsection. Further, adopted §216.3(d)(1) provides that the educational requirement is a one-time requirement. While an individual must complete the required CNE prior to performing a forensic examination, the individual must only complete the CNE one time in order to satisfy the educational requirements of the bill. Further, consistent with the terms of SB 1191, adopted §216.3(d)(1) permits APRNs to use continuing medical education in forensic evidence collection that is approved by the Texas Medical Board to satisfy the educational requirements of the bill.

Adopted §216.3(d)(2) implements the existing requirements of SB 39. Under adopted §216.3(d)(2), a nurse, including an APRN, who is employed in an emergency room setting must complete at least two hours of CNE relating to forensic evidence collection. Similar to the continuing nursing education course required under adopted §216.3(d)(1), adopted §216.3(d)(2) specifies that the educational requirement is a one time requirement. Additionally, because the original compliance date in SB

39 (January 1, 2008) has now become obsolete, the adopted amendments require a nurse to complete the educational requirements within two years of the initial date the individual is employed in the emergency room setting. This change ensures that only those individuals who are employed in an emergency room setting are required to complete the education, which is consistent with the intent of SB 39.

Because SB 39 was enacted in 2005, the Board recognizes that many nurses may have already completed CNE related to forensic evidence collection. As such, individuals who completed CNE during the time period of February 19, 2006, through September 1, 2013, will not be required to complete additional CNE related to forensic evidence collection, provided that the CNE met the requirements of the Board's rules relating to forensic evidence collection that were in effect from February 19, 2006, through September 1, 2013. Further, under the adopted amendments, an individual may simultaneously satisfy the educational requirements of SB 39 and SB 1191 by completing a single CNE course related to forensic evidence collection that meets the requirements of the adopted subsection.

The provisions of adopted §216.3(d) are intended to effectuate the intent of SB 39 and SB 1191, while acknowledging individuals who previously completed CNE related to forensic evidence collection. Further, CNE completed under adopted §216.3(d) may be used to fulfill a portion of a nurse's CNE requirements under §216.3. National certification related to forensic evidence collection that is approved by the Board may also be used to fulfill the requirements of adopted §216.3(d).

Remaining Sections

Adopted §216.1 contains definitions for the terms used throughout the chapter. The majority of the adopted amendments correct typographical and grammatical errors and outdated references in the rule text. Two adopted amendments, however, are more substantial in nature.

First, adopted §216.1(2) amends the definition of the term "advanced practice registered nurse". The adopted definition is necessary for consistency with the Advanced Practice Registered Nurse Consensus Model of the National Council of State Boards of Nursing. The Consensus Model is the result of several national nursing organizations' efforts to create a uniform model of regulation across the states of advanced practice registered nurses (APRNs). Consistent with the Consensus Model's definition of "advanced practice registered nurse", adopted §216.1(2) describes the role and responsibilities of an APRN, the required educational preparation and clinical experience of an APRN, and requirements for an APRN's continued competence.

Adopted §216.1(15) is necessary for consistency with SB 406, which was enacted by the 83rd Texas Legislature, and effective November 1, 2013. SB 406 relates to the delegated authority of an APRN to prescribe and/or order drugs and devices. As a result of the enactment of SB 406, the Board repealed Chapter 222 of this title (relating to Advanced Practice Registered Nurses with Prescriptive Authority) and adopted a new Chapter 222 in its place (effective November 20, 2013). The adopted amendments to §216.1(15) are necessary for consistency with the changes made by SB 406 and the requirements of newly adopted Chapter 222.

The adopted amendments to §216.2 include citations to new sections of the Occupations Code, §301.305 and §301.307, which were added during the 83rd Legislative Session, and citations to the Occupations Code §301.304, which was added during the 82nd Legislative Session. Two additional citations are also included, §301.152 and §301.306. Although these sections have been part of the Nursing Practice Act for several years, they are relevant to the Board's authority to require nurses' participation in continuing competency activities for licensure renewal.

The adopted amendments to §216.5 are nonsubstantive in nature and correct grammatical and typographical errors in the section.

The adopted amendments to §216.6 correct grammatical and typographical errors in the section, incorporate the term "CNE" for consistency with terminology used throughout the chapter, and remove existing paragraph (7) from the section because it is contradictory to the existing provisions of §216.3(b).

The adopted amendments to §216.7 correct grammatical and typographical errors in the section, incorporate the term "CNE" for consistency with terminology used throughout the chapter, and increase the amount of time that a licensee must maintain records of completed continuing competency activities from two consecutive renewal periods to three consecutive renewal periods.

The adopted amendments to §§216.8, 216.9, 216.10, and 216.11 correct grammatical and typographical errors in the sections and incorporate the term "CNE" for consistency with terminology used throughout the chapter.

Stakeholder Collaboration. The Board's Nursing Practice Advisory Committee (Committee) met on September 18, 2013, to discuss the proposed amendments to Chapter 216, as well as the provisions of SB 1058 and SB 1191. After its discussions, the Committee voted to recommended the proposed amendments to the Board for adoption. The Committee's recommendations also included recommendations regarding an individual's development and presentation of CNE. In particular, the Committee voted to recommend amendments that would have allowed an individual to receive continuing education credit for developing and presenting a CNE program of at least two hours in length that related to basic forensic evidence collection, nursing jurisprudence and nursing ethics, and older adult or geriatric care.

The Board considered the proposed amendments, the Committee's recommendations, and Staff's recommendations at its October 2013 meeting. Following discussion and deliberation, the Board determined that the Committee's recommended amendments related to an individual's program development and presentation should be removed from the rule proposal prior to its publication. Additionally, the Board charged the Committee with reconsidering a more comprehensive amendment related to CNE program development and presentation. Any recommendations made by the Committee regarding CNE program development and presentation could then be taken up in a future rule proposal, if at all. Following its decision to remove the recommended amendments related to CNE program development and presentation from the rule proposal, the Board voted to approve the publication of the proposed amendments in the *Texas Register.*

The proposed amendments were published in the December 6, 2013, issue of the *Texas Register.* The Board received two written comments on the proposal, which were considered by the Board at its January 2014 meeting. Following consideration of the written comments received, the Board declined to make changes to the proposed rule text and voted to adopt the amendments to Chapter 216 as proposed. The Board's responses to

the written comments received are included in this adoption order.

How the Sections Will Function.

Adopted §216.1 sets out the definitions to be used throughout the chapter. Adopted §216.1(2) amends the definition of "advanced practice registered nurse" to include the role and responsibilities of an APRN, the required educational preparation and clinical experience of an APRN, and requirements for an APRN's continued competence. The term "continuing education" has been amended in adopted §216.1(12) to "continuing nursing education". Further, the definition of "prescriptive authority" in adopted §216.1(15) has been amended to include a reference to the requirements of Chapter 222 of this title. The remaining amendments to this section correct typographical and grammatical errors and are nonsubstantive in nature.

Adopted §216.2 sets out the purpose of continuing competency requirements, which is to ensure that nurses stay abreast of current industry practices, enhance their professional competence, learn about new technology and treatment regimens, and update their clinical skills. Continuing education in nursing includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills and develop attitudes for the enhancement of nursing practice, thus improving health care to the public. Nursing certification is another method of demonstrating continuing competence. Pursuant to authority set forth in the Occupations Code §§301.152, 301.303, 301.304, 301.305, 301.306, and 301.307, the Board requires participation in continuing competency activities for license renewal. The procedures set forth in Chapter 216 provide guidance to fulfilling the continuing competency requirement. The Board encourages nurses to choose continuing education courses that relate to their work setting and area of practice or to attain, maintain, or renew an approved national nursing certification in their practice area, which benefits the public welfare.

Adopted §216.3 sets out the specific continuing competency requirements that a nurse must meet. The adopted amendments to subsections (a), (b), and (c) are not substantive in nature and only correct grammatical and typographical errors.

The amendments to §216.3 are substantive in nature. Adopted §216.3(d) sets out the requirements for nurses who perform forensic medical examinations and who work in emergency room settings. Under adopted §216.3(d)(1), pursuant to the Health and Safety Code §323.004 and §323.0045, a nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who performs a forensic examination on a sexual assault survivor must have basic forensic evidence collection training or the equivalent education prior to performing the examination. This requirement may be met through the completion of CNE that meets the requirements of the adopted subsection. This is a one-time requirement. Further, an APRN may use continuing medical education in forensic evidence collection that is approved by the Texas Medical Board to satisfy this requirement.

Under adopted §216.3(d)(2), a nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who is employed in an emergency room (ER) setting must complete a minimum of two hours of CNE relating to forensic evidence collection that meets the requirements of the adopted subsection within two years of the initial date of the nurse's employment in an ER setting. This is also a one-time requirement.

Pursuant to the adopted §216.3(d)(2), this requirement applies to nurses who work in an ER setting that is: (i) the nurse's home unit; (ii) an ER unit to which the nurse "floats" or schedules shifts; or (iii) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER. Further, a nurse shall be considered to have met the requirements of adopted §216.3(d)(1) and (2) if the nurse: (i) completed CNE during the time period of February 19, 2006, through September 1, 2013; and (ii) the CNE met the requirements of the Board's rules related to forensic evidence collection that were in effect from February 19, 2006, through September 1, 2013. Further, completion of at least two hours of CNE that meets the requirements of the adopted subsection may simultaneously satisfy the requirements of adopted §216.3(d)(1) and (2).

Adopted §216.3(d)(3) provides that a nurse who would otherwise be exempt from CNE requirements during the nurse's initial licensure or first renewal periods under §216.8(b) or (c) of this chapter (relating to Relicensure Process) shall comply with the requirements of §216.3. Further, in compliance with §216.7(b) of this chapter (relating to Responsibilities of Individual Licensee), each licensee is responsible for maintaining records of CNE attendance. Validation of course completion in forensic evidence collection should be retained by the nurse indefinitely, even if a nurse changes employment.

Adopted §216.3(d)(4) states that continuing education completed under the subsection shall include information relevant to forensic evidence collection and age or population specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under the Government Code §420.031 regarding use of a service-approved evidence collection kit and protocol. Content may also include, but is not limited to, documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.

Adopted §216.3(d)(5) states that the hours of continuing education completed under the subsection will count towards completion of the 20 contact hours of CNE required in §216.3(a). Certification related to forensic evidence collection that is approved by the Board may be used to fulfill the requirements of the subsection.

Adopted §216.3(e) provides that a nurse who holds or is seeking to hold a valid volunteer retired (VR) nurse authorization in compliance with the Occupations Code §112.051 and §301.261(e) and §217.9(d) of this title (relating to Inactive Status) must have completed at least 10 hours of CNE as defined in this chapter during the previous biennium, unless the nurse also holds valid recognition as an APRN or is a Volunteer Retired Registered Nurse (VR-RN) with advanced practice authorization in a given role and specialty in the State of Texas. Further, the nurse must have completed at least 20 hours of CE as defined in the chapter if authorized by the Board in a specific advanced practice role and specialty. The 20 hours of CE must meet the same criteria as APRN CE defined under §216.3(c). An APRN authorized as a VR-RN with APRN authorization may not hold prescriptive authority. This does not preclude a registered nurse from placing his/her APRN authorization on inactive status and applying for authorization only as a VR-RN. The nurse is also exempt from fulfilling targeted CE requirements except as required for volunteer retired APRNs.

Adopted §216.3(g) requires each nurse, including an APRN, to complete at least two hours of CNE relating to nursing jurisprudence and nursing ethics before the end of every third, two-year licensing period. The CNE course(s) shall contain information related to the Texas Nursing Practice Act, the Board's rules, including §217.11 of this title (relating to Standards of Nursing Practice), the Board's position statements, principles of nursing ethics, and professional boundaries. The hours of continuing education required under the subsection shall count towards completion of the 20 contact hours of CNE required in §216.3(a). Certification may not be used to fulfill the CNE requirements of the subsection.

Adopted §216.3(h) requires a nurse, including an APRN, whose practice includes older adult or geriatric populations to complete at least two contact hours of CE in every licensure cycle after January 1, 2014. The minimum two contact hours of CE must include information relating to elder abuse, age related memory changes and disease processes, including chronic conditions, and end of life issues. The minimum two contact hours of CE may include information related to health maintenance and health promotion of the older adult or geriatric populations. Certification related to the older adult or geriatric populations that is approved by the Board may also be used to fulfill the CE requirements of the subsection. Further, the hours of continuing education completed under the subsection shall count towards completion of the 20 contact hours of CE required in §216.3(a).

Adopted §216.5 provides that, in addition to those programs reviewed by a Board approved entity, a licensee may attend an academic course that meets the following criteria: (1) the course shall be within the framework of a curriculum that leads to an academic degree in nursing or any academic course directly relevant to the licensee's area of nursing practice; and (2) participants, upon audit by the Board, shall be able to present an official transcript indicating completion of the course with a grade of "C" or better or a "Pass" on a Pass/Fail grading system.

Adopted §216.6 sets forth the following activities that do not meet continuing education requirements for licensure renewal: (1) Basic Life Support (BLS) or cardiopulmonary resuscitation (CPR) courses; (2) in service programs, such as programs sponsored by the employing agency to provide specific information about the work setting and orientation or other programs which address the institution's philosophy; policies and procedures; on-the-job training; and basic CPR; and equipment demonstration; (3) nursing refresher courses, such as programs designed to up-date knowledge or current nursing theory and clinical practice, which consist of a didactic and clinical component to ensure entry level competencies into nursing practice; (4) orientation programs, such as a program designed to introduce employees to the philosophy, goals, policies, procedures, role expectations and physical facilities of a specific work place; (5) courses which focus upon self-improvement, changes in attitude, self-therapy, self-awareness, weight loss, and yoga; (6) economic courses for financial gain, e.g., investments, retirement, preparing resumes, and techniques for job interview; (7) courses which focus on personal appearance in nursing; (8) liberal art courses in music, art, philosophy, and others when unrelated to patient/client care; (9) courses designed for lay people; (10) self-directed study, which is an educational activity wherein the learner takes the initiative and the responsibility for assessing, planning, implementing and evaluating the activity including, but not limited to, academic courses that are audited, or that are not directly relevant to a licensee's area of nursing practice, or that are prerequisite courses such as mathematics, physiology, biology, government, or other similar courses, and authorship; and (11) Continuing Medical Education (CME), unless completed by an APRN in the APRN's role and population focus area of licensure.

Adopted §216.7(b) provides that the licensee shall be responsible for maintaining a record of CNE activities. These records shall document attendance as evidenced by original certificates of attendance, contact hour certificates, or academic transcripts, and copies of these shall be submitted to the Board upon audit. Adopted §216.7(c) requires the records to be maintained by the licensee for a minimum of three consecutive renewal periods or six years.

Adopted §216.8(a) provides that, upon renewal of the license, the licensee shall sign a statement attesting that the CNE or approved national nursing certification requirements have been met. Further, the contact hours must have been completed in the biennium immediately preceding the license renewal. CNE contact hours from a previous renewal period will not be accepted. Additional contact hours earned may not be used for subsequent renewal periods.

Adopted §216.8(b) provides that a candidate licensed by examination shall be exempt from the CNE or approved national nursing certification requirement for issuance of the initial license and for the immediate renewal period following licensure.

Adopted §216.8(c) states that an applicant licensed by endorsement shall be exempt from the CNE or approved national nursing certification requirement for the issuance of the initial Texas license and for the immediate renewal period following initial Texas licensure.

Adopted §216.8(d) provides that a license that has been delinquent for less than four years may be renewed by the licensee showing evidence of having completed 20 contact hours of acceptable CNE or an approved national nursing certification within two years immediately preceding the application for relicensure and by meeting all other Board requirements. A licensee shall be exempt from the continuing education requirement for the immediate renewal period following renewal of the delinquent license.

Adopted §216.8(f) provides that a licensee whose license has been revoked and subsequently applies for reinstatement must show evidence that the continuing competency requirements and other Board requirements have been met prior to reinstatement of the license by the Board.

Adopted §216.9 provides that the Board shall select a random sample of licensees 90 days prior to each renewal month. Audit forms shall be sent to selected licensees to substantiate compliance with the continuing competency requirements. Within 30 days following notification of audit, these selected licensees shall submit an audit form and: (i) documentation as specified in §216.4 and §216.5 of this chapter (relating to Criteria for Acceptable Continuing Education Activity and Additional Criteria for Specific Continuing Education Programs) and any additional documentation the Board deems necessary to verify compliance with continuing education requirements for the period of licensure being audited; or (ii) a copy of the current approved national nursing certification and any additional documentation the Board deems necessary to verify compliance with continuing competency requirements for the period of licensure being audited. Failure to notify the Board of a current mailing address will not absolve the licensee from audit requirements.

Adopted §216.10(b) provides that Board or its designee shall conduct a review in which the appellant may appear in person

to present reasons why the audit decision should be set aside or modified. Adopted §216.10(c) states that the decision of the Board after the appeal shall be considered final and binding.

Finally, adopted §216.11 provides that failure to comply with the Board's continuing competency requirements will result in the denial of renewal.

Summary of Comments and Agency Response.

§216.3

Comment: A commenter representing the Texas Association Against Sexual Assault recommends increasing the requirement for forensic evidence collection CNE from a one-time requirement to a recurring requirement. The commenter states that, prior to the passage of SB 1191, most facilities without sexual assault nurse examiners (SANEs) opted not to perform forensic medical examinations. However, the commenter states that SB 1191 has created a significantly different context where it is more likely that a nurse who is not a certified SANE will be required to provide a forensic medical examination for a sexual assault survivor. As such, the commenter believes that a one-time requirement to receive forensic evidence collection CNE is no longer appropriate. The commenter proposes increasing forensic evidence collection CNE to once every three years. The commenter states that the Board should respond to the increased probability of non-SANE nurses being utilized as sexual assault examiners without a moderate increase in training. Because emergency facilities without SANEs will continue to transfer many, if not most, survivors to be treated by SANEs, emergency room nurses who are not SANEs may only seldom be required to conduct forensic medical exams. The commenter also states that protocols around medical forensic exams are also constantly evolving and training on current protocols will be critical for evidence collections. For emergency room nurses who conduct forensic medical exams infrequently, a recurring CNE will be especially important to periodically refresh previous training. For these reasons, the commenter believes that a three-year recurrence in forensic evidence training strikes an appropriate balance between a reasonable CNE load and the increased likelihood that emergency room nurses will perform forensic medical examinations. The commenter also suggests eliminating the language in proposed §216.3(d)(2)(B) from the rule as adopted.

The commenter also commends the Board's commitment to maximizing nurses' options for CNE compliance and supports the following features of the proposed amendments: ensuring forensic evidence collection CNE is required only for individuals employed in an emergency room setting by requiring training to be completed within two years of the initial date the individual is employed in an emergency room; permitting advanced practice registered nurses (APRNs) to use continuing medical education in forensic evidence collection that is approved by the Texas Medical Board to satisfy educational requirements under SB 1191 and SB 39; permitting national certification related to forensic evidence collection that is approved by the Board to be used to fulfill educational requirements under SB 1191 and SB 39; and expressly stating that the same forensic evidence collection CNE may be used to satisfy training requirements under proposed amended §216.3(d)(1) and (d)(2), as well as to fulfill a portion of a nurse's CNE requirements under §216.3.

Agency Response: The Board declines to make the suggested changes. The Board is charged with protecting the health and welfare of the public. In this role, the Board must appropriately balance the interests of the public with the interests of its licensees. The Board is cognizant of the importance of forensic medical examinations and the competence of the individuals who perform them. However, the Board also understands that not every nurse that works in an emergency room setting will be called upon to perform a forensic medical examination. The adopted amendments are intended to establish the minimum CNE requirements for nurses who work in an emergency room setting and/or perform forensic medical examinations. Under the adopted amendments, an individual must complete the required education prior to performing a forensic medical examination. If the individual is employed in an emergency room setting, the individual must complete the required education within two years of the individual's employment in the emergency room setting. The adopted amendments do not prohibit nurses who perform forensic medical examinations from obtaining additional education or completing additional CNE or from obtaining related certification. Further, the Board anticipates that many nurses who frequently perform forensic medical examinations may choose to obtain additional related education and certification, including SANE certification. Additionally, individual facilities are not affected by the Board's adopted rules; thus, a facility may require its employees to complete additional forensic evidence collection training or CNE or obtain related certification. Further, the Board has determined that it is appropriate to acknowledge individuals who have completed CNE related to forensic evidence collection under the Board's rules that were originally promulgated under the authority of SB 39. The adopted amendments implement the requirements of SB 1191 and continue to effectuate the intent of SB 39. The Board believes that the adopted CNE requirements are adequate to protect the interests of the public, while appreciating the realistic concerns of many nurses who will be required to complete forensic CNE to meet the rule's requirements, but who may never be required to perform a forensic medical examination.

Comment: A commenter representing the Texas Association for Home Care and Hospice (TAHC&H) states that home care nurses are concerned with the prescriptive and restrictive nature of the additional requirements and believe the existing required education is sufficient. These nurses feel that there is a real burden on taxpayers to regulate compliance, employers to provide the education, and professional nurses to maintain compliance, which is not justified by evidence based research to prove sufficient benefit to the public and communities. The commenter states that most of the home care nurses' comments are directed at finding a way to keep the timelines of the new requirements more simple. A major concern is the potential for confusion with the timelines and requirements. The commenter states that home care nurses recommend that the Board find a way for the new timelines to be more closely complimentary to the every two years timeline already in place. Supporting nurses with consistent simple guidelines can help everyone meet and manage compliance with the new requirements better. The commenter further states that it could make it less likely that a nurse would accidentally be out of compliance for licensure. The commenter also states that the newly proposed rules are seen by many home care nurses to be fair and necessary for the safety of patients. Finally, the commenter states that it has been involved working as a stakeholder with the Board and recognizes and supports the Board on these proposed rules.

Agency Response: The Board declines to make any changes to the rule text as adopted. The increased amount of required continuing education set forth in the adopted rule is a direct re-

sult of legislative enactment. Senate Bill (SB) 1058, which was enacted during the 83rd Legislative Session and effective on September 1, 2013, requires nurses to complete at least two, but no more than four, hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third, two-year licensing period. Additionally, SB 1058 requires nurses whose practice includes older adult or geriatric populations to complete at least two, but no more than six, hours of continuing education relating to older adult or geriatric populations or maintain certification in the area of practice relating to older adult or geriatric populations. Additionally, SB 1191, which was also enacted during the 83rd Legislative Session and effective on September 1, 2013, requires all individuals who perform a forensic examination on a sexual assault survivor to have at least basic forensic evidence collection training or the equivalent education prior to performing an examination. Further, SB 39, which was enacted in 2005, continues to be in effect, and requires nurses who are employed in emergency room settings to complete at least two hours of CNE relating to forensic evidence collection within a specified window of time.

The Board recognizes that the new continuing education requirements may result in associated costs of compliance. However, in an effort to defray a portion of such costs, the adopted rule allows the completion of the new continuing education courses to satisfy a portion of a nurse's existing biennial continuing competency requirements. Further, national certification may, in some cases, be used to satisfy the new continuing education requirements, as well as satisfy a nurse's biennial continuing competency requirements. Further, not all nurses will be subject to each of the new continuing education requirements. Under the provisions of the adopted rule, a nurse who has previously completed continuing education in forensic evidence collection (that meets the requirements of the Board's prior rule) will be given credit for the completion of that education and will not be required to repeat that education. Further, the adopted rule permits a nurse to use the completion of continuing education in forensic evidence collection to simultaneously satisfy the continuing education requirements of both SB 1191 and SB 39. Additionally, although the newly enacted legislation authorizes up to 6 hours of continuing education for nursing jurisprudence and nursing ethics and continuing education relating to older adult or geriatric populations, the Board has opted to require nurses to complete only 2 hours of continuing education in these areas at this time, the minimum number of hours of continuing education required by the newly enacted legislation. The Board believes that the adopted rule appropriately implements the requirements and intent of the newly enacted legislation and balances the interests of the Board's licensees, and for that reason, the Board declines to make any changes to the rule text as adopted.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: The Texas Association for Home Care and Hospice; the Texas Association Against Sexual Assault.

Neither for nor against, with changes: None.

Statutory Authority.

The amendments are adopted under the Occupations Code §§301.151, 301.303, 301.305, 301.306, and 301.307 and the Health and Safety Code §323.004(b-1) and §323.0045.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.303(a) provides that the Board may recognize, prepare, or implement continuing competency programs for license holders under Chapter 301 and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including: (i) completion of targeted continuing education programs; and (ii) consideration of a license holder's professional portfolio, including certifications held by the license holder.

Section 301.303(b) states that the Board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period.

Section 301.303(c) provides that, if the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education.

Section 301.303(e) states that the Board may adopt other rules as necessary to implement §301.303.

Section 301.303(f) states that the Board may assess each program and provider under §301.303 a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.

Section 301.303(g) provides that the Board by rule may establish guidelines for targeted continuing education required under Chapter 301. The rules adopted under §301.303(g) must address: (i) the nurses who are required to complete the targeted continuing education program; (ii) the type of courses that satisfy the targeted continuing education requirement; (iii) the time in which a nurse is required to complete the targeted continuing education; (iv) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (v) any other requirement considered necessary by the Board.

Section 301.305(a) states that, as part of a continuing competency program under §301.303, a license holder shall complete at least two hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third two-year licensing period.

Section 301.305(b) provides that the Board shall adopt rules implementing the requirement under §301.305(a) in accordance with the guidelines for targeted continuing education under §301.303(g).

Section 301.305(c) states that the Board may not require a license holder to complete more than four hours of continuing education under §301.305.

Section 301.306(a) states that, as part of continuing education requirements under §301.303, a license holder who is employed to work in an emergency room setting and who is required under Board rules to comply with §301.306 shall complete at least two hours of continuing education relating to forensic evidence collection not later than: (i) September 1, 2008; or (ii) the second anniversary of the initial issuance of a license under this chapter to the license holder.

Section 301.306(b) provides that the continuing education required under §301.306(a) must be part of a program approved under §301.303(c).

Section 301.306(c) states that the Board shall adopt rules to identify the license holders who are required to complete continuing education under §301.306(a) and to establish the content of that continuing education. The Board may adopt other rules to implement §301.306, including rules under §301.303(c) for the approval of education programs and providers.

Section 301.307(a) states that, as part of a continuing competency program under §301.303, a license holder whose practice includes older adult or geriatric populations shall complete at least two hours of continuing education relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations.

Section 301.307(b) provides that the Board shall adopt rules implementing the requirement under §301.307(a) in accordance with the guidelines for targeted continuing education under §301.303(g).

Section 301.307(c) states that the Board may not require a license holder to complete more than six hours of continuing education under §301.307.

Section 323.004(b-1) provides that a person may not perform a forensic examination on a sexual assault survivor unless the person has the basic training described by §323.0045 or the equivalent education and training.

Section 323.0045(a) states that a person who performs a forensic examination on a sexual assault survivor must have at least basic forensic evidence collection training or the equivalent education.

Section 323.0045(b) provides that a person who completes a continuing medical or nursing education course in forensic evidence collection that is approved or recognized by the appropriate licensing board is considered to have basic sexual assault forensic evidence training for purposes of this chapter.

Section 323.0045(c) provides that each health care facility that has an emergency department and that is not a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors shall develop a plan to train personnel on sexual assault forensic evidence collection.

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 3, 2014.

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Texas Board of Nursing
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Proposal publication date: December 6, 2013
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CHAPTER 228. PAIN MANAGEMENT

22 TAC §228.1

Introduction. The Texas Board of Nursing (Board) adopts new Chapter 228, §228.1, concerning Pain Management. The new chapter is adopted without changes to the proposed text as published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8750) and will not be republished.

Reasoned Justification. The new section is adopted under the authority of the Occupations Code §§157.0511(b), 168.002, 168.201, 301.002, 301.151, 301.452, 301.453, and 301.4531, as well as the general authority of Senate Bill (SB) 406 (83rd Legislature, Regular Session, effective November 1, 2013); House Bill (HB) 1803 (83rd Legislature, Regular Session, effective January 1, 2014); and SB 1643 (83rd Legislature, Regular Session, effective September 1, 2013), and prescribes the minimum standards of nursing practice for an advanced practice registered nurse (APRN) who provides pain management services.

Many APRNs practice in pain management settings and/or provide pain management services. Under the Board's current rules, these APRNs are required to comply with the minimum standards of nursing practice set forth in existing 22 TAC §217.11 (relating to Standards of Nursing Practice) and the requirements set forth in 22 TAC Chapter 221 (relating to Advanced Practice Nurses) and 22 TAC Chapter 222 (relating to Advanced Practice Registered Nurses with Prescriptive Authority). While these rules contain minimum requirements for patient assessment, documentation, and diagnosing and prescribing under appropriate physician delegation, the Board has determined that additional guidance is needed for APRNs who practice in the area of pain management. This determination is based, in part, on reports of increased "pill mill" activity in Texas clinics staffed by APRNs.

As part of treating pain, pain management clinics frequently dispense prescription drugs, such as opioids, and other highly addictive medications. These types of clinics are sometimes associated with "pill mill" activity. "Pill mills" are usually cloaked under the illusion of a legitimate medical clinic. However, unlike legitimate facilities whose purpose is to provide medical services consistent with the standard of care, "pill mills" distribute large quantities of controlled substances and medications, without regard to medical necessity or therapeutic benefit, in exchange for monetary incentives. As a result, "pill mills" have been linked to increased risks of prescription drug abuse and overdoses. Because APRNs may diagnose and prescribe medications under the delegated authority of a physician, APRNs have been linked to prescribing practices that are consistent with "pill mill" activity. Further, APRNs have also been employed at pain management clinics that have been closed by law enforcement agencies due to their "pill mill" activities.

The Texas Legislature first introduced legislation in 2009 (Senate Bill 911, 83rd Legislature, Regular Session) affecting the registration, inspection, and monitoring of pain management clinics in Texas. Since then, the Legislature has continued to monitor "pill mill" activity. In the 83rd Legislature, Regular Session, the Legislature passed HB 1803, SB 406, and SB 1643, all intended to support the continued regulation of pain management clinics, services, and providers in this state.

The Board recognizes that the treatment of pain is complex. It often involves complex treatment plans and layers of healthcare providers working together to reduce a patient's suffering and improve his/her quality of life. The Board also recognizes

that the legitimate treatment of pain may also involve the use of prescription medications, including opioids. The adopted new rule is not intended to prevent APRNs from providing legitimate pain management services to patients nor is it intended to impede an APRN's existing pain management practice. Rather, the adopted rule is intended to provide additional guidance to APRNs who provide pain management services. The adopted new rule succinctly sets forth the minimum standards of practice that an APRN must adhere to when providing pain management services. These standards are intended to protect patients and the public from inappropriate, non-therapeutic, non-evidenced based, and/or dangerous treatment practices.

Stakeholder Collaboration

The Board's Advanced Practice Nursing Advisory Committee (Committee) met on May 31, 2013; July 1, 2013; and September 16, 2013, to discuss new rules related to pain management. After its discussions, the Committee voted to recommend the proposed new rule to the Board for adoption. The Board considered the proposed new rule, the Committee's recommendations, and Staff's recommendations at its October 2013 meeting. Following discussion and deliberation, the Board voted to approve the publication of the proposed new chapter in the *Texas Register.*

The proposed new chapter was published in the December 6, 2013, issue of the *Texas Register.* The Board received two written comments on the proposal, which were considered by the Board at its January 2014 meeting. Following consideration of the written comments received, the Board declined to make changes to the proposed rule text and voted to adopt the new chapter as proposed. The Board's responses to the written comments received are included in this adoption order.

How the Section Will Function.

Adopted new subsection (a) sets forth the definitions to be used within the new chapter, including the terms "controlled substance", "dangerous drug", "device", "medication", "non-prescription drug", and "pain management clinic".

Adopted new subsection (b) identifies the purpose of the new chapter and reiterates the Board's expectations regarding the provision of pain management services. Because the treatment of pain can be highly individualized and complex, a reasonably detailed and documented plan of care is necessary to ensure that a patient's treatment is appropriately monitored. Further, although the Board recognizes that the prescription of medications may be a legitimate part of pain management, the medications must be prescribed in a therapeutic manner and must be pharmacologically appropriate and safe for the diagnosis for which they are prescribed. Further, a documented explanation of the rationale for the particular treatment plan is required for cases in which treatment with scheduled drugs is difficult to relate to the patient's objective physical, radiographic, or laboratory findings. This ensures that the patient's treatment plan is appropriate for the particular patient and is within the current standard of care.

Further, because harm may result from a provider's failure to utilize sound clinical judgment, particularly where the prescription of medications is concerned, the adopted new subsection also reiterates that the plan of care must be based upon careful and complete patient assessment and sound clinical judgment that is within the current standard of care and supported by evidence based research. Finally, the adopted new subsection reiterates that an APRN must legibly, accurately, and completely document patient records, including any consultations and/or referrals with the APRN's delegating physician and/or other healthcare providers. These basic standards are intended to ensure that a patient receives proper evaluation and treatment for his/her pain needs. Further, these standards are consistent with generally accepted standards of care and practitioners should be familiar with, and currently adhering to, such basic standards of care.

Adopted new subsection (c) describes the minimum standards that apply to patient assessments. When evaluating a patient who is seeking treatment for pain, an APRN must perform and document a physical assessment of the patient that includes a problem-focused exam specific to the chief presenting complaint of the patient. Further, the patient's current and complete health history must be documented in the patient's record. Additionally, a physical assessment must be performed and documented each time an APRN prescribes and/or orders a new medication for the patient or a refill of medication for the patient. Finally, an APRN's pain assessment and documentation must include, as appropriate: (i) the nature and intensity of the patient's pain; (ii) all current and past treatments for the patient's pain, including relevant patient records from prior treating providers as available; (iii) underlying conditions and co-existing physical and psychiatric disorders; (iv) the effect of pain on the patient's physical and psychological function; (v) the patient's history and potential for substance misuse, abuse, dependence, addiction or other substance use disorder, including relevant validated, objective testing and risk stratification tools; and (vi) one or more recognized clinical indications for the use of a medication, if prescribed to the patient. These adopted requirements are intended to ensure that patients are appropriately and adequately assessed for the treatment of pain and that the patient's medical record is well documented. Further, the adopted requirements reiterate that the assessment of pain encompasses more than just physical factors, and that an APRN's assessment must take into account the patient's history and past treatments, as well as co-existing disorders and the patient's potential for substance misuse, abuse, dependence, or addiction. This is particularly true if the patient's treatment plan will involve medications or controlled substances. As with the requirements set forth in adopted subsection (b), these standards are also consistent with generally accepted standards of care and practitioners should be familiar with, and currently adhering to, such basic standards of care.

Adopted new subsection (d) describes the requirements related to a patient's treatment plan. APRNs who treat patients with pain must ensure that a written treatment plan is documented in the patient's record. The patient record should include, as appropriate: (i) a written explanation of how the medication(s) ordered/prescribed relate(s) to the patient's chief presenting complaint and treatment of pain; (ii) the name, dosage, frequency, and quantity of any medication prescribed and number of refills authorized for the patient; (iii) laboratory testing and diagnostic evaluations ordered for the patient; (iv) all other treatment options that are planned or considered; (v) plans for ongoing monitoring of the treatment plan and outcomes; (vi) subjective and objective measures that will be used to determine the patient's treatment outcomes, such as the patient's pain relief and improved physical and psychosocial function; (vii) any and all consultations and referrals, including the date the consultation and/or referral was made; to whom the consultation and/or referral was made; the time frame for completion of the consultation and/or referral; and the results of the consultation and/or referral; and (viii) documentation of informed consent.

Informed consent includes a discussion with the patient, a person(s) designated by the patient, or with the patient's surrogate

or guardian, if the patient is without medical decision-making capacity, of the risks and benefits of the use of medications for the treatment of the patient's pain. Adopted new subsection (e) requires this discussion to be documented by either a written, signed document maintained in the patient record or a contemporaneous notation included in the patient record. Further, the adopted new subsection emphasizes that the discussion between the APRN and the patient, or the patient's surrogate or guardian, should include an explanation of the diagnosis; treatment plan; expected therapeutic outcomes, including the realistic expectations for sustained pain relief, and possibilities for lack of pain relief; non-pharmacological therapies; potential side effects of treatments and drug therapy and how to manage common side effects; adverse effects of medication use, including the potential for dependence, addiction, tolerance, and withdrawal; and potential for impaired judgment and motor skills.

The adopted requirements set forth in new subsections (d) and (e) are intended to ensure that patients seeking treatment for pain are evaluated according to generally accepted standards of care and that the treating APRN formulates a treatment plan based upon careful and complete patient assessment and sound clinical judgment. Further, the adopted requirements regarding informed consent are intended to ensure that patients are made aware of the risks and benefits of the APRN's recommended treatment plan, as well as the realistic expectations and/or limitations of the plan. Additionally, if drug therapy is to be utilized as part of the patient's treatment plan, it is important for the practitioner and patient to discuss any potential side effects of the medications, as well as the potential for dependence, addiction, tolerance, and withdrawal. Honest and frank discussions between the patient and the APRN regarding viable treatment options and realistic limitations of those options encourage a continuing open line of communication between the patient and the APRN and is more likely to result in well informed, individualized, evidence-based treatment decisions.

Adopted new subsection (f) requires the use of a written pain management agreement if a treatment plan includes the use of drug therapy for longer than 90 days. The written agreement must specify the patient's responsibilities to: (i) submit to laboratory testing for drug confirmation upon request of the treating APRN, his/her delegating physician, and/or any other health care providers; (ii) adhere to the number and frequency of prescription refills; (iii) use only one provider to prescribe controlled substances related to pain management, and to make consultations and referrals; (iv) use only one pharmacy for all prescriptions for controlled substances related to pain management; (v) acknowledge potential consequences of non-compliance with the agreement; and (vi) acknowledge processes following successful completion of treatment goals, including weaning of medications. These requirements are particularly important for patients who receive medications as part of their treatment regimen. Because the treatment of pain often involves the use of controlled substances, the potential for abuse, addiction, and overdose is high. It is therefore, necessary for APRNs to monitor patients' use of controlled substances carefully. The requirements contained in adopted new subsection (f) are designed to protect patients from the over-use of medications, particularly controlled substances, prescribed for pain treatment. The requirements also establish expectations for a patient's compliance with a practitioner's treatment plan. The goal of these adopted requirements is to ensure that patients who are prescribed medications for pain, including controlled substances, are treated therapeutically, safely, and within an acceptable standard of care. Further, like the other adopted requirements, these standards are consistent with generally accepted standards of care that practitioners should be familiar with.

Adopted new subsection (g) relates to an APRN's ongoing monitoring of the treatment of a patient's pain. Under the adopted requirements, an APRN must see a patient periodically at reasonable intervals to review the patient's treatment plan. An APRN's review must include an assessment of the patient's progress toward reaching his/her treatment plan goals, including an evaluation of the patient's history of medication usage, as well as any new information about the pain and the patient's compliance with his/her pain management agreement. The APRN must also document his/her review of the patient's treatment plan and any adjustment in the treatment plan based upon the individual needs of the patient. These adopted requirements are designed to ensure that a patient's progress is routinely monitored in accordance with acceptable standards of care and that necessary changes to the patient's treatment plan are made timely and effectively, as dictated by the individual condition of the patient.

The adopted new requirements also dictate that the continuation or modification of the use of medications for pain management must be based on an evaluation of the patient's progress toward treatment plan goals, as well as on evaluation and consideration of any new factors that may influence the treatment plan. In determining a patient's progress or lack of progress, an APRN should assess the patient's decreased pain, increased level of function, improved quality of life, as well as objective evidence of improved or diminished function. If the patient's progress is unsatisfactory, the current treatment plan should be re-evaluated, with consideration given to the use of other therapeutic modalities and/or services of other providers. An APRN's assessment and any modifications to the treatment plan should be well documented. Further, if it is determined that the patient should continue taking scheduled drugs, the APRN must consult with his/her delegating physician and include documentation of such consultation in the patient's record. Although drug therapy can be a legitimate part of the treatment of a patient's pain, there is also an increased associated risk of addiction, overuse, and overdose that an APRN must guard against. The adopted requirements are consistent with generally acceptable standards of care, particularly where patients are taking controlled substances over an extended period of time. The requirements are intended to ensure that APRNs exercise sound judgment in assessing a patient's response to drug therapy and that the decision to continue a patient's drug therapy is made after careful and thoughtful deliberation and appropriate consultation.

Adopted new subsection (h) relates to consultation and patient referral. In certain situations, some patients may require specialized evaluation and treatment. Patients who are at risk for substance use disorders or addiction require special attention. In such cases, consideration should be given to consultation with and/or referral to a provider who is an expert in the treatment of patients with substance use disorders. Likewise, patients with chronic pain and histories of substance use disorders or with co-existing psychological and/or psychiatric disorders may require consultation with and/or referral to an expert in the treatment of such patients. Consideration should be given to consultation with and/or referral to a provider who is an expert in the treatment of patients with these histories and/or disorders. APRNs should ensure that information regarding the consideration of consultation and/or referral of patients is adequately documented in the patient's record.

Adopted new subsection (i) specifically relates to pain management clinics in the state of Texas. Pursuant to Chapter 168 of the Occupations Code, a pain management clinic may not operate in this state unless it is properly certified. As such, under the adopted new subsection, an APRN who practices in a pain management clinic in this state must verify that the clinic has been properly certified as a pain management clinic by the Texas Medical Board and that the certification is current. Additionally, the Occupations Code §168.201(c) requires the owner or operator of a pain management clinic to be on site at the clinic at least 33 percent of the clinic's total number of operating hours and review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic. Consistent with these statutory requirements, the adopted new subsection requires an APRN to be available on site with a physician at least 33 percent of a pain management clinic's total operating hours and to comply with the requirements of §168.201 regarding the review of patient charts. Further, consistent with the provisions of §168.201(d) (as amended by HB 1803, 83rd Legislature, Regular Session, effective January 1, 2014), the adopted requirements preclude APRNs from owning or operating pain management clinics in this state, as such ownership or operation constitutes the practice of medicine.

Lastly, for an APRN who owns or operates a clinic in this state that meets the definition of a pain management clinic under the adopted new chapter, consistent with the Occupations Code §168.002 (as amended by HB 1803, 83rd Legislature, Regular Session, effective January 1, 2014), such clinic is exempted from the certification requirements of the Occupations Code Chapter 168 and the Texas Medical Board if the APRN is treating patients in the APRN's area of specialty and the APRN personally uses other forms of treatment with the issuance of a prescription to the majority of the APRN's patients. The treatment must be within the current standard of care, supported by evidence-based research, and consistent with the treatment plan. Further, an APRN who owns or operates a clinic in this state that meets the exemption in §168.002 and adopted new subsection (i)(4) is not subject to the prohibition in adopted new subsection (i)(5).

Summary of Comments and Agency Response.

General comments

Comment: A commenter representing the Texas Pain Society states that the organization is supportive of the proposed rules and would not suggest any changes at this time. The commenter further states that, as the rules are implemented and used in daily practice, there may be a need to go back and review the language and fine tune any areas that need improvement.

Agency Response: The Board appreciates the comment. Further, the Board agrees that the rules should be reviewed regularly to ensure that they are meeting their intended purpose, as well as appropriately addressing the issues that affect acute and chronic pain management.

Comment: A commenter representing the Texas Society of Anesthesiologists suggests that the Board clarify that advanced practice registered nurses (APRNs) are still subject to the requirements of Chapters 221 and 222, in addition to the requirements of new Chapter 228, and that Chapter 228 does not in any way replace or substitute the requirements in Chapters 221 and 222. The commenter provides the following suggested language:

"In addition to the requirements of this Chapter, APRNs providing pain management services are also required to comply with 22 TAC Chapters 221 and 222."

The commenter believes that the addition of this language will eliminate any uncertainty that could lead APRNs licensed by the Board to believe that new Chapter 228 is intended by the Board as a substitute or replacement for the Board's existing rules.

Agency Response: The Board declines to make the suggested change. None of the provisions of adopted new Chapter 228 exclude the application of existing Chapters 221 and 222 to APRN practice. Existing Chapter 221 sets forth requirements that apply to all APRNs. Existing Chapter 222 sets forth requirements that apply to APRNs with prescriptive authority. Newly adopted Chapter 228 sets forth requirements that apply to APRNs who provide pain management services. To the extent that any confusion regarding the applicability of these chapters may exist, the Board believes it is more appropriate to address such issues on the Board's website in a "Frequently Asked Question".

Names of Those Commenting For and Against the Proposal.

For: The Texas Pain Society.

Against: None.

For, with changes: The Texas Society of Anesthesiologists.

Neither for nor against, with changes: None.

Statutory Authority.

The new chapter is adopted under the Occupations Code §§157.0511(b), 168.002, 168.201, 301.002, 301.151, 301.452, 301.453, and 301.4531 and under the general authority of HB 1803, SB 406, and SB 1643.

Section 157.0511(b) provides that, except as provided by Subsection (b-1), a physician may delegate the prescribing or ordering of a controlled substance only if: (i) the prescription is for a controlled substance listed in Schedule III, IV, or V as established by the Commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code; (ii) the prescription, including a refill of the prescription, is for a period not to exceed 90 days; (iii) with regard to the refill of a prescription, the refill is authorized after consultation with the delegating physician and the consultation is noted in the patient's chart; and (iv) with regard to a prescription for a child less than two years of age, the prescription is made after consultation with the delegating physician and the consultation is noted in the patient's chart.

Section 168.002 provides that the chapter does not apply to: (i) a medical or dental school or an outpatient clinic associated with a medical or dental school; (ii) a hospital, including any outpatient facility or clinic of a hospital; (iii) a hospice established under 40 TAC §97.403 or defined by 42 C.F.R. §418.3; (iv) a facility maintained or operated by this state; (v) a clinic maintained or operated by the United States; (vi) a health organization certified by the Board under §162.001; (vii) a clinic owned or operated by a physician who treats patients within the physician's area of specialty and who personally uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients; or (viii) a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse's area of specialty and who personally uses other forms of treatment with the issuance of a prescription for a majority of the patients.

Section 168.201(d) provides that a person who owns or operates a pain management clinic is engaged in the practice of medicine.

Section 301.002 defines "professional nursing" as the performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Professional nursing involves: (i) the observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a person who is ill, injured, infirm, or experiencing a change in normal health processes; (ii) the maintenance of health or prevention of illness; (iii) the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist; (iv) the supervision or teaching of nursing; (v) the administration, supervision, and evaluation of nursing practices, policies, and procedures; (vi) the requesting, receiving, signing for, and distribution of prescription drug samples to patients at practices at which an advanced practice registered nurse is authorized to sign prescription drug orders as provided by Subchapter B, Chapter 157; (vii) the performance of an act delegated by a physician under §§157.0512, 157.054, 157.058, or 157.059; and (viii) the development of the nursing care plan.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; (iv) perform public service the Board considers appropriate; or (v) abstain from the consumption of alcohol or the use of drugs and submit to random periodic screening for alcohol or drug use.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a per-

son who has not previously been the subject of disciplinary action by the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201400430
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: February 23, 2014
Proposal publication date: December 6, 2013
For further information, please call: (512) 305-6822

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

CHAPTER 651. FEES

22 TAC §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts amendments to §651.2, regarding Physical Therapy Board Fees, without changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7413). The amendments simplify requirements for PTs and PTAs who wish to return to the profession.

The amendments change the late renewal and license restoration fees for individuals.

No comments were received regarding the proposed changes.

The amendments are adopted under Title 3, Subtitle H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this 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.

Filed with the Office of the Secretary of State on January 29, 2014.

TRD-201400329
John P. Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Effective date: February 18, 2014
Proposal publication date: October 25, 2013
For further information, please call: (512) 305-6900

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 290. PUBLIC DRINKING WATER

SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §290.44

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts an amendment to §290.44 *without change* to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7083). The text will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The purpose of the adopted amendment is to reflect changes to the Texas Health and Safety Code (THSC), §341.042, from House Bill (HB) 2781, 83rd Legislature, 2013. These changes relate to structures that are connected to a public water system (PWS) and have a rainwater harvesting system (RWHS). Some of the changes to §290.44(j) required by HB 2781 were implemented through Rule Project No. 2011-057-290-OW, which was effective on September 12, 2013.

Section Discussion

§290.44, Water Distribution

The commission adopts §290.44(j) and its subdivisions to implement THSC, §341.042, as amended by HB 2781, for structures that have RWHSs and are connected to a PWS. The adopted rulemaking: removes the phrase "for indoor use" from §290.44(j), requiring all structures that are connected to a PWS and have an RWHS to have appropriate cross-connection safeguards; adds §290.44(j)(1) to require that a privately owned RWHS with a capacity of more than 500 gallons that is connected to a PWS for a back-up supply must have a backflow prevention assembly or an air gap at the storage facility for the harvested rainwater; removes the word "indoor" from the phrase "for indoor potable purposes" in §290.44(j)(2), which refers to a RWHS that is connected to a PWS and must be installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist; adds §290.44(j)(3), by renumbering existing §290.44(j)(1), which requires a person who intends to connect a RWHS to a PWS to give written notice to the municipality in which the RWHS is located or the owner or operator of the PWS, as amended to remove the phrase "for use for potable purposes," to improve the rule's organizational structure; and adds §290.44(j)(4) to require that the PWS used as a back-up supply for the RWHS may be connected only to the water storage tank and may not be connected to the plumbing of a structure. HB 2781 uses the term "auxiliary water supply" to refer to a PWS that is being used as the back-up supply for a privately owned RWHS, however, throughout Chapter 290, the term "auxiliary" is used to describe a source that is connected to the PWS, such as a well that provides additional water for a surface water system. In order to maintain consistency with Chapter 290's established terminology, the executive director's staff refers to a back-up

supply instead of an auxiliary water supply or an auxiliary water source as referenced in the legislation.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by HB 2781, which establish requirements for structures that have a RWHS and are connected to a PWS. The bill also contains language that states that a municipality or the owner or operator of a PWS may not be held liable for any adverse health effects allegedly caused by the consumption of water from an affected RWHS if the municipality or PWS is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or PWS.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the adopted rule is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing RWHSs in Texas. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the rulemaking is not adopted solely under the general powers of the agency, but specifically under THSC, §341.042, which allows the commission to adopt and enforce rules related to harvested rainwater.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the adopted rulemaking is to implement legislative changes enacted by HB 2781, which establish requirements for structures that have RWHSs and are connected to a PWS. The bill also contains language that states that a municipality or the owner or operator of a PWS may not be held liable for any adverse health effects allegedly caused by the consumption of water from an affected RWHS if the municipality or PWS is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or PWS. The adopted rulemaking would substantially advance these purposes by amending Chapter 290 to incorporate the statutory requirements.

Promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. The adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This adopted rulemaking will primarily affect those persons who have a structure that has a RWHS and is connected to a PWS; this would not be an effect on real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period. The commission did not receive any comments regarding the adopted rulemaking's consistency with the Coastal Management Program.

Public Comment

The commission held a public hearing on November 5, 2013. At the November 5, 2013, public hearing no one offered comments on the proposed rule. The comment period closed on November 12, 2013. The commission received written comments from Innovative Water Solutions, LLC (IWS); Pair Plumbing and Septic; Texas Rainwater Catchment Association; and one individual. No commenters expressed opposition to the entire rule as proposed. IWS suggested alternative rule language. Texas Rainwater Catchment Association requested the commission amend the statute. The written comments are summarized in the Response to Comments section of the preamble.

Response to Comments

An individual requested that the commission protect the brown pelicans.

The commission responds that the adopted rule addresses RWHSs that are connected to a PWS and does not pertain to brown pelicans. This comment is outside the scope of this rulemaking. No change has been made in response to this comment.

Pair Plumbing and Septic expressed interest "in seeing how the harvesting of rain water can economically be done without cross-connecting to raw sewerage/Septic systems and Domestic Potable water systems."

The commission responds that Chapter 290 addresses RWHSs that are connected to a PWS. The adopted rule prohibits RWHSs from being connected to a PWS without proper cross-connection protection. The commission's stated mission is to "protect our state's public health and natural resources consistent with sus-

tainable economic development. Our goal is clean air, clean water, and the safe management of waste." Allowing a RWHS to be connected to a raw sewerage/septic system would be counter to that objective as raw sewage contains various pathogens (bacteria, parasites, and viruses) and may contain chemical toxins (heavy metals, pesticides, and pharmaceuticals). No change has been made in response to this comment.

Pair Plumbing and Septic also commented that conventional septic systems should be installed, instead of aerobic septic systems, in order to replenish ground water.

The commission responds that the adopted rule addresses RWHSs that are connected to a PWS and does not pertain to septic systems. This comment is outside the scope of this rulemaking; therefore, no change has been made in response to this comment.

IWS commented that the term "connection" in §290.44(j) is ambiguous and can be interpreted in different ways. Depending on the context, it could be construed to mean a metered residence or a physical connection between RWHS piping and PWS piping and that any residence with a RWHS that is also supplied by a PWS would be required to install a reduced-pressure principle backflow prevention assembly device, regardless of the size, design, or use of the privately owned RWHS. Additionally, the commission's requirement to install a reduced-pressure principle backflow prevention assembly device would increase the RWHSs cost of installation. Texas Rainwater Catchment Association commented that they seek a clear and universal understanding of the language found in the laws, rules, and regulations relating to rainwater harvesting. Texas Rainwater Catchment Association also requested the commission "amend the code language" in response to their comment.

The commission responds that the words and terms used within Chapter 290 have the meanings defined in §290.38, unless otherwise indicated. Those terms are clearly defined and consistently used by the commission in this rulemaking. The commission has established a definition for "connection" in existing §290.38(15) as, "A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system.... For the purposes of this definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if: (A) the water is used exclusively for purposes other than those defined as human consumption (see human consumption); (B) the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or (C) the executive director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards." Based upon that definition, the presence of a backflow prevention device or an air gap does not mean that the customer's water service is then disconnected from the PWS, thus creating a stand-alone private water system. The commission also responds that, according to §290.47(i), the specific type of backflow prevention device required for a RWHS is either an air gap or a reduced-pressure principle backflow prevention assembly. While the commission requires the use of a backflow prevention device, it is up to the local municipality to determine whether a reduced-pressure principle backflow prevention assembly device or an air gap is required. Further, the commission responds that this rule implements only the changes made by HB 2781, 83rd Legislature, 2013, which amended THSC, §341.042. If additional legislative changes are implemented, the commission will evaluate those changes and if necessary, consider implementing a rulemaking. No changes have been made in response to these comments.

Texas Rainwater Catchment Association commented that the term "connection" appears in several sections of the proposed rule and it is their position that once a backflow prevention assembly device is installed downstream of the water meter, the metered water supply is appropriately protected.

The commission requires appropriate cross-connection control protections for structures that are connected to PWSs and have a RWHS. The commission agrees that the appropriate backflow prevention assembly, if properly maintained and tested, does appropriately protect the PWS. No change has been made in response to this comment.

IWS commented that in §290.44(j)(1), the use of "connected" refers to the physical relationship between the RWHS and the PWS supply when the PWS is intended to provide back-up water to the RWHS tank. IWC further commented that it takes no issue with the language as proposed.

The commission acknowledges this comment. No change has been made in response to this comment.

IWS commented that if the term "connection" as used in §290.44(j)(2) is meant to mirror the term's use in §290.44(j), the rule language places restrictions on all RWHSs installed within the jurisdiction of a PWS (if the property is a metered residence) where the collected water is suitable for drinking, making it illegal for a private residence (other than the residences of master or journeyman plumbers) to capture, store, and treat rainwater for any use, regardless of a physical separation from the PWS and the RWHS's piping. IWS also commented that in §290.44(j)(2), "connection" could mean that a RWHS must be installed and maintained by a master plumber only when there is a physical connection between the RWHS and the PWS and that "the only interpretation of this language that would be consistent with the rest of Chapter 290 would be one that made clear that the term 'connection' points to the nature of the physical relationship between PWS piping and RWHS piping."

The commission responds that the words and terms used within Chapter 290 have the meanings defined in §290.38. The commission has established a definition for "connection" in existing §290.38(15), as stated in this section of the preamble. No change has been made in response to this comment.

IWS commented that in §290.44(j)(4) the term "potable" is not present and this subsection does not clearly define how the use of the rainwater relates to the plumbing of a structure. IWS provided a drawing with their submitted rule comments and asked whether §290.44(j)(4) be interpreted to mean that installation of RWHSs used for irrigation supply would be prohibited if it includes a back-up water connection to a PWS, regardless of the cross-connection safeguards in place. In referring to their provided drawing, IWS questioned: 1) whether a reduced-pressure principle backflow prevention assembly device or air gap breaks the connection from the PWS; and 2) if so, why there is a need to prohibit the connection to a structure when the connection is made after the appropriate cross-connection safeguards.

The commission responds that HB 2781 was silent regarding the use of potable versus non-potable when amending THSC, §341.042(b-3). HB 2781 amended THSC, §341.042(b-3), to specify that "the public water supply system used as an auxiliary water source may be connected only to the water storage tank and may not be connected to the plumbing of a structure." The legislation does not prohibit the installation of a RWHS as long as appropriate cross-connection safeguards are in place. Based upon the definition of a connection in §290.38(15), the presence of a backflow prevention device or an air gap does not mean that the customer's water service is disconnected from the PWS. Moreover, the commission is not prohibiting the connection to a structure when the connection is made after appropriate cross-connection safeguards are in place; however, the commission is prohibiting the connection to the internal plumbing of a structure to implement the provisions of HB 2781, as passed by the 83rd Legislature. No changes have been made in response to this comment.

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.042, which allows the commission to adopt rules relating to the domestic use of harvested rainwater. Therefore, the TWC and THSC authorize rulemaking that amends §290.44, which relates to structures that have rainwater harvesting systems (RWHS) and are connected to a public water system (PWS).

The adopted amendment implements the language set forth in House Bill (HB) 2781, 83rd Legislature, 2013, which requires the commission to amend the existing rule for structures that have RWHSs and are connected to a PWS by requiring such structures to have appropriate cross-connection safeguards and to be installed by a specially-licensed plumber. Additionally, HB 2781 requires that a RWHS that is connected to a PWS for use as a back-up supply may not also have the plumbing of the structure connected to the PWS. HB 2781 also removes the phrase "for indoor use" when referring to such structures.

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 January 31, 2014.

TRD-201400415
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 20, 2014
Proposal publication date: October 11, 2013
For further information, please call: (512) 239-2613

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §1.2

The Texas Department of Transportation (department) adopts amendments to §1.2, concerning the organization and responsibilities of the department. The amendments to §1.2 are adopted without changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8167) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

In response to Minute Order 111738, adopted by the Texas Transportation Commission (commission) on March 26, 2009, the department established four regional support centers in Fort Worth, Houston, San Antonio, and Lubbock. After careful evaluation of the regional management model and with the recognition of new ways to gain efficiency and improvement of operations, the department determined that it should centralize certain support functions that were within the Regional Support Centers to improve and expand their business service, create more effective and efficient business processes, and become a more streamlined, collaborative, and responsive organization. In 2012 the department transferred several of the regional functions, including right of way responsibilities, project management, information technology, and accounting, to existing central divisions. The department has determined that the best business decision is to transfer the remaining regional functions to four new divisions, the Procurement, Professional Engineering Procurement Services (PEPS), Fleet, and Support Services divisions, for the effective management of those functions. The purpose of these rule amendments is to remove various terms in the rules that refer to departmental regions.

Amendments to §1.2, Texas Department of Transportation, remove information about the department's regional support centers by deleting subsection (e).

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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-201400403
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: February 20, 2014
Proposal publication date: November 15, 2013
For further information, please call: (512) 463-8683

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SUBCHAPTER M. DONATIONS

43 TAC §1.503

The Texas Department of Transportation (department) adopts amendments to §1.503, concerning Donations. The amendments to §1.503 are adopted without changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8168) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Under Transportation Code, §201.206, the department has authority to accept donations for the purpose of carrying out its functions and duties. Government Code, §575.003, provides the process that all state agencies must use in the acceptance of gifts. For the purposes of that statute, "gift" is synonymous with "donation." The statute requires that a state agency that has a governing board may accept a gift with a value of $500 or more only if the agency has authority to accept gifts and a majority of the board, in an open meeting, acknowledges the acceptance of the gift within 90 days after the gift is accepted by the agency.

The department's current rules require the approval of the Texas Transportation Commission (commission) for the acceptance of a gift by the department, except that the department, with the approval of the executive director, may accept a gift or donation with a value of less than $1,500 or a donation of $1,500 or more that is for travel reimbursement for staff attendance at a conference. If the executive director approves such a gift or donation and it is valued at $500 or more, the acceptance must be acknowledged by the commission within 60 days of the acceptance. The requirement of the commission's approval delays the department's ability to use the donation for the intended purpose.

Amendments to §1.503, Acceptance, remove the requirement that a gift or donation to the department be approved by the commission and specify that the acceptance of any gift to the department must be approved by the executive director. Under the current rules, the definition of "executive director" authorizes the executive director to delegate the powers granted and duties assigned under §1.503 to a department employee who holds a position that is not below the level of district engineer, division director, or special office director; that authority is unchanged by the amendments to the section. The added language, in compliance with Government Code, §575.003, also provides that the commission must acknowledge a gift or donation of more than $500 not later than the 90th day after the date it is accepted by the executive director. These changes will allow the department to more efficiently manage gifts and donations and eliminate delays in their use. The amendments also repeal the exceptions provided by current subsections (d) and (e) because they are no longer needed.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 575 and Transportation Code, §201.206.

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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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: February 20, 2014
Proposal publication date: November 15, 2013
For further information, please call: (512) 463-8683

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CHAPTER 3. PUBLIC INFORMATION

The Texas Department of Transportation (department) adopts amendments to §§3.11 - 3.13 and §3.26, all concerning public information. The amendments to §§3.11 - 3.13 and §3.26 are adopted without changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8170) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

In response to Minute Order 111738, adopted by the Texas Transportation Commission (commission) on March 26, 2009, the department established four regional support centers in Fort Worth, Houston, San Antonio, and Lubbock. After careful evaluation of the regional management model and with the recognition of new ways to gain efficiency and improvement of operations, the department determined that it should centralize certain support functions that were within the Regional Support Centers to improve and expand their business service, create more effective and efficient business processes, and become a more streamlined, collaborative, and responsive organization. In 2012 the department transferred several of the regional functions, including right of way responsibilities, project management, information technology, and accounting, to existing central divisions. The department has determined that the best business decision is to transfer the remaining regional functions to four new divisions, the Procurement, Professional Engineering Procurement Services (PEPS), Fleet, and Support Services divisions, for the effective management of those functions. The purpose of these rule amendments is to remove various terms in the rules that refer to departmental regions.

Amendments to §3.11 remove the definition of "regional director" and subsequent definitions are renumbered. Amendments to §3.12 remove the terms "regional director" and "region" in subsections (a), (e), and (f) of that section. Amendments to §3.13 remove the term "regional director" in subsection (b) of that section. Amendments to §3.26 remove the term "region" in subsection (c) of that section. Additionally, reference to an old Internet address for the department is removed because it is obsolete.

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER B. ACCESS TO OFFICIAL RECORDS

43 TAC §§3.11 - 3.13

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: February 20, 2014
Proposal publication date: November 15, 2013
For further information, please call: (512) 463-8683

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SUBCHAPTER C. COMPLAINT RESOLUTION

43 TAC §3.26

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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CHAPTER 10. ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §10.6

The Texas Department of Transportation (department) adopts amendments to §10.6, concerning Ethical Conduct by Entities Doing Business with the Department. The amendments to §10.6 is adopted without changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8172) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

In response to Minute Order 111738, adopted by the Texas Transportation Commission (commission) on March 26, 2009, the department established four regional support centers in Fort Worth, Houston, San Antonio, and Lubbock. After careful evaluation of the regional management model and with the recognition of new ways to gain efficiency and improvement of operations, the department determined that it should centralize certain support functions that were within the Regional Support Centers to improve and expand their business service, create more effective and efficient business processes, and become a more streamlined, collaborative, and responsive organization. In 2012 the department transferred several of the regional functions, including right of way responsibilities, project management, information technology, and accounting, to existing central divisions. The department has determined that the best business decision is to transfer the remaining regional functions to four new divisions, the Procurement, Professional Engineering Procurement Services (PEPS), Fleet, and Support Services divisions, for the effective management of those functions. The purpose of these rule amendments is to remove various terms in the rules that refer to departmental regions.

Amendments to §10.6 remove the term "region director" in subsection (b) of that section.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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Proposal publication date: November 15, 2013
For further information, please call: (512) 463-8683

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CHAPTER 12. PUBLIC DONATION AND PARTICIPATION PROGRAM

SUBCHAPTER K. ACKNOWLEDGMENT PROGRAM

43 TAC §§12.351 - 12.355

The Texas Department of Transportation (department) adopts amendments to §§12.351 - 12.355, concerning the acknowledgment program. The amendments to §§12.351 - 12.355 are adopted without changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8173) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

These amendments to the acknowledgment program rules provide the department with greater flexibility in implementing the program and address issues identified through the vendor selection process.

Amendments to §12.351 clarify examples of types of services suitable for the acknowledgment program. The department did not intend to limit the types of highway related services for which donations could be accepted. The amendment deletes the word "certain" in reference to highway related service to eliminate the confusion. The department also added travel service to the list of examples to clarify that items such as wireless internet connections and information kiosks could be considered under the program.

Amendments to §12.352 add a definition of "Acknowledgment," which means a notification intended to inform the public that a participating sponsor has provided a donation to support the highway related service. This definition comes from the federal guidelines and is used to distinguish acknowledgment from advertising.

Amendments to §12.353 change subsection (a) to allow the department to accept non-monetary donations, including services such as internet connectivity, under the program. Subsection (e) is amended to remove the requirement that the department provide the highway related service to be consistent with the removal of the requirement in subsection (a) that a donation be money. Changes to subsection (f) specify that the vendor will install and maintain the acknowledgments under the program, including acknowledgment signs. This eliminates the need for the department to erect and remove the acknowledgments. The department has determined that the program will be more efficient if the vendor is allowed to install the acknowledgments. The vendor will be working directly with the participating sponsors and will be able to more quickly address their issues. This will alleviate the department's staff time needed to manage this program. Changes to subsection (h) regarding the types of products that cannot be referenced on the sign are reworded to coordinate with the changes to subsection (f), making the restrictions apply to an acknowledgment installed by a vendor.

Amendments to subsection (i) of §12.353 address compliance with Government Code, §575.003, regarding the acceptance of gifts. The donations under the acknowledgment program will be considered gifts to the department and must comply with that section. Subsection (i) requires that gift be acknowledged by the Texas Transportation Commission within 90 days after the gift is accepted by the department. Subsection (j) is added to provide that all acknowledgments must comply with all applicable law to insure that the acknowledgment program meets all state and federal legal requirements.

Amendments to §12.354 remove the requirement that the vendors' contracts with participating sponsors be for a term of not less than two years. This requirement was initially included to eliminate staffing issues with the installation and removal of acknowledgment signs. With the vendor responsible for the maintenance of the signs, the department is eliminating the requirement to provide flexibility in the program to attract various levels of participating sponsors. This section also requires the vendor to describe the method and location of each acknowledgment. This change is also a result of transferring the responsibilities to the vendor. The department will now require the vendor to notify the department of the location and type of acknowledgment used for each participating sponsor.

Amendments to §12.355 add a new subsection (f) that requires a sign installation to comply with all applicable department standards. This change is needed due to the transfer of the signing responsibilities to the vendor. The vendor will be responsible for installing and maintaining all signs in accordance with all department signing standards. Subsection (g) is amended to replace the department with the vendor to coordinate with the transfer of the signing responsibilities.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 575 and Transportation Code, §201.206.

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-201400408
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

CHAPTER 27. TOLL PROJECTS

SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS

43 TAC §§27.2, 27.4, 27.10

The Texas Department of Transportation (department) adopts amendments to §27.2, Definitions, §27.4, Solicited Proposals, and §27.10, Compensation upon Termination for Convenience, concerning comprehensive development agreements. The amendments are adopted without changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8176) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Senate Bill 1730, 83rd Legislature, Regular Session, 2013, amended Transportation Code, §223.201 to authorize the department to enter into a comprehensive development agreement

for a nontolled state highway improvement project authorized by the legislature and to combine in a comprehensive development agreement two or more eligible projects described in Transportation Code, §223.201(f). Senate Bill 1730 amended Transportation Code, §371.101 to require a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project to contain a provision authorizing the department to terminate the agreement for convenience and purchase the interest of the private participant in the comprehensive development agreement and related property, and to include a price breakdown stating a specific price for the purchase of the private participant's interest at specified intervals from the date the toll project opens. The department is required to assign points to and score each proposer's price breakdown in the evaluation of proposals.

Amendments to §27.2 revise the definition of eligible project (a project for which the department may enter into a comprehensive development agreement) to include a nontolled state highway improvement project authorized by the Texas Legislature and a project that combines two or more eligible projects described in Transportation Code, §223.201(f).

Amendments to §27.4 provide that the department will publish notice advertising the issuance of a request for qualifications in the *Texas Register* and will post the notice and the request for qualifications on the department's Internet website. Transportation Code, §223.203(c) requires the department to publish a notice advertising a request for qualifications in the *Texas Register* that includes the criteria to be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which responses must be received. The amendments to §27.4 are consistent with the requirements of §223.203(c) and are anticipated to enhance competition in comprehensive development agreement procurements.

As required by Transportation Code, §371.101, §27.4 is amended to provide that a request for proposals must require the submission of a proposed price breakdown if required by §27.10 and to provide that the criteria used to evaluate proposals will include the proposed price breakdown included in the proposal if inclusion of the price breakdown is required by §27.10.

Senate Bill 1730 amended Transportation Code, §371.101 to repeal provisions requiring a toll project entity having rulemaking authority to by rule develop a formula for making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. The commission previously adopted §27.10 in compliance with that requirement.

Amendments to §27.10 remove the existing provisions relating to the formula previously required under Transportation Code, §371.101, including changing the title of that section. Section 27.10 is amended to require the department to include in a comprehensive development agreement subject to Transportation Code, §371.101 a provision authorizing the department to terminate the agreement for such a project for convenience and purchase the interest of the private participant in the comprehensive development agreement and related property and to include a price breakdown stating a specific price for the purchase of the private participant's interest at specified intervals from the date the toll project opens.

Section 27.10 is amended to describe the methodology for determining the compensation amount owed to the private participant as a result of the termination for convenience of a comprehensive development agreement in which the private participant has an ownership right to the toll revenues and is subject to Transportation Code, §371.101. The commission and the department have construed the requirement in Transportation Code, §371.101 that the private participant receive the right to operate and collect revenue to require the private participant to have an ownership right to the revenue (e.g., in a concession agreement) and not to contracts that include an obligation to operate a toll project, but where the private participant does not have an interest in the project and related property.

Section 27.10 is also amended to define terms used in that section that apply to the methodology prescribed in Transportation Code, §371.101 for determining the compensation amount owed to the private participant in the event of termination. Section 27.10 requires a proposer for an agreement to which that section applies to include a proposed price breakdown in its proposal, using the specified intervals required by the department, and provides that the department will evaluate the proposed price breakdowns as provided in §27.4.

Section 27.10 requires a comprehensive development agreement to which that section applies to include provisions regarding compensation to the private participant if the department chooses to terminate the agreement for convenience at any time before the toll project opens. As required by Transportation Code, §371.101, §27.10 requires a comprehensive development agreement to which that section applies to provide that if the department chooses to exercise its option to terminate the agreement for convenience at any time during a specified interval, the compensation to the private participant may generally not exceed the lesser of the price stated for the interval in the price breakdown in effect on the date of purchase or the greater of the fair market value of the private participant's interest on the valuation date or an amount equal to the amount of outstanding debt specified in the comprehensive development agreement. Transportation Code, §371.101 requires the agreement to authorize the department to terminate the agreement and purchase the private participant's interest at any time during a specified interval.

As required by Transportation Code, §371.101, §27.10 requires a comprehensive development agreement subject to that section to include a provision requiring the private participant to notify the department of the beginning of a price interval not later than 12 months before the price interval takes effect. The department is required to notify the private participant if it will exercise the option to terminate for convenience the agreement during the price interval not later than 6 months after receiving the private participant's notice. Section 27.10 requires the comprehensive development agreement to provide that the department may, without liability, rescind a notice of the exercise of an option to terminate. Section 27.10 provides that the price for terminating the comprehensive development agreement may be adjusted to reflect the changes in the agreement if the project requires expansion or reconstruction in a manner that differs from the manner provided in the original project scope or schedule.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work

of the department, and more specifically, Transportation Code, §223.209, which requires the commission to adopt rules, procedures, and guidelines governing the selection and negotiation process for comprehensive development agreements.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.201 and §371.101.

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 January 31, 2014.

TRD-201400411
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: February 20, 2014
Proposal publication date: November 15, 2013
For further information, please call: (512) 463-8683

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SUBCHAPTER B. TRANSFER OF DEPARTMENT TOLL PROJECTS

The Texas Department of Transportation (department) adopts amendments to §27.11, Purpose, and the repeal of §27.14, Conversion of Non-toll State Highways, concerning the transfer of department toll projects and conversion of non-toll state highways. The amendments to §27.11 and the repeal of §27.14 are adopted without changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8182) and will not be republished.

EXPLANATION OF ADOPTED REPEAL AND AMENDMENTS

Senate Bill 1029, 83rd Legislature, Regular Session, 2013, repealed Transportation Code, §§228.201(a)(7), 228.202, 228.203, 228.207, and 228.208, which authorized the Texas Transportation Commission, after making the required determinations and after the required county and voter approval, to convert a non-toll segment of the state highway system to a department toll project.

Amendments to §27.11 delete provisions relating to the conversion of non-toll segments of the state highway system to department toll projects from the description of the purpose of the subchapter.

These rules repeal §27.14, which provides the process used for the conversion of non-toll state highways to toll projects because the authority for the conversion was repealed by Senate Bill 1029.

COMMENTS

No comments on the proposed amendments and repeal were received.

43 TAC §27.11

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.204, which requires the commission to adopt rules implementing Subchapter E of Chapter 228.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 228.

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 January 31, 2014.

TRD-201400409
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: February 20, 2014
Proposal publication date: November 15, 2013
For further information, please call: (512) 463-8683

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43 TAC §27.14

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.204, which requires the commission to adopt rules implementing Subchapter E of Chapter 228.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 228.

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 January 31, 2014.

TRD-201400410
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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Proposal publication date: November 15, 2013
For further information, please call: (512) 463-8683

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PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §57.56

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts an amendment to §57.56, relating to General Requirements for Advisory Committees, without changes to the

proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7677). The amendment changes the date that the board's advisory committees will be abolished. The Government Code §2110.008 requires the Authority to approve the continuation of its advisory committees and reset the date of their abolishment, or the committees will be abolished by operation of law. The amendment to §57.56 changes the date to August 31, 2018. Adoption of this amendment will act as the Authority's approval of the continuation of these committees. The text of the rule as amended will not be republished.

No written comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties, and Government Code §2110.008, which the Authority interprets as requiring it to set a date of abolishment for its advisory committees or face automatic abolishment of them.

The following are the statutes, articles, or codes affected by the amendments: Texas Civil Statutes, Article 4413(37), §6(a), and Government Code §2110.008.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 30, 2014.

TRD-201400397
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Effective date: February 19, 2014
Proposal publication date: November 1, 2013
For further information, please call: (512) 465-4011

Stephanie Fulton

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

Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 74, Qualified Domestic Relations Orders. This review is being conducted pursuant to Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at *paula.jones@ers.state.tx.us.* The deadline for receiving comments is Monday, March 17, 2014, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201400373
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 30, 2014

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The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 81, Insurance. This review is being conducted pursuant to Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at *paula.jones@ers.state.tx.us.* The deadline for receiving comments is Monday, March 17, 2014, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201400374
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 30, 2014

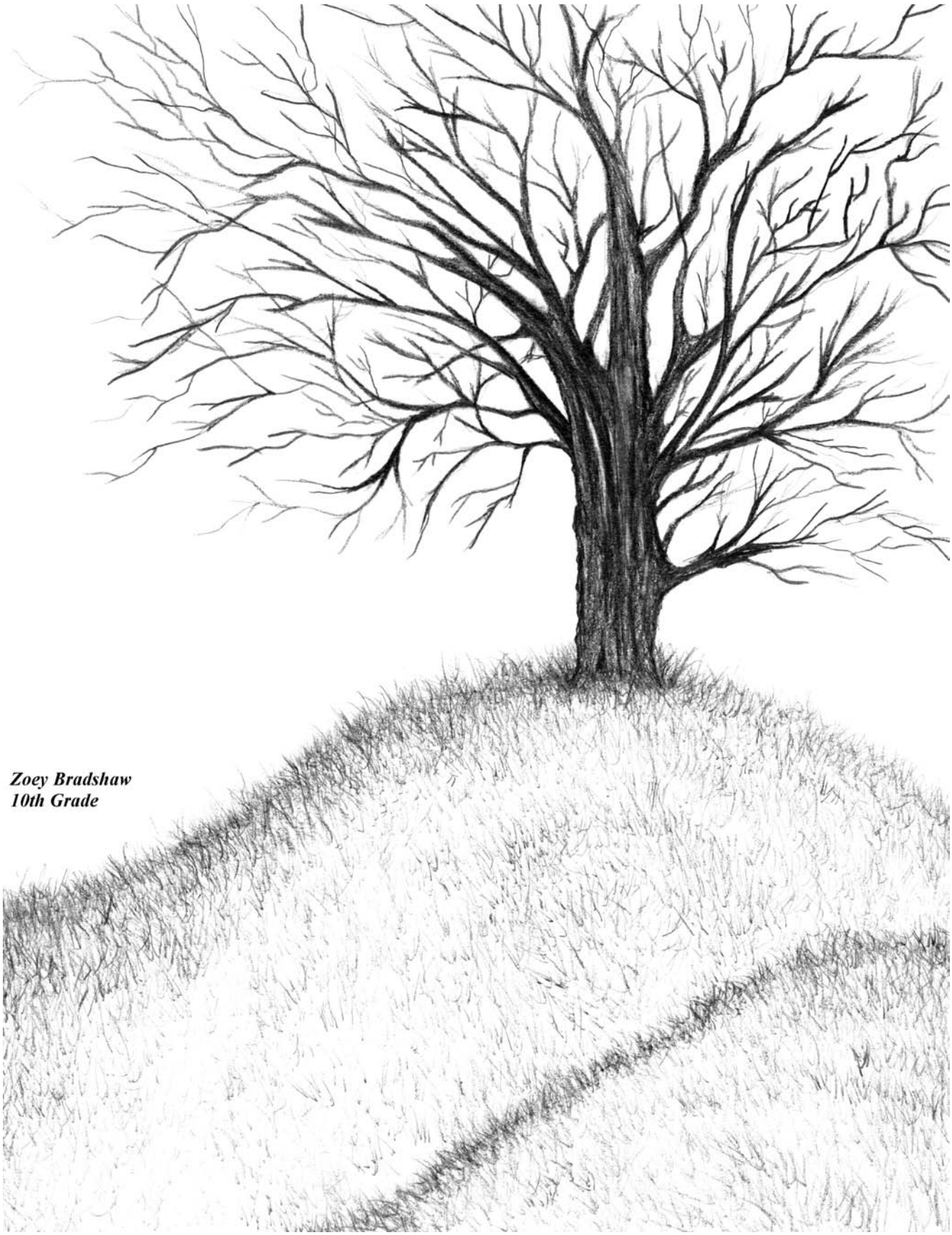
♦ ♦ ♦

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 82, Health Services in State Office Complexes. This review is being conducted pursuant to Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at *paula.jones@ers.state.tx.us.* The deadline for receiving comments is Monday, March 17, 2014, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201400375
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 30, 2014



Zoey Bradshaw
10th Grade

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: 30 TAC §30.28(y)(6)

Type of Training	Fee Amount
Association Meetings - training sessions up to (2) two hours (over two hours, see conferences)	$10 per training credit hour
Association Meetings - annual review for single chapter, section, or district with 12 or less meetings per year	$100 per annual review application
Association Meetings - annual review for multiple chapters, sections, or districts with 12 or less meetings per year for each	$400 per annual review application
Conferences	$10 per training credit hour or a minimum of $50
Classroom Training - using **existing** approved manuals.	$10 per training credit hour or a minimum of $50
Classroom Training with **new manuals and new materials**	$25 per training credit hour or a minimum of $100
Technology-Based Training	$25 per training credit hour or a minimum of $100
Correspondence Courses	$25 per training credit hour or a minimum of $100
Webinar	$50 for initial review, then $10 per training credit hour for subsequent applications.

Figure: 40 TAC §711.401(a)

The investigator notifies...	Within...	Does the investigator reveal the identity of the reporter?
The administrator or CEO	One hour of receipt of the allegation by DFPS.	Only if the alleged perpetrator is a Mental Health Services Provider and the allegation is sexual exploitation.
DADS Office of Consumer Rights and Services, by fax, at (512) 438-4302 of allegations involving an HCS provider.	24 hours of receipt of the allegation by DFPS or the next working day.	
Law enforcement of any allegation of abuse, neglect, or exploitation involving a child.	One hour of receipt of the allegation by DFPS.	Yes
Law enforcement of any allegation of abuse, neglect, or exploitation believed to constitute a criminal offense under any law, involving an adult person served.		
Office of Inspector General of any allegation of abuse, neglect, or exploitation in state supported living centers or the ICF-IID component of Rio Grande State Center believed to constitute a criminal offense under any law involving a child or adult person served.		

Figure: 40 TAC §711.401(b)

The Investigator notifies...	Within....	Does the investigator reveal the identity of the reporter?
For State Hospitals and mental health component of the Rio Grande State Center - The DSHS Office of Consumer Services and Rights Protection at (800) 252-8154.	One hour of receipt of the allegation by DFPS.	Only if the alleged perpetrator is a Mental Health Services Provider and the allegation is sexual exploitation.
For State Supported Living Centers and the ICF-IID component of the Rio Grande State Center - The DADS Office of Consumer Rights and Services at (800) 458-9858.		
For HCS Programs - The HCS CEO/Administrator Designee.		
For Licensed ICFs-IID - The licensed ICF-IID CEO/Administrator Designee.		
For Community Centers and Local Authorities - The DADS Office of Consumer Rights and Services at (800) 458-9858, DSHS Office of Consumer Services and Rights Protection at (800) 252-8154, and either the Chair of the Community Center Board of Trustees or Local Authority Board of Directors, as appropriate.	24 hours of receipt of the allegation by DFPS or the next working day.	

Figure: 40 TAC §745.37(2)

Child Day-Care Operations	Description of Operation	Type of Permit
(A) Listed Family Home	A caregiver at least 18 years old that provides care in her own home for compensation, for three or fewer children unrelated to the caregiver, birth through 13 years, for at least: (i) four hours a day, three or more days a week, for three or more consecutive weeks; or (ii) four hours a day for 40 or more days in a period of 12 months. The total number of children in care, including children related to the caregiver, may not exceed 12.	Listing (A caregiver who is subject to regulation as a listed family home may instead become a registered family home.)
(B) Registered Child-Care Home	The primary caregiver provides regular care in the caregiver's own residence for not more than six children from birth through 13 years, and may provide care after school hours for not more than six additional elementary school children. The total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	Registration
(C) Licensed Child-Care Home	The primary caregiver provides care in the caregiver's own residence for children from birth through 13 years. The total number of children in care varies with the ages of the children, but the total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	License
(D) Child-Care Center	An operation providing care at a location other than the permit holder's home, for seven or more children under 14 years of age, for less than 24 hours per day, but at least two hours a day, three or more days a week.	License
(E) Employer-Based Child Care	A small employer providing care for up to 12 of the employees' children that are under 14 years of age, for less than 24 hours per day. The care is located on the employer's premises and in the same building where the parents work.	Compliance Certificate

(F) Shelter Care	A child care program at a temporary shelter, such as a family violence or homeless shelter, providing care for seven or more children under 14 years of age while the resident parent is away from the shelter. The child care program operates for at least four hours a day three days a week.	Compliance Certificate
(G) Before or After-School Program	An operation that provides care before, or after, or before and after, the customary school day and during school holidays, for at least two hours a day and three days a week, to children who attend pre-kindergarten through grade six.	License
(H) School-Age Program	An operation that provides supervision and recreation, skills instruction, or skills training for at least two hours a day and three days a week to children attending pre-kindergarten through grade six. A school-age program operates before or after the customary school day and may also operate during school holidays, the summer period, or any other time when school is not in session.	License

Figure: 40 TAC §748.303(c)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of your operation unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires your operation to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(4) An allegation that a person under the auspices of your operation who directly cares for or has access to a child in the operation has abused drugs within the past seven days.	(A)(i) YES (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO (B)(ii) Not applicable.
(5) An investigation of abuse or neglect by an entity (other than Licensing) of an employee, professional level service provider, volunteer, or other adult at the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.	(B)(i) NO (B)(ii) Not applicable.
(6) An arrest, indictment, or a county or district attorney accepts an "Information" regarding an official complaint against an employee, professional level service provider, or volunteer alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?).	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.	(B)(i) NO (B)(ii) Not applicable.

Figure: 40 TAC §749.503(d)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of your agency or a foster home unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires a foster home to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(4) An allegation that a person under the auspices of your child-placing agency who directly cares for or has access to a child in the setting has abused drugs within the past seven days.	(A)(i) YES (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO (B)(ii) Not applicable.
(5) An investigation of abuse or neglect by any other entity other than Licensing of an employee, contract staff, volunteer, or other adult at the agency.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.	(B)(i) NO (B)(ii) Not applicable.
(6) An arrest or indictment, or a county or district attorney accepts an "Information" regarding an official complaint, against an employee, a foster parent, a contract staff, or volunteer alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?).	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.	(B)(i) NO (B)(ii) Not applicable.

Figure: 43 TAC §15.55(c)

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
Project is on the Interstate Highway System	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State
Project is on the State Highway System (except Farm to Market System, Urban Road System, Principal Arterial Street Program (PASS) or Phase 1 Trunk System Corridor)	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
Project is on the PASS except for existing US, SH, FM and UR system routes	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	50% State 50% Local -or- 80% Federal 10% State 10% Local
Project is not on the State Highway System	100% Local -or- 80% Federal 20% Local	100% Local -or- 80% Federal 20% Local	100% Local -or- 80% Federal 20% Local
Project is on the FM/UR system New FM/UR route	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% Local
Existing FM/UR route	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
Project is on a Phase 1 Trunk System Corridor, Designated Statewide Mobility Corridor, ~~[or]~~ On-System Turnpike Project, or Hurricane Evacuation Route	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State
State Park Road Program	100% State	100% State	100% State
On-State System Bridge Program	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
Off-State System Bridge Program If bridge project connects Texas with a neighboring state	80% Federal 10% State 10% Local -or- 80% Federal 20% State #1 80% Federal 20% State	80% Federal 10% State 10% Local -or- 80% Federal 20% State #1 80% Federal 20% State	100% Local
On-State System Safety Program	100% State -or- 90% Federal 10% State	90% Federal 10% State	100% State -or- 90% Federal 10% State
Off-State System Safety Program If included in the Railroad Signal Safety Program	90% Federal 10% Local -or- 90% Federal 10% State	90% Federal 10% Local -or- 90% Federal 10% State	90% Federal 10% Local -or- 90% Federal 10% State
Transportation Enhancement Program #2	80% Federal 20% Local	80% Federal 20% Local	80% Federal 20% Local

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
On-State System Safe Routes to Schools Program	100% State -or- 100% Federal	100% State -or- 100% Federal	100% State -or- 100% Federal
Off-State System Safe Routes to Schools Program	100% Federal	100% Federal	100% Local -or- 100% Federal

All participation ratios shown depict the minimum local participation for eligible costs. For continuous lighting systems or safety lighting on the state highway system, refer to Chapter 25, §25.11 of this title.

NOTES:

#1 If approved in accordance with §15.55(d) of this subchapter.

#2 For projects selected in the Transportation Enhancement Program call, federal participation is limited to the amount authorized by the commission, not to exceed 80% of the eligible costs.

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.

Texas Department of Agriculture

Request for Proposals: 2014 Specialty Crop Block Grant Program

The Texas Department of Agriculture (TDA) is accepting proposals for the Specialty Crop Block Grant Program (Program or SCBGP). The Program is designed to solely enhance the competitiveness of specialty crops. Projects must demonstrate a positive measurable impact on the specialty crop industry.

Funding from the USDA-AMS under the SCBGP is contingent upon reauthorization of the Agriculture Reform, Food and Jobs Act (Farm Bill), or other measure which amends the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) and the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note).

Eligibility. Responses will **only** be accepted from producer, industry or community-based organizations involved with or that promote specialty crops.

Projects must demonstrate that they enhance the competitiveness of Texas' specialty crop industry.

Project funds may only be used for activities benefiting specialty crops.

Projects must benefit more than one individual, institution or organization. Grant funds will not be awarded for projects that directly benefit or provide a profit to a single organization, institution or individual.

Applications will not be accepted where the primary applicant is an educational institution.

Producer, industry or community-based organizations involved with specialty crops may partner with an educational institution; however, the primary applicant must be a producer, industry or community-based organizations involved with specialty crops.

Funding Parameters, Award Information and Notification.

Selected projects will receive funding on **a cost reimbursement basis.** Funds will not be advanced to grantees. Selected applicants must have the financial capacity to pay all costs up-front.

Projects may be funded at varying levels depending on the nature of the project.

Projects must demonstrate strong justification for the requested budget as well as the potential for providing significant demonstrable benefits to Texas specialty crops.

Where more than one (1) proposal on an eligible research topic is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

TDA reserves the right to accept or reject any or all proposals submitted. TDA is under no legal or other obligation to execute a grant on the basis of a response submitted to this Request for Proposals (RFP). TDA shall not pay for any costs incurred by any entity in responding to this RFP.

The public announcements and written notifications will be made to all applicants and their affiliated agencies, organizations, or institutions. Favorable decisions will indicate the amount of award, duration of the grant, and any special conditions associated with the project.

Submitting an Application. Applications are currently being accepted and must be submitted on the form provided by TDA by the submission deadline. Application form and guidance documents are available on TDA's website at www.TexasAgriculture.gov.

Applications must be complete and have all required documentation to be considered. Applications without required documentation will be returned. TDA reserves the right to request additional information or documentation to determine eligibility. Applications must be signed by the applicant and include all required supporting documentation.

Deadline for Submission of Responses. The complete application packet including the proposal with signatures must be RECEIVED by **5:00 p.m. (Central Time) on Thursday, March 20, 2014.** It is the applicant's responsibility to submit all materials necessary for evaluation early enough to ensure timely delivery. *Late or incomplete proposals will not be accepted. Applicants may not supplement or amend the application after the deadline.*

In addition, the narrative must be submitted via email to Grants@TexasAgriculture.gov in a format which allows the text copy function to be operational, such as Microsoft Word (.doc, .docx) or Adobe Acrobat (.pdf).

Contact Information:

Physical Address. Texas Department of Agriculture, Trade & Business Development - Grants Office, 1700 North Congress Avenue, Austin, Texas 78701.

Mailing Address. Texas Department of Agriculture, Trade & Business Development - Grants Office, P.O. Box 12847, Austin, Texas 78711.

Electronic Versions. Fax: (888) 223-9048, Email: Grants@TexasAgriculture.gov.

For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Weth Fryer, Grants Specialist, at (512) 463-6908 or by email at Grants@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201400537
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: February 5, 2014

♦ ♦ ♦

Department of Assistive and Rehabilitative Services

Application for Early Childhood Intervention Federal Funding

The Texas Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services is soliciting comments related to its annual application for funding under the Individuals with Disabilities Education Act, Part C. The annual funding application will be submitted to the U.S. Department of Education, Office of Special Education Programs. The application is posted on the DARS web site at: http://www.dars.state.tx.us. The Texas Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services is providing an opportunity to comment on the application from February 14, 2014 until 5:00 p.m. on April 15, 2014. To request copies of the application or submit comments, please contact:

Texas Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services, Mail Code 3029, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, ECI.policy@dars.state.tx.us.

TRD-201400434
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: February 3, 2014

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Comptroller of Public Accounts

Notice of Contract Amendment

The Texas Comptroller of Public Accounts ("Comptroller") announces the amendment to a contract with Padgett, Stratemann & Co., LLP, 811 Barton Springs Road, Suite 550, Austin, Texas 78704, awarded under Request for Proposals ("RFP") 204c for Professional Accounting Services to Conduct Audits of the Texas Conservation Plan for the Dunes Sagebrush Lizard. The term of the contract is December 6, 2013, through June 24, 2014, with option to renew for two (2) additional periods. The amendment increases the total amount of the contract from $50,000.00 to $57,500.00.

The notice of issuance was published in the July 12, 2013, issue of the *Texas Register* (38 TexReg 4530). The notice of award was published in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9655).

TRD-201400542
Robin Reilly
Assistant General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 5, 2014

♦ ♦ ♦

Notice of Request for Proposals

Pursuant to Chapter 403, §403.011; Chapter 2155, §2155.001; and Chapter 2156, §2156.121 of the Texas Government Code and Chapter 54, Subchapter F of the Texas Education Code, the Texas Comptroller of Public Accounts ("Comptroller") on behalf of the Texas Prepaid Higher Education Tuition Board ("Board") announces its Request for Proposals No. 207d ("RFP") from qualified investment management firms to assist Comptroller and the Board in managing the Domestic Core Fixed Income portion of the assets held by the Texas Guaranteed Tuition Plan as described in the RFP. If approved by the Board, the successful respondent(s), if any, will be expected to begin performance of the contract on or about September 1, 2014.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: http://esbd.cpa.state.tx.us on Friday, February 14, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact Robin Reilly, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, February 28, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Friday, March 14, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, March 28, 2014. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s). The Board and Comptroller each reserve the right to accept or reject any or all Proposals submitted. The Board and Comptroller are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Board and Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 14, 2014, after 10:00 a.m. CT; Questions Due - February 28, 2014, 2:00 p.m. CT; Official Responses to Questions posted - March 14, 2014, or as soon thereafter as practical; Proposals Due - March 28, 2014, 2:00 p.m. CT; Contract Execution - August 1, 2014, or as soon thereafter as practical; and Commencement of Work - on or about September 1, 2014. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201400534
Robin Reilly
Assistant General Counsel
Comptroller of Public Accounts
Filed: February 5, 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, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/10/14 - 02/16/14 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 02/10/14 - 02/16/14 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 02/01/14 - 02/28/14 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 02/01/14 - 02/28/14 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.

[3] For variable rate commercial transactions only.

TRD-201400458
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 4, 2014

♦ ♦ ♦

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 17, 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 17, 2014.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Adonai Elohai, LLC dba The Ridge; DOCKET NUMBER: 2013-1671-PWS-E; IDENTIFIER: RN102717584; LOCATION: Kerrville, Gillespie County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code (THSC), §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter (mg/L) of free chlorine throughout the distribution system at all times; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent that has an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(III), and (B)(iii), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; 30 TAC §290.41(c)(1)(A), by failing to locate the facility's groundwater well at least 150 feet from a septic tank perforated drain field; 30 TAC §290.121(a) and (b), by failing to compile and maintain an accurate and 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 will be used to comply with the monitoring requirements which is maintained at each treatment plant and at a central location; and 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 mg/L using a colorimeter, spectrophotometer, or, with the written permission of the executive director, a color comparator; PENALTY: $764; Supplemental Environmental Project offset amount of $306 applied to Travis Audubon Society; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: City of Austin; DOCKET NUMBER: 2013-1920-WQ-E; IDENTIFIER: RN101220085; LOCATION: Austin, Travis County; TYPE OF FACILITY: public water supply; RULE VIOLATED: TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state; PENALTY: $7,125; Supplemental Environmental Project offset amount of $7,125 applied to Travis Audubon Society; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: City of Lovelady; DOCKET NUMBER: 2013-1914-PWS-E; IDENTIFIER: RN101391647; LOCATION: Lovelady, Houston County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification within 24 hours after the occurrences of chloramine residuals below 0.5 milligrams per liter using the prescribed notification format as specified in 30 TAC §290.47(e); 30 TAC §290.46(s)(1), by failing to calibrate the well meter at least once every three years; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence; and 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation that is readily accessible outside the chlorination room; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: City of Plano; DOCKET NUMBER: 2013-1868-WQ-E; IDENTIFIER: RN103099156; LOCATION: Plano, Collin County; TYPE OF FACILITY: public water supply with associated water mains; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of potable water; and TWC, §26.039(b), by failing to timely submit a noncompliance notification to the TCEQ Dallas/Fort Worth Regional Office within 24 hours of the unauthorized discharge; PENALTY: $17,562; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Tahoka; DOCKET NUMBER: 2013-2017-PWS-E; IDENTIFIER: RN101234847; LOCATION: Tahoka, Lynn

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: $2,100; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(6) COMPANY: COX MANUFACTURING COMPANY; DOCKET NUMBER: 2013-1769-MLM-E; IDENTIFIER: RN100649003; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: machine shop; RULE VIOLATED: 30 TAC §335.70(a) and §335.513 and 40 Code of Federal Regulations (CFR) §262.40(c), by failing to maintain records of hazardous waste determinations and waste classifications; 30 TAC §335.6(c), by failing to update the facility's notice of registration regarding all generated waste streams and associated solid waste management units; 30 TAC §335.69(f)(5)(A) and 40 CFR §262.34(d)(5)(i) and (ii), by failing to designate at least one employee as emergency coordinator and post the emergency coordinator information next to the telephone; 30 TAC §335.69(f)(4) and 40 CFR §265.37 by failing to make arrangements, agreements, or contracts for emergency services with local authorities; 30 TAC §335.69(f)(5)(C) and 40 CFR §262.34(d)(5)(iii), by failing to ensure all employees are thoroughly familiar with proper waste handling and emergency procedures; 30 TAC §335.69(f)(2) and 40 CFR §262.34(d)(2) and §265.174, by failing to conduct weekly inspections of all container storage areas looking for leaking containers and for deterioration of containers caused by corrosion or other factors; 30 TAC §335.69(a)(2) and 40 CFR §262.34(a)(2), by failing to label all hazardous waste containers with accumulation start dates; and 30 TAC §331.3 and §335.4 and TWC, §26.121, by failing to prevent the disposal of industrial solid waste into an unauthorized injection well; PENALTY: $15,188; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Crossroad USA Investments Incorporated dba Crossroads Shell; DOCKET NUMBER: 2013-1940-PST-E; IDENTIFIER: RN101532075; LOCATION: Fort Worth, Tarrant 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; PENALTY: $3,380; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: John Merendino dba Merendino Service Station; DOCKET NUMBER: 2013-1660-PST-E; IDENTIFIER: RN102873296; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month; 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by TCEQ personnel; PENALTY: $4,375; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Joseph Cooter Payne; DOCKET NUMBER: 2014-0086-WOC-E; IDENTIFIER: RN106996994; LOCATION: Haskell, Haskell County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 78602-783311, (325) 698-9674.

(10) COMPANY: King Homes, Incorporated; DOCKET NUMBER: 2013-1967-AIR-E; IDENTIFIER: RN104954540; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: air curtain incinerator; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization to operate a source of air emissions; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; PENALTY: $3,075; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: NE Construction, LLP; DOCKET NUMBER: 2014-0077-WQ-E; IDENTIFIER: RN106946585; LOCATION: Midland, Midland County; TYPE OF FACILITY: commercial construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(12) COMPANY: ONEOK Sterling III, Pipeline, LLC; DOCKET NUMBER: 2014-0094-WQ-E; IDENTIFIER: RN106886997; LOCATION: Grayson County; TYPE OF FACILITY: commercial construction; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to impound, divert, or use state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: ORANGEFIELD WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1986-PWS-E; IDENTIFIER: RN101222818; LOCATION: Orangefield, Orange County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to customers of the facility within 24 hours of a low pressure event or water outage using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: $270; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Southwest Region Conference Association of Seventh-day Adventists dba Round Rock Seventh-day Adventist Church; DOCKET NUMBER: 2013-1992-EAQ-E; IDENTIFIER: RN106835820; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: religious assembly site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $937; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5406; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(15) COMPANY: St. David's Medical Center; DOCKET NUMBER: 2013-1844-PST-E; IDENTIFIER: RN100551266; LOCATION: Austin, Travis County; TYPE OF FACILITY: facility with an emergency generator; 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 a regulated substance into the underground storage tanks (USTs); and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issues UST delivery certificate by submitting a properly completed UST registration and self-certification form; PENALTY: $6,886; ENFORCEMENT COORDINATOR: Jill Russell, (512)

239-4564; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(16) COMPANY: Texas Department of Public Safety; DOCKET NUMBER: 2013-0846-PST-E; IDENTIFIER: RN102912037; LOCATION: Plainview, Hale County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(17) COMPANY: WILKINSON GARY IRON & METAL, INCORPORATED; DOCKET NUMBER: 2013-1919-MLM-E; IDENTIFIER: RN106890015; LOCATION: Laredo, Webb County; TYPE OF FACILITY: salvage yard; RULE VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance level odor emissions conditions; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water runoff associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: $3,751; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-201400457
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 4, 2014

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 17, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 17, 2014.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Attebury Grain, LLC; DOCKET NUMBER: 2012-1326-AIR-E; TCEQ ID NUMBER: RN102420569; LOCATION: 624 Burlington Road, Saginaw, Tarrant County; TYPE OF FACILITY: grain elevator; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §101.211(b), §116.115(b)(2)(G) and New Source Review (NSR) Permit Number 76905, General Conditions Number 9, by failing to maintain records of unauthorized emissions due to maintenance activities; THSC, §382.085(b) and 30 TAC §101.20(1), §116.115(c), and 40 Code of Federal Regulation (CFR) §60.8, §60.11, and NSR Permit Number 76905 Special Conditions Number 2, and AO Docket Number 2010-0418-AIR-E Ordering Provision Number 2.g., by failing to conduct required initial performance tests for the particulate matter emissions from the grain terminal elevator exhaust stacks, emission point numbers B1-B9 and failing to properly conduct initial opacity observations from all emission points; THSC, §382.085(b) and 30 TAC §116.115(b)(2), §116.116(b)(1) and NSR Permit Number 76905 General Conditions Number 1, by failing to operate in accordance with representations made in the permit application for NSR Permit Number 76905; and THSC, §382.085(b) and 30 TAC §101.20(1), §116.115(c) and 40 CFR §60.302 and NSR Permit Number 76905 Special Conditions Number 2, by failing to comply with the visible emissions opacity limit of 5% for rail car loading and unloading operations; PENALTY: $12,900; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Chahid El-Bayeh d/b/a McQueeney Chevron; DOCKET NUMBER: 2013-0480-PST-E; TCEQ ID NUMBER: RN102462892; LOCATION: 2901 Farm-to-Market 78, Seguin, Guadalupe County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew 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 §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $17,822; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: CHARLIE HILLARD, INC. d/b/a CHARLIE HILLARD FORD; DOCKET NUMBER: 2013-1713-PST-E; TCEQ ID NUMBER: RN100666833; LOCATION: 5000 Bryant Irvin Road, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a fleet refueling facility; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(b) and 30 TAC §334.50(b)(2), by failing to provide release detection for the suction piping associated with UST system; PENALTY: $3,516; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: JACK'S GROCERY, INC. d/b/a Jack's Grocery 1; DOCKET NUMBER: 2012-2268-PST-E; TCEQ ID NUMBER: RN102487626; LOCATION: 1022 Highway 146 South, La Porte, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $10,913; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Shmoni Barsoum d/b/a Z Kwik Stop and John Barsoum d/b/a Z Kwik Stop; DOCKET NUMBER: 2013-0518-PST-E; TCEQ ID NUMBER: RN101443562; LOCATION: 105 West Main Street, Royse City, Rockwall County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: $31,600; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: SOUTHEAST OIL COMPANY dba Sealy Shell; DOCKET NUMBER: 2012-2308-PST-E; TCEQ ID NUMBER: RN104502943; LOCATION: 2010 Highway 36 South, Sealy, Austin County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $8,750; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201400461
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 4, 2014

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 17, 2014.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 17, 2014.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: D.C.T.D., INC. d/b/a Boomers; DOCKET NUMBER: 2013-0645-PST-E; TCEQ ID NUMBER: RN101899607; LOCATION: 2330 Sherwood Way, San Angelo, Tom Green County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $5,008; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: Horacio Delgado and Honoriana Delgado; DOCKET NUMBER: 2013-0148-MSW-E; TCEQ ID NUMBER: RN106557556; LOCATION: 25201 State Highway 345, San Benito, Cameron County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: $11,250; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: INTERCONTINENTAL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2012-0906-PWS-E; TCEQ ID NUMBER: RN102698651; LOCATION: 13935 Smith Road, Trailer 140, Humble, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), by failing to collect routine monitoring samples for coliform analysis and failing to provide public notification of the failures; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees for TCEQ Financial Administration Account Number 91010827 for Fiscal Years 2007-2012; PENALTY: $1,988; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: SIMON-RICKY LLC dba Fina Mart; DOCKET NUMBER: 2012-2495-PST-E; TCEQ ID NUMBER: RN101557122; LOCATION: 1890 South Old Orchard lane, Lewisville, Denton County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew 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; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $12,856; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201400462
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 4, 2014

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 17, 2014.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 17, 2014.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: Darlene Chappell d/b/a Big Red Barn; DOCKET NUMBER: 2013-0630-PST-E; TCEQ ID NUMBER: RN102063575; LOCATION: 781 Reagan Street, Barnhart, Irion County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $17,211; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201400460
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 4, 2014

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 30

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 30, Occupational Licenses and Registrations, §§30.5, 30.7, 30.14, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30, 30.33, and 30.36, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill (HB) 798, HB 1302, HB 1659, HB 1846, and Senate Bill 162 from the 83rd Legislature, 2013, relating to the occupational licensing requirement for certain offenses where proceedings were dismissed, exemption of Class C misdemeanors from convictions, prohibiting certain registered sex offenders from providing services in a person's residence unless supervised, child support payments, expedited processing of applications by military spouses, and credit for verified military service, training or education for military service members or military veterans. The proposed rulemaking would also repeal existing §30.33 and simultane-

ously propose new §30.33 in order to reorganize the section to improve readability by the public.

Additional amendments would update the occupational licensing rules by providing consistency, incorporating new training technology, reorganizing existing language, and improving readability.

The commission will hold a public hearing on this proposal in Austin on Thursday, March 6, 2014, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2013-044-030-WS. The comment period closes March 18, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Ivan Messer, Occupational Licensing Unit, (512) 239-6316.

TRD-201400413
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 31, 2014

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Notice of Water Quality Applications

The following notices were issued on January 31, 2014, through February 4, 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

BRAZOS ELECTRIC POWER COOPERATIVE INC which operates Randall W. Miller Generating Station, a natural gas and fuel oil-fired steam electric generating station, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001903000, which authorizes the discharge of once through cooling water at a daily average flow not to exceed 400,000,000 gallons per day via Outfall 001 and low volume wastewater, stormwater, and previously monitored effluent (metal cleaning waste) on an intermittent and flow variable basis via Outfall 002. The facility is located at 2217 Farm-to-Market Road 3137, on the west shore of Lake Palo Pinto, three miles east of Farm-to-Market Road 919, and approximately eleven miles north of the City of Gordon, Palo Pinto County, Texas 76484.

LONE STAR INDUSTRIES INC which operates Maryneal Cement Plant, a portland and masonry cement manufacturer, has applied for a renewal of TPDES Permit No. WQ0003905000, which authorizes the discharge of utility wastewater and stormwater on an intermittent and flow variable basis via Outfall 001 and stormwater runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 202 County Road 306, one mile northwest of the intersection of Farm-to-Market Road 608 and Farm-to-Market Road 1170, approximately 0.7 mile northwest of the City of Maryneal, Nolan County, Texas 79335.

CITY OF STOCKDALE has applied for a renewal of TPDES Permit No. WQ0010292001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located on the southeast side of County Road 401 (Old Floresville Road), approximately 1,500 feet southwest of the intersection of U.S. Highway 87 and County Road 401 in Wilson County, Texas 78160.

CITY OF IDALOU has applied for a renewal of TCEQ Permit No. WQ0010421001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 316,000 gallons per day via surface irrigation of 100 acres of public access golf course 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 one mile southwest of the intersection of U.S. Highway 82-62 (State Highway 114) and Farm-to-Market Road 400; one half mile south of Highway 82-62 on Pecan Street. The irrigation disposal site is located on a golf course, approximately 2 miles southwest of the intersection of Highway 82-62 and Farm-to-Market Road 400 in Lubbock County, Texas 79329.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0010481001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 1,890,000 gallons with seven Outfalls. The current permit authorizes the disposal of water treatment plant sludge at an on-site water treatment sludge landfill, which consists of sixty-one acres of land located at the water treatment plant site and also the storage of water treatment plant sludge temporarily in on-site lagoons. The facility is located at 810 State Highway 78 North, at the corner of State Highway 78 and Brown Street, in the City of Wylie in Collin County, Texas 75098.

CITY OF GRANGER has applied for a renewal of TPDES Permit No. WQ0010891001, 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 at 1001 Lamb Street, approximately 1300 feet south of Farm-to-Market Road 971 and 1 mile east of State Highway 95 in Granger, Williamson County, Texas 76530.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TCEQ Permit No. WQ0011503001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via surface irrigation of 18 acres pasture and wooded land but approximately 2 acres of non-public access meadowland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 14222 Park Road 57, Somerville approximately 9 miles south of the intersection of Farm-to-Market Road 976 and state Highway 36, approximately 16 miles south of the City of Caldwell in Burleson County, Texas 77879.

NORTH ALAMO WATER SUPPLY CORPORATION has applied for a new permit TPDES Permit No. WQ0015163001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located approx-

imately 1.5 miles east of the intersection of Valverde Road and Minnesota Road, on the northwest corner of the intersection of Goolie Road and Minnesota Road in Hidalgo County, Texas 78537.

UNITED STATES GYPSUM COMPANY which operates the Galena Park Plant, a gypsum wallboard and wallboard paper manufacturing facility, has applied for a minor amendment to TPDES Permit No. WQ0000353000 to authorize the addition of a chlorination/dechlorination system to provide disinfection of the effluent at the existing lagoons prior to discharge at Outfall 001. The existing permit authorizes the discharge of treated process wastewater, treated domestic wastewater, stormwater, and boiler blowdown at a daily average flow not to exceed 375,000 gallons per day via Outfall 001. The facility is located at 1201 Mayo Shell Road, approximately 1.25 miles east of Loop 610 East and 0.5 mile south of Clinton Drive in the City of Galena Park, Harris County, Texas 77547.

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.

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-201400535
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 5, 2014

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Monthly Report due December 5, 2013 for Committees

Robert O. Esparza Jr., San Antonio Ironworkers PAC, 4318 Clark Ave., San Antonio, Texas 78223

TRD-201400396
Natalia Ashley
Interim Executive Director
Texas Ethics Commission
Filed: January 30, 2014

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 1, 2014, through February 3, 2014. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on February 5, 2014. The public comment period for this project will close at 5:00 p.m. on March 7, 2014.

FEDERAL AGENCY ACTIONS:

Applicant: Calhoun County Commissioner Precinct 1

Location: The project site is located in wetlands adjacent to Matagorda Bay at Ocean Drive, Magnolia Beach, spanning 1 mile, and terminating just past 23rd Street, in Indianola, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Lavaca East, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 28.56003 North; Longitude: 96.53784 West.

Project Description: The applicant proposes to raise the roadbed elevation of N. Ocean Drive along the western shore of Matagorda Bay. The proposed project would permanently impact 1.8 acres of tidally-influenced wetlands.

CMP Project No: 14-1344-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2013-00336. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Trinity Bay Conservation District

Location: The project site is located in Mayhaw Bayou, in Winnie, Chambers County Texas. The project can be located on the U.S.G.S. quadrangle map titled: Stowell, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29.820392 North; Longitude: 94.386002 West.

Project Description: The applicant proposes to discharge 578 cubic yards of concrete below the ordinary high water mark for the purpose of widening and deepening approximately 2,323 linear feet of an unnamed tributary to Mayhaw Bayou and providing erosion protection along the banks so that the bayou may convey stormwater downstream and away from existing residential areas.

CMP Project No: 14-1358-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2012-00810. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

Applicant: Port of Corpus Christi

Location: The project is located in the Port of Corpus Christi at the north bulkhead line of the Tule Lake Channel, west of the Bulk Terminal Dock Number 2, near Torch Petroleum in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Northing: 3078410; Easting: 649723. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.82199 North; Longitude: -97.47981 West.

Project Description: The applicant proposes to amend the depth of an existing project from -16 feet MLT (-12 feet plus 2-foot advanced maintenance plus 2-foot allowable overdepth) to -20 feet MLT (-16 feet plus 2-foot advanced maintenance plus 2-foot allowable overdepth. The new project depth would increase the 16.9-acre existing project area by 2.15 acres and increase the current 286,537 cubic yard projected dredged material volume by approximately 74,935 cubic yards.

CMP Project No: 14-1367-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2001-00996. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: John Nau

Location: The project site is located in Aransas Bay, at 1 Finisterre Street in the Key Allegro Subdivision, in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Rockport, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 28.031787 North; Longitude: -97.026465 West. Project Description: The applicant proposes to construct a new bulkhead in front of a failed, existing bulkhead for erosion control and to reclaim land that has eroded into waters of the United States (U.S.). Approximately 209 cubic yards of material would be placed behind the proposed bulkhead to backfill approximately 2,821.5 square feet of unvegetated jurisdictional waters of the U.S.

CMP Project No: 14-1370-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2011-00880. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Charles Doolin

Location: The project site, Point Glass, is located along the north shore of Offatts Bayou, at 7404 Broadway, south of the Gulf Freeway, in Galveston County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: GALVESTON, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29.28646 North; Longitude: -94.85308 West.

Project Description: The applicant proposes to mechanically dredge 6,000 cubic yards at the Point Glass facility to provide access for two large vessels and two boathouse slips. Approximately 1,500 cubic yards of the excavated material will be beneficially placed for wetland creation. The remainder of the sand will be placed on the upland for fill. The applicant also proposes to construct an L-shaped extension off the existing pier along the eastern boundary of the Sea Scout property (SWG-2008-00245). The first leg of the extension will be 10-foot-wide by 42-foot-long and will run parallel to the shoreline and connect to a perpendicular extension which is 10-foot-wide by 120-foot-long. Additionally, five 1-foot 10-inch mooring pilings will be installed along the existing Sea Scout pier (SWG-2008-00245) and an additional ten 1-foot 10-inch mooring pilings will be installed along the proposed 120-foot-long walkway and adjacent shore to moor a large vessel. As a second option to the wooded pier, the applicant is asking to be able to install a 13-foot-wide by 125-foot-long floating pontoon structure anchored by steel pilings to serve as a pier for mooring a large vessel.

CMP Project No: 14-1371-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2013-00770. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Greehey and Company, Ltd.

Location: The project site is located in adjacent wetlands and waters of Aransas Bay at the proposed Pegasus Bay development site, approximately 0.5 miles northeast of the State Highway (SH) 35 and SH 188 intersection. The project can be located on the U.S.G.S. quadrangle map titled: ESTES, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.96156 North; Longitude: 97.09765 West.

Project Description: The applicant proposes to create a mixed-use marina development with direct access to the Gulf Intracoastal Waterway (GIWW) on a 46.72-acre tract, which will include a marina, hotel, condominiums, retail space and single family residential development. The applicant states that the proposed marina design will include a canal system which will allow for water circulation by expanding the existing connection to the GIWW to take advantage of the predominant southeasterly breeze and allow water to move into and out of the canal. The proposed canal will have a uniform depth of -8.00 feet MSL and will vary in width from 100 feet at its narrowest point to 550 feet at its widest point. Approximately 56,551 cubic yards of material are proposed to be mechanically excavated from jurisdictional areas and 183,585 cubic yards of material from uplands during the creation of the proposed marina and canal. Additionally, the applicant proposes to construct approximately 4,430 linear feet of bulkhead within the proposed canal.

CMP Project No: 14-1372-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2008-00652. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Revesser, LLC

Location: The project is located in Mustang Island wetlands, intertidal areas of the East Flats and uplands, at the Newport Landings Property. The project site encompasses a 264.10-acre tract located immediately west of the intersection of State Highway 361 and Mustang Boulevard, in Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Aransas, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.799317 North; Longitude: 97.096251 West.

Project Description: The applicant proposes to construct a waterfront single family residential development with open water access. The applicant is proposing to excavate approximately 13.42 acres of jurisdictional areas to accommodate the construction of the canal network on the property. Canals would be constructed primarily in the dry (mechanical excavation) with a potentially small volume hydraulically dredged in areas where mechanical excavation is not feasible. All excavated and dredged material would be placed in upland areas on site. No fill in jurisdictional areas is proposed.

CMP Project No: 14-1360-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2005-00522. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201400541

Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: February 5, 2014

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Cognitive Rehabilitation Therapy in the Home and Community-Based Services and Community Living Assistance and Support Services Programs

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Monday, March 3, 2014, at 9:30 a.m. to receive public comment on proposed payment rates for cognitive rehabilitation therapy in the Home and Community-based Services (HCS) and Community Living Assistance and Support Services (CLASS) waiver programs operated by the Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing will be held in the Public Hearing Room 164 of the HHSC-MHMR Center Building, located at 909 West 45th Street, Austin, Texas. Entry is through Security at the front of the building facing 45th Street. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes rates for cognitive rehabilitation therapy in the Home and Community-based Services (HCS) and Community Living Assistance and Support Services (CLASS) waiver programs. The proposed rates will be effective April 1, 2014, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed payment rates reflect the funding of these services in the 83rd Legislative session (S.B. 1, 83rd Legislature, Regular Session, 2013). The proposed payment rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter E, §355.505, Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program and Subchapter F, §355.723, Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs, and were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101, Introduction, and Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on February 14, 2014. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to, Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to judy.myers@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2316.

TRD-201400485
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: February 4, 2014

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Notice of Public Hearing on Proposed Medicaid Payment Rates for Home and Community-Based Services - Adult Mental Health

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Monday, March 3, 2014, at 10:30 a.m. to receive public comment on proposed payment rates for the Home and Community-Based Services - Adult Mental Health (HCBS-AMH) program operated by the Department of State Health Services (DSHS).

The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing will be held in the Public Hearing Room, Room 164, of the HHSC-MHMR Center Building, located at 909 West 45th Street, Austin, Texas. Entry is through Security at the front of the building facing 45th Street. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes rates for the new HCBS-AMH program. The proposed rates will be effective April 1, 2014, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed payment rates reflect the funding of these services through the 2014-2015 General Appropriations Act, 83rd Legislature, Regular Session, 2013 (Article II, Department of State Health Services, Rider 81). The rider directs that appropriated funds be used to develop a program for adults with complex needs and extended or repeated state inpatient psychiatric stays. The proposed payment rates were determined in accordance with the rate setting methodologies codified at 1 TAC §355.9070, Reimbursement Methodology for Department of State Health Services (DSHS) Home and Community-Based Services - Adult Mental Health (HCBS-AMH), which is effective on March 1, 2014, as noted in the January 24, 2014, issue of the *Texas Register* (39 TexReg 395); 1 TAC §355.101, Introduction; and 1 TAC §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on February 14, 2014. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to, Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin,

Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to sarah.hambrick@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2316.

TRD-201400456
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: February 4, 2014

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Youth Empowerment Services (YES) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. CMS has approved this waiver through March 31, 2018. The proposed effective date for the amendment is June 1, 2014, with no changes to cost neutrality.

The YES waiver program is designed to provide community-based services to children with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. At any given time, the waiver can serve up to 400 youth who are at least age three but under age 19 and who are predicted to remain in the waiver for 12 months.

Based on the legislative direction of a rider to the current appropriations act, HHSC and the Department of State Health Services (DSHS) will initiate the expansion of the YES waiver. See General Appropriations Act, 83rd Legislature, R.S., Chapter 1411, Article II, Rider 80, at II-76 (HHSC and DSHS). Currently, the waiver serves the counties of Bexar, Tarrant, Travis, Harris, Fort Bend, Brazoria, and Galveston; this amendment will expand the geographical limitation area to include Cameron, Hidalgo, Willacy, Webb, Jim Hogg, Starr, and Zapata counties.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 462-6289, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201400540
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: February 5, 2014

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Texas Department of Insurance

Notice of Hearing

The commissioner of insurance will hold a public hearing under Docket Nos. 2763 and 2764 on proposed rules concerning the Texas Windstorm Insurance Association's loss funding provisions and the premium surcharge at 9 a.m. Central time, February 26, 2014, at the Beaumont Civic Center located at 701 Main Street, Beaumont, Texas. The proposed rules implement HB 3, 82nd Legislature, 1st Called Session, 2011.

The department proposes adding new 28 TAC §§5.4123 - 5.4128, 5.4135, 5.4136, 5.4148, and 5.4149, and amending 28 TAC §§5.4101, 5.4102, 5.4121, 5.4133, 5.4141 - 5.4147, and 5.4164. These sections concern funding losses and operating expenses in excess of TWIA's premium and other revenue under Insurance Code Chapter 2210, Subchapters B-1, J, and M. The new and amended sections will be incorporated into TWIA's plan of operation. The department also proposes amendments to 28 TAC §§5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4187, and 5.4189 - 5.4192. These sections concern procedures for making and assessing premium surcharges under Insurance Code Chapter 2210, Subchapter M. Premium surcharges are required to repay class 2 public securities that are issued in the event of a catastrophe that results in excess losses. The commissioner will consider written and oral comments presented at the hearing.

The rule proposals are published in this issue of the *Texas Register*. You can obtain a copy of the rule proposals at www.tdi.texas.gov/rules/2014/parules.html. You may send your comments about the proposals to the Chief Clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit your comments by email to Brian Ryder in the Property and Casualty Actuarial Office at Brian.Ryder@tdi.texas.gov, or by mail to Brian Ryder, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. All comments must be received by 5 p.m. Central time on March 10, 2014.

TRD-201400478
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: February 4, 2014

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Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Radiac Research Corporation (TLLRWDCC #1-0059-00)

261 Kent Avenue

Brooklyn, New York 11211

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by March 3, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201400476

Leigh Ing
Executive Director
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: February 4, 2014

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Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Zion Solutions (TLLRWDCC #1-0060-00)

101 Shiloh Boulevard

Zion, Illinois 60099

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by March 3, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201400477
Leigh Ing
Executive Director
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: February 4, 2014

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North Central Texas Council of Governments

Request for Qualifications for Traffic Count Data Collection

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is seeking proposals to collect traffic counts at 80 main lane sections of freeways located in Tarrant, Johnson, and Parker counties. The objective of this project is to collect traffic counts within an approximate 6-week period from the end of March 2014 to the middle of May 2014. The equipment used in this project should not require stopping the traffic flow for its installation. Also, the installation and removal of the equipment should not pose any safety threat to the personnel in charge or to the users of the freeway.

The selected contractor will be responsible for collecting and summarizing traffic count data collected Monday through Friday in 15 minute intervals. The data collection will be done through coordination with Texas Department of Transportation (TxDOT). All data should be formatted to be compatible with Microsoft Excel software. The summarized data should be available to NCTCOG no later than May 30, 2014 and separated between site locations.

Due Date

Interested individuals and/or firms should submit a Statement of Qualifications and Interest no later than 5:00 p.m., on Friday, February 28, 2014, to Francisco Torres, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Qualifications (RFQ) will be available at www.nctcog.org/rfp by the close of business on Friday, February 14, 2014.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Qualifications. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201400536
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: February 5, 2014

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on January 31, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Longview Cable Television Company, Inc. for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42213.

The requested amendment is to expand the service area footprint to include all areas within the boundaries of the municipality of Longview, Texas, including any future annexations. Applicant also requests to include all unincorporated areas of Gregg, Harrison and Upshur Counties, Texas, excluding any federal properties, in its service area footprint.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42213.

TRD-201400480

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 4, 2014

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 31, 2014, for a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Ciao Telecom, Inc. for a State-Issued Certificate of Franchise Authority, Project Number 42209.

The applicant proposes to be a video service provider and the requested SICFA service area consists of following nine Texas counties: Bexar, Dallas, Harris, Tarrant, Travis, Collin, Denton, El Paso and Fort Bend.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42209.

TRD-201400479
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 4, 2014

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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 January 30, 2014, for an amendment to certificated service area for a service area exception within Roberts, Hemphill, Wheeler and Gray Counties.

Docket Style and Number: Joint Application of Greenbelt Electric Cooperative, Inc., Southwestern Public Service Company and North Plains Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Roberts, Hemphill, Wheeler and Gray Counties. Docket Number 42204.

The Application: Greenbelt Electric Cooperative, Inc. (GEC), Southwestern Public Service Company (SPS) and North Plains Electric Cooperative, Inc. (North Plains) filed a joint application for a service area boundary exception to allow GEC to provide service to a specific customer located within the certificated service areas of SPS and North Plains. SPS and North Plains 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 21, 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 42204.

TRD-201400452
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 3, 2014

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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 a revised application on February 3, 2014, for an amendment to certificated service area for a service area exception within Parmer County, Texas.

Docket Style and Number: Application of Deaf Smith Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Parmer County. Docket Number 42160.

The Application: Deaf Smith Electric Cooperative, Inc. (DSEC) filed an application for a service area boundary exception to allow DSEC to provide service to a specific customer located within the certificated service area of Southwestern Public Service Company (SPS). SPS has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than February 21, 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 42160.

TRD-201400482
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 4, 2014

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On February 3, 2014, Bexar Metro 9-1-1 Network District (Applicant) filed an application to amend a service provider certificate of operating authority (SPCOA) Number 60905. Applicant seeks a change in type of provider to include data, facilities-based, and resale 9-1-1 network services.

The Application: Application of Bexar Metro 9-1-1 Network District for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 42222.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than February 21, 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 42222.

TRD-201400481
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 4, 2014

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Starr County

Request for Comments and Proposals: Additional Medicaid Beds

Department of Aging and Disability Services (DADS) rule 40 TAC §19.2322(h)(7) permits the County Commissioners Court of a rural county with a population of less than 100,000 and no more than two Medicaid-certified nursing facilities to request that DADS contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Starr County Commissioners Court is considering requesting that DADS contract for additional Medicaid nursing facility beds in Starr County. The Commissioners Court is soliciting public input and comments on whether the request should be made. Further, the Commissioners Court seeks proposals from qualified persons or entities interested in providing additional Medicaid nursing home services in Starr County.

If you wish to make comments in this regard or if you wish to make a proposal to the Commissioners Court, these comments and/or proposals must be submitted in writing on or before April 10, 2014, to the Starr County Judge's office at 100 N. FM 3167, Rio Grande City, Texas 78582.

TRD-201400416
Becky L. Venecia
Secretary
Starr County
Filed: January 31, 2014

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Presidio County, 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: Presidio County; TxDOT CSJ No.: 1424MARFA.

Scope: Provide engineering/design services to:

1. Mill, overlay and mark RW 13-31 and Taxiway from RW 31 to Terminal Apron

2. Reconstruct & Expand Terminal Apron

3. Rehabilitate TW A

4. Replace MIRL and Signs RW 13-31

5. Install PAPI-2 RW 13-31

The HUB goal for the design of the current project is 6%. The goal will be re-set for the construction phase. TxDOT Project Manager is Ryan Hindman.

The following is a listing of proposed projects at the Marfa 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 RW 4-22; rehabilitate and mark TW and Apron; construct additional apron, hangar, hangar access TW; parking lot; airport access road and drainage improvements.

Presidio County 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 "Marfa 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 11, 2014, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

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 Kelle Chancey, Grant Manager. For technical questions, please contact Ryan Hindman, Project Manager.

TRD-201400450

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 3, 2014

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Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Presidio County, 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: Presidio County; TxDOT CSJ No.: 1424PRSDO.

Scope: Provide engineering/design services to:

1. Construct hangar & hangar access taxiway

2. Rehabilitate and Mark RW 17-35, taxiway and apron

The HUB goal for the design of the current project is 11%. The goal will be re-set for the construction phase. TxDOT Project Manager is Ryan Hindman.

The following is a listing of proposed projects at the Presidio Lely International 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: construct hangar and hangar access taxiway; construct apron and install/replace fence.

Presidio County 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 "Presidio Lely International 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 11, 2014, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

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 Kelle Chancey, Grant Manager. For technical questions, please contact Ryan Hindman, Project Manager.

TRD-201400451
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 3, 2014

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Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Greenville, 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: City of Greenville; TxDOT CSJ No.: 1401GREEN.

Scope: Provide engineering/design services to reconstruct eastern 580 feet of Taxiway K at Majors Field.

The DBE goal for the design of the current project is 11%. The goal will be re-set for the construction phase. TxDOT Project Manager is Ryan Hindman.

The following is a listing of proposed projects at the Majors 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 Runway 17/35; rehabilitate taxiway pavement; construct apron area pavement; construct hangar access taxiway; and construct hangar.

The City of Greenville 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 "Majors 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:

Five 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 4, 2014, 4:00 p.m.** (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

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 Edie Stimach, Grant Manager. For technical questions, please contact Ryan Hindman, Project Manager.

TRD-201400502
Angela Parker
Associate General Counsel
Texas Department of Transportation
Filed: February 4, 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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Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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