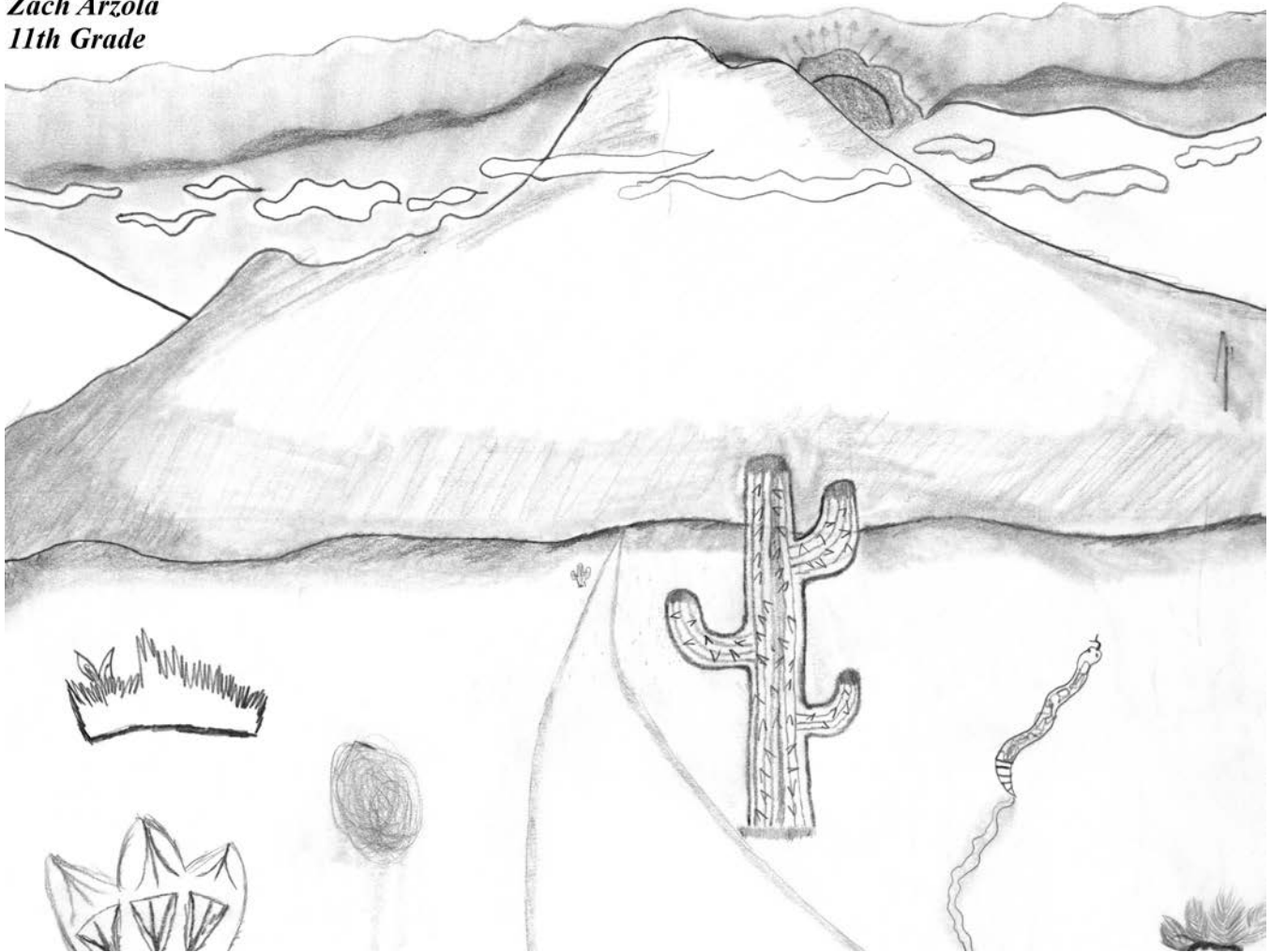

TEXAS REGISTER

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Pages 3639 – 3780

*Zach Arzola
11th Grade*



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

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

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Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

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

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

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

THE GOVERNOR

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

Appointments

Appointments for March 4, 2014

Appointed to the Texas Economic Development Corporation for a term to expire at the pleasure of the Governor, Nelda Luce Blair of The Woodlands (replacing Paul Foster of El Paso who resigned).

Appointed as Ex-Officio Designee, to the Texas Economic Development Corporation for a term to expire at the pleasure of the Governor, Kathy Walt of Austin (replacing Clint Harp of Austin).

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2015, Chakilla Robinson of Katy (replacing Morgan Talbot of McAllen who is deceased).

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2019, James Michael Lunsford of Cypress (Dr. Lunsford is being reappointed).

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2019, Joe E. Martin, Jr. of College State (Dr. Martin is being reappointed).

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2019, James Michael Miller of Aledo (Mr. Miller is being reappointed).

Appointed to the Star+Plus Nursing Facility Advisory Committee, pursuant to SB 7, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Sandra L. "Sandy" Klein of San Antonio.

Appointed to the Star+Plus Nursing Facility Advisory Committee, pursuant to SB 7, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Donald S. "Don" Langer of Katy.

Appointed to the Star+Plus Nursing Facility Advisory Committee, pursuant to SB 7, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Peggy M. Russell of Austin.

Appointed to the Star+Plus Nursing Facility Advisory Committee, pursuant to SB 7, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Woody D. Richards of Georgetown.

Appointed to the Star+Plus Nursing Facility Advisory Committee, pursuant to SB 7, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Suzanna M. Sulfstede of Carrollton.

Designating John A. Cuellar as presiding officer of the Aging and Disability Services Council for a term at the pleasure of the Governor. Mr. Cuellar is replacing Sharon Butterworth of El Paso as presiding officer.

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2016, Dewey "Mike" Cox of Driftwood (Mr. Cox is being reappointed).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2016, Dawn DuBose Randle of Houston (Dr. Randle is being reappointed).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2016, Daniel Griffith, II of Pflugerville (corporal Griffith is being reappointed).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2016, Garry E. Eoff of Brownwood (Mr. Eoff is being reappointed).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2016, Evan Gonzales of Giddings (replacing Jason Marlin of Coppell whose term expired).

Appointed to the Aging and Disability Services Council for a term to expire February 1, 2017, Edward Yosowitz of Houston (replacing Sharon Butterworth of El Paso who resigned).

Appointed to the State Health Services Council for a term to expire February 1, 2015, Maria "Carmen" Pagan of McAllen (replacing Glenda R. Kane of Corpus Christi who resigned).

Appointed to the State Health Services Council for a term to expire February 1, 2015, Nancy Townes of Granbury (replacing Nasruddin Rupani of Sugar Land who resigned).

Appointed to the State Health Services Council for a term to expire February 1, 2019, Jay S. Zeidman of Houston (replacing Maria F. Teran of El Paso who resigned).

Appointments for March 12, 2014

Appointed to the Texas Veterans Commission for a term to expire December 31, 2017, John "Jake" Ellzey of Midlothian (replacing John "Jake" Ellzey who resigned).

Appointed to the Texas Higher Education Coordinating Board for a term to expire August 31, 2015, Sada Cumber of Sugar Land (replacing Durga D. Agrawal of Houston who resigned).

Appointed to the OneStar Foundation for a term to expire March 15, 2017, Helen Soto Knaggs of Austin (reappointed).

Appointed to the OneStar Foundation for a term to expire March 15, 2017, Alison L. Meador of Austin (reappointed).

Appointed to the OneStar Foundation for a term to expire March 15, 2017, Bruce H. Esterline of Dallas (reappointed).

Appointed to the OneStar Foundation for a term to expire March 15, 2017, Anna Maria Farias of Corpus Christi (reappointed).

Appointments for March 14, 2014

Appointed to the Rio Grande Regional Review Committee for a term to expire at the pleasure of the Governor, Carlos Leon of El Paso (replacing Daniel R. Haggerty of El Paso who is deceased).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2015, Joseph Bontke of Houston (Mr. Bontke is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2015, David Ondich of Burlson (Mr. Ondich is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2015, R.A. "Dick" Nugent of Nederland (replacing Connie Sue Kelley of Humble whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2016, Rodolfo Becerra, Jr. of Nacogdoches (Mr. Becerra is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2016, Aaron W. Bangor of Austin (Dr. Bangor is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2016, Margaret M. Larsen of The Hills (Ms. Larsen is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2016, Marco A. Treviño of Edinburg (replacing Mackenzie Kelly of Austin whose term expired).

Appointments for March 21, 2014

Appointed to the Product Development and Small Business Incubator Board for a term to expire February 1, 2015, Erin O. Ford of Crockett (replacing Paul C. Maxwell of El Paso who resigned).

Appointed to the Coastal Water Authority Board of Directors, effective April 1, 2014, and to expire April 1, 2016, Alan D. Conner of Dayton (Mr. Conner is being reappointed).

Appointed to the Governing Board of the Texas Indigent Defense Commission for a term to expire February 1, 2016, Jon H. Burrows of Temple (reappointed).

Appointed to the Governing Board of the Texas Indigent Defense Commission for a term to expire February 1, 2016, Olen U. Underwood of Willis (reappointed).

Appointed to the Governing Board of the Texas Indigent Defense Commission for a term to expire February 1, 2016, B. Glen Whitley of Hurst (reappointed).

Appointed to the Panhandle Regional Review Committee for a term to expire at the pleasure of the Governor, Quinn J. Alexander of Canyon (replacing Kari Campbell of Austin who resigned).

Appointments for March 27, 2014

Appointed to the State Independent Living Council for a term to expire October 24, 2016, Saul Herrera of Midland (Mr. Herrera is being reappointed).

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2015, Shannon McClendon of Dripping Springs (replacing Kimberly Carlisle of Plano who resigned).

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2019, Tammy Camp of Shallowater (Dr. Camp is being reappointed).

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2019, Leila Salmons of Bellaire (Ms. Salmons is being reappointed).

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2019, Phillip Wilson of Dallas (Dr. Wilson is being reappointed).

Pursuant to SB 1238, 83rd Legislature, Regular Session, appointed to the Texas Forensic Science Commission for a term to expire September 1, 2014, Harvey P. Kessler of Southlake.

Pursuant to SB 1238, 83rd Legislature, Regular Session, appointed to the Texas Forensic Science Commission for a term to expire September 1, 2014, Ashraf Mozayani of Houston.

Pursuant to SB 1238, 83rd Legislature, Regular Session, appointed to the Texas Forensic Science Commission for a term to expire September 1, 2015, Richard B. Alpert of North Richland Hills.

Pursuant to SB 1238, 83rd Legislature, Regular Session, appointed to the Texas Forensic Science Commission for a term to expire September 1, 2015, Vincent J.M. Di Maio of San Antonio. Dr. Di Maio will serve as presiding officer of the commission.

Pursuant to SB 1238, 83rd Legislature, Regular Session, appointed to the Texas Forensic Science Commission for a term to expire September 1, 2015, Nizam Peerwani of Fort Worth.

Pursuant to SB 1238, 83rd Legislature, Regular Session, appointed to the Texas Forensic Science Commission for a term to expire September 1, 2015, Jeffrey Barnard of Dallas.

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2016, Laurie C. Fontana of Houston (Ms. Fontana is being reappointed).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2016, Luis F. De La Garza, Jr. of Laredo (Mr. De La Garza is being reappointed).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2016, Jesus "Jesse" Barba, Jr. of McAllen (replacing Shannon McClendon of Dripping Springs whose term expired).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2016, Brian L. Padden of Austin (replacing Keith Kidd of Reno whose term expired).

Appointments for April 1, 2014

Promoted to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas with all rights, privileges and emoluments appertaining to this office, effective immediately, Brian K. Smallwood.

Appointments for April 17, 2014

Appointed to the West Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Thomas Edward Cyprian of Breckenridge (replacing Stanley N. Willman of Breckenridge).

Appointed to the Board of Pilot Commissioners for Galveston County Ports for a term to expire February 1, 2018, Henry Porretto of Galveston (Chief Porretto is being reappointed).

Appointed to the Texas Board of Physical Therapy Examiners for a term to expire January 31, 2015, Harvey D. Aikman of Mission (replacing Karen L. Gordon of Port O'Connor who resigned).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2016, Randall R. "Randy" Childers of Hewitt (reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2016, Steven J. Fitzpatrick of Tyler (reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2016, C. Mark Remmert of Liberty Hill (reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2016, Jesse E. Rider of Tyler (reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2016, William F. "Dubb" Smith, III of Dripping Springs (reappointed).

Appointed to the South Plains Regional Review Committee for a term to expire at the pleasure of the Governor, Maximo D. Ledesma, Jr. of Levelland (replacing Hugh Lynn Bradley of Levelland).

Appointments for April 22, 2014

Appointed as the Student Regent for the University of Texas System, effective June 1, 2014, for a term to expire May 31, 2015, David "Max" Richards of Fort Worth (replacing Nash Horne of Austin whose term expired).

Appointed as the Student Regent for the University of Houston System, effective June 1, 2014, for a term to expire May 31, 2015, Asit Rajiv Shah of Richmond (replacing Benjamin P. "Ben" Wells of Cypress whose term expired).

Appointed as the Student Regent for Texas Southern University, effective June 1, 2014, for a term to expire May 31, 2015, Marshaun Williams of Houston (replacing Faran Foy of Houston whose term expired).

Appointed as the Student Regent for Stephen F. Austin State University, effective June 1, 2014, for a term to expire May 31, 2015, Kelsey Brown of Flower Mound (replacing Matthew L. Logan of Nacogdoches whose term expired).

Appointed as the Student Regent for the Texas Higher Education Coordinating Board, effective June 1, 2014, for a term to expire May 31, 2015, Gerald T. "Jerry" Korty of Fort Worth (replacing Alice A. Schneider of Austin whose term expired).

Appointed as the Student Regent for Texas Woman's University, effective June 1, 2014, for a term to expire May 31, 2015, Candace Henslee of Denton (replacing Joleesia Berry of Dallas whose term expired).

Appointed as the Student Regent for the University of North Texas System, effective June 1, 2014, for a term to expire May 31, 2015, Christopher D. "Chris" Vera of Fort Worth (replacing Rodolfo "Rudy" Reynoso, Jr. of Sherman whose term expired).

Appointed as the Student Regent for the Texas Tech University System, effective June 1, 2014, for a term to expire May 31, 2015, Coby Nielson Ray of Lubbock (replacing Joshua A. Heimbecker of San Angelo whose term expired).

Appointed as the Student Regent for the Texas A&M University System, effective June 1, 2014, for a term to expire May 31, 2015, Colton Buckley of Gatesville (replacing Nick Madere of Austin whose term expired).

Appointed as the Student Regent for the Texas State University System, effective June 1, 2014, for a term to expire May 31, 2015, Anna Alicia Sandoval of Alpine (replacing Matthew A. Russell of San Marcos whose term expired).

Appointed as the Student Regent for Midwestern State University, effective June 1, 2014, for a term to expire May 31, 2015, Jesse Clyde Brown of Wichita Falls (replacing Shelby Davis of Petrolia whose term expired).

Appointments for April 25, 2014

Appointed to the Texoma Regional Review Committee for a term to expire at the pleasure of the Governor, Leon Klement of Muenster (replacing Bill V. Cox of Collinsville).

Appointed to the Texoma Regional Review Committee for a term to expire at the pleasure of the Governor, Billy "Bart" Lawrence of Pottsboro (replacing Gene Short of Pottsboro).

Appointed to the Texoma Regional Review Committee for a term to expire at the pleasure of the Governor, Thomas D. "Tom" Byler of Southmayd (replacing Billy W. Kerr of Southmayd).

Appointed to the Texoma Regional Review Committee for a term to expire at the pleasure of the Governor, Willie Frank Johnson of Leonard (replacing William J. Yoss of Leonard).

Designating Elizabeth "Christy" Jack as presiding officer of the Governing Board of the Office of Violent Sex Offender Management for a term at the pleasure of the Governor. Ms. Jack is replacing Daniel P. "Dan" Powers as presiding officer.

Rick Perry, Governor

TRD-201402039



Proclamation 41-3372

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, significantly low rainfall has resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

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

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

WHEREAS, this state of disaster includes the counties of Archer, Armstrong, Bailey, Bandera, Baylor, Bell, Bexar, Blanco, Bosque, Brazoria, Briscoe, Brown, Burnet, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Coryell, Cottle, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, Eastland, Edwards, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Fort Bend, Frio, Gaines, Garza, Gillespie, Gray, Grayson, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hidalgo, Hill, Hockley, Hood, Hopkins, Hudspeth, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kaufman, Kendall, Kent, Kerr, Kimble, King, Knox, La Salle, Lamar, Lamb, Lampasas, Lipscomb, Llano, Lubbock, Lynn, Mason, Matagorda, McCulloch, McLennan, Medina, Menard, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Randall, Real, Red River, Roberts, Rockwall, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Uvalde, Val Verde, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wise, Yoakum, Young and Zavala.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 14th day of March, 2014.

Rick Perry, Governor

TRD-201402040



THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-1197-GA

Requestor:

The Honorable Joseph Deshotel

Chair, Committee on Land & Resource Management

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Questions concerning the Attorney General's representation of a state officer as a defendant in a criminal matter (RQ-1197-GA)

Briefs requested by May 16, 2014

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

TRD-201402053

Katherine Cary

General Counsel

Office of the Attorney General

Filed: April 30, 2014



Opinions

Opinion No. GA-1053

The Honorable Luis V. Saenz

Cameron County District Attorney

Cameron County Courthouse

964 East Harrison Street

Brownsville, Texas 78520

Re: Whether subsection 2.204(c) of the Family Code authorizes a justice of the peace to grant a waiver of the 72-hour waiting period after the issuance of a marriage license (RQ-1160-GA)

S U M M A R Y

A court would likely conclude that a justice of the peace is not a "judge of a court with jurisdiction in family law cases" for purposes of subsection 2.204(c) of the Family Code and thus may not grant a waiver of the 72-hour waiting period after the issuance of a marriage license.

Opinion No. GA-1054

The Honorable Linda Harper-Brown

Chair, Committee on Government Efficiency and Reform

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether state statutes that prohibit or void certain restrictive covenants affect covenants existing at the time the statutes are enacted (RQ-1161-GA)

S U M M A R Y

Property owners' association covenants are treated as contracts between parties under Texas law and are therefore protected by the Contract Clauses of both the Texas and United States Constitutions. Both the Texas Supreme Court and the United States Supreme Court have determined that the constitutional rule against impairment of contracts may yield to statutes that serve a significant and legitimate public purpose.

A court would likely conclude that Property Code section 202.006 is not a bill of attainder prohibited by the Texas or United States Constitutions.

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

TRD-201402032

Katherine Cary

General Counsel

Office of the Attorney General

Filed: April 29, 2014



Royce Ramos
12th Grade



PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.5

The Texas State Securities Board proposes an amendment to §113.5, concerning financial statements. The amendment would permit certain issuers whose previous sales of securities did not exceed \$1 million to file reviewed financial statements for a registered offering that does not exceed \$5 million.

Section 7.A(1)(f)(2) of the Texas Securities Act permits the Board to define the term "small business issuer" and prescribe the circumstances under which such an issuer can submit reviewed (rather than audited) financial statements for a registration of securities by qualification. Currently, certain issuers whose previous sales of securities did not exceed \$500,000 can file reviewed financial statements for a registered offering that does not exceed \$500,000. These dollar caps, set in 1995, need to be updated.

As §139.25, the new crowdfunding exemption being concurrently proposed, would allow public solicitation or advertising, the exemption is included in the list of types of prior securities offerings that would not disqualify an issuer from being eligible to file reviewed financial statements in a subsequent registered offering.

Patricia Louterback, Director, Registration Division, has determined that for the first five-year period the rule is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Louterback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to facilitate the capital raising efforts of more small business issuers by allowing the use of reviewed financial statements in conjunction with a registered securities offering. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities

Board, P.O. Box 13167, Austin, Texas 78711-3167 or sent by facsimile to (512) 305-8336.

The amendment is proposed under Texas Civil Statutes, Articles 581-7.A. and 581-28-1. Section 7.A(1)(f)(2) provides the Board with the authority to define and provide requirements for small business issuers permitted to submit reviewed financial statements. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-7 and 581-10.

§113.5. Financial Statements.

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

(c) Small business issuer. For purposes of subsection (b) of this section, the term "small business issuer" shall mean any corporation:

(1) that has not previously sold securities by means of an offering involving public solicitation or advertising unless such offering was made in compliance with:

(A) §139.25 of this title (relating to Intrastate Crowdfunding Exemption);

(B) §139.16 of this title (relating to Sales to Individual Accredited Investors);²_;

(C) §139.19 of this title (relating to Accredited Investor Exemption);²_;

(D) §109.4 of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors);²_; or

(E) the Texas Securities Act, §5.H;

(2) - (6) (No change.)

(7) whose previous sales of securities (exclusive of debt financing with banks and similar commercial lenders) does not exceed \$1 million [~~\$500,000~~].

(d) (No change.)

(e) Small business offering. For purposes of subsection (b) of this section, the term "small business offering" shall mean that the amount of the offering must not exceed \$5 million [~~\$500,000~~].

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 April 25, 2014.

TRD-201401988

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 305-8303



CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §§115.1, 115.3, 115.19

The Texas State Securities Board proposes amendments to §115.1, concerning general provisions, and §115.3, concerning examination. New §115.19, concerning Texas crowdfunding portal registration and activities, is also proposed.

The amendment to §115.1 would add a definition for "Texas crowdfunding portal" and provide a restricted dealer registration category as such.

The amendment to §115.3 would provide an examination waiver to an applicant applying for restricted dealer registration as a Texas crowdfunding portal.

New §115.19 would set out the registration process and permitted activities of a dealer registered as a Texas crowdfunding portal.

A Texas crowdfunding portal would be a Texas-only dealer, able to utilize the exclusion from federal registration available to dealers whose business is exclusively intrastate. The portal's activities would be limited to operating an Internet website for §139.25 exempt offerings. It could not participate in secondary market transactions or engage in the activities in subsection (c).

To preserve the intrastate character of the dealer's activities and the offering, the Internet website must contain appropriate disclaimers and obtain evidence of Texas residency before allowing access to the offering materials or permitting a sale to be made.

Prior to offering securities on the Internet website, the portal conducts background and regulatory checks on the issuer and each of the issuer's control persons. Additionally, the portal must obtain affirmative acknowledgments of certain disclosures common to all crowdfunding offerings from investors before a sale can be made.

Records required to be kept by the portal are specified in subsection (e), rather than the more extensive, and mostly inapplicable, list of records required of other securities dealers. A portal is also not required to maintain a supervisory system. A portal's records are subject to inspection and must be furnished on request of the Securities Commissioner.

A Texas crowdfunding portal would apply for registration by filing new Form 133.15, which is being concurrently proposed. It would also provide its organizational documents to establish its status as a Texas entity. It would be subject to the same registration fee as other dealers registered in Texas. New Form 133.15 would also be used for filing amendments. The portal is subject to the post-registration reporting requirements in §115.9. When the portal withdraws its registration, it would use new Form 133.16, which is also being proposed.

Tommy Green, Director, Inspections and Compliance Division, Patricia Louthback, Director, Registration Division, and Joe Rotunda, Director, Enforcement Division, have determined that for the first five-year period §115.1 and §115.3 are in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule. However, there will be fiscal implications as a result of enforcing or administering new §115.19 on state, but not local government.

The effect on state government for the first five-year period §115.19 will be in effect is a potential increase in revenue in the form of fees paid by entities registering in Texas as crowdfunding portals and by their agents. Under existing Texas law and regulations, a third party operating a website to effect the purchase and sale of securities for the account of others would normally be required to register as a general dealer and comply with the laws and regulations applicable thereto. A person operating such a website merely for the purchase of securities of startups and small businesses, however, may find it impractical in view of the limited nature of that person's activities and business to register as a general dealer and operate under the full set of regulatory obligations that apply to dealers. The restricted registration provided by the new rule is expected to encourage the formation of third-party portals. The increase in state revenue from these potential new registrants would be \$275 for each firm and \$285 for each agent that registers in Texas and thereafter would be \$270 and \$275, respectively, for each annual renewal.

Mr. Green, Ms. Louthback, and Mr. Rotunda also have determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to allow persons restricting their activities as provided by new §115.19 to use a simplified registration process and keep activity-specific records. The creation of these Texas crowdfunding portals would facilitate the capital raising efforts of small business issuers who utilize the Texas intrastate crowdfunding exemption.

Evaluating the potential economic impact of the proposed rules on small and micro-business requires a degree of speculation as both the business and regulatory models involved are new. Also, the potential economic impact needs to be considered from two different angles: the impact on small business as crowdfunding portals and small business as securities issuers.

Portals, as envisioned by §115.19, do not currently exist, but if and when they do, it is likely that they will be small businesses. Crowdfunding portals can support smaller capital raises without performing all of the ordinarily costly duties associated with a full-service securities dealer. For example, portals will not be able to offer investment advice or recommendations, conduct business valuations, or hold, manage, possess or otherwise handle investor funds or securities. The result will be a simpler cost structure with lower fees than those typically associated with an equity investment offering. Lower costs for the portal result in lower fees for issuers. This means that small businesses can act as portals and make it easier for small and micro-business to raise capital, which is the aim of the proposal.

There is an anticipated economic cost to entities that are required to comply with §115.19 as proposed, including designing and maintaining a website, conducting background and regulatory checks on potential issuers and their control persons, and maintaining records of offerings made and communications concerning the offerings. Registration and renewal fees are also required. While such costs are not insignificant, they are less

than the costs associated with being a registered general dealer. Therefore, the effect on micro- or small businesses will most likely be a positive one. The anticipated impact on local employment is also expected to be positive. Since the rules will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or sent by facsimile to (512) 305-8336.

The amendments to §115.1 and §115.3 and new rule §115.19 are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposals affect Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

§115.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Texas crowdfunding portal--Any person registered as a Texas dealer pursuant to §115.19 of this title (relating to Texas Crowdfunding Portal Registration and Activities) that utilizes an Internet website to offer or sell securities that are exempt from securities registration solely pursuant to §139.25 of this title (relating to Intrastate Crowdfunding Exemption).

(b) (No change.)

(c) Types of registrations.

(1) (No change.)

(2) Restricted registration. The restricted registrations are as follows:

(A) - (M) (No change.)

(N) registration to deal exclusively in investment banking; ~~and~~

(O) registration to act exclusively as a Texas crowdfunding portal; and

(P) ~~(Q)~~ registration with other restrictions which the Securities Commissioner may impose based upon the facts.

(3) (No change.)

(d) (No change.)

§115.3. Examination.

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

(c) Waivers of examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) - (E) (No change.)

(F) a person who completed the required examinations, but whose registration has lapsed for more than two years and who has been continually employed in a securities-related position with an entity which was not required to be registered; ~~and~~

(G) a person who completed the required examinations and whose registration with FINRA and with another state securities regulator has not lapsed for more than two years; ~~and~~

(H) a Texas crowdfunding portal and its agents.

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

(d) (No change.)

§115.19. Texas Crowdfunding Portal Registration and Activities.

(a) Intrastate portal. A Texas crowdfunding portal:

(1) must be an entity incorporated or organized under the laws of Texas, authorized to do business in Texas, and engaged exclusively in intrastate offers and sales of securities in Texas;

(2) must limit its activities to operating an Internet website utilized to offer and sell securities exempt from registration pursuant to §139.25 of this title (relating to Intrastate Crowdfunding Exemption); and

(3) does not operate or facilitate a secondary market in securities.

(b) Internet website. The Internet website operated by the Texas crowdfunding portal must meet the following requirements:

(1) the website must contain a disclaimer that reflects that access to securities offerings on the website is limited to Texas residents and offers and sales of the securities appearing on the website are limited to persons that are Texas residents;

(2) evidence of residency within Texas is required as a condition of entry before viewing securities-related offering materials on the website and before sale is made to a prospective purchaser. An affirmative representation made by a prospective purchaser that the prospective purchaser is a Texas resident and proof of at least one of the following would be considered sufficient evidence that the individual is a resident of this state:

(A) a valid Texas driver license or official personal identification card issued by the State of Texas;

(B) a current Texas voter registration; or

(C) general property tax records showing the individual owns and occupies property in this state as his or her principal residence;

(3) prior to offering an investment opportunity to residents of Texas and throughout the term of the offering, the portal shall give the Securities Commissioner access to the Internet website; and

(4) prior to permitting an investment in any securities listed on the Internet website, the portal shall obtain an affirmative acknowledgment from the investor of the following:

(A) There is no ready market for the sale of the securities acquired from this offering; it may be difficult or impossible for an investor to sell or otherwise dispose of this investment. An investor may be required to hold and bear the financial risks of this investment indefinitely;

(B) The securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law;

(C) In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved; and

(D) No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on this Internet website.

(c) Prohibited activities. A Texas crowdfunding portal shall not:

(1) offer investment advice or recommendations;

(2) compensate employees, agents, or other persons not registered with the Securities Commissioner for soliciting offers or sales of securities displayed or referenced on its platform or portal;

(3) hold, manage, possess or otherwise handle investor funds or securities;

(4) be affiliated with or under common control with an issuer whose securities appear on the Internet website;

(5) hold a financial interest in any issuer offering securities on the portal's Internet website; or

(6) receive a financial interest in an issuer as compensation for services provided to or on behalf of an issuer.

(d) Background and regulatory checks. Prior to offering securities to residents of Texas, the Texas crowdfunding portal shall conduct a reasonable investigation of the background and regulatory history of each issuer whose securities are offered on the portal's Internet website, and of each of the issuer's control persons. "Control persons" for purposes of this subsection means the issuer's officers; directors; or other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; and persons holding more than 20% of the outstanding equity of the issuer. The portal must deny an issuer access to its Internet website if the portal has a reasonable basis for believing that:

(1) the issuer or any of its control persons is subject to a disqualification under §139.25 of this title (relating to Intrastate Crowdfunding Exemption);

(2) the issuer has engaged in, is engaging in, or the offering involves any act, practice, or course of business that will, directly or indirectly, operate as a fraud or deceit upon any person; or

(3) it cannot adequately or effectively assess the risk of fraud by the issuer or its potential offering.

(e) Recordkeeping.

(1) A Texas crowdfunding portal is not required to maintain the records listed in §115.5 of this title (relating to Minimum Records) or to maintain a supervisory system under §115.10 of this title (relating to Supervisory Requirements).

(2) A portal shall maintain and preserve for a period of five (5) years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, the following records related to offers and sales made through the Internet website and to transactions where the portal receives compensation:

(A) records of compensation received for acting as a portal, including the name of the payor, the date of payment, name of the issuer, and name of the investor;

(B) copies of information provided by the portal to issuers offering securities through the portal, prospective purchasers, and investors;

(C) any agreements and/or contracts between the portal and an issuer, prospective purchaser, or investor;

(D) any information used to establish that an issuer, prospective purchaser, or investor is a Texas resident;

(E) any information used to establish that a prospective purchaser or investor is an accredited investor as defined in §107.2 of this title (relating to Definitions);

(F) any correspondence or other communications with issuers, prospective investors, and/or investors;

(G) any information made available through the portal's Internet website relating to an offering;

(H) ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts; and

(I) any other records relating to the offers and/or sales of securities made through the Internet website.

(3) A portal shall maintain and preserve a copy of the Form 133.15 (relating to Texas Crowdfunding Portal Registration), Form 133.16 (relating to Texas Crowdfunding Portal Withdrawal of Registration), and the Form U-4 (Uniform Application for Securities Industry Registration or Transfer) used to register the portal and its designated officer, and any amendments thereto, for a period of five (5) years from the termination of the portal's registration.

(4) The records required to be maintained and preserved under this subsection may be archived if they are over two years old.

(5) A portal shall, upon written request of the Securities Commissioner, furnish to the Commissioner any records required to be maintained and preserved under this subsection.

(6) The portal shall provide to the Commissioner access, inspection, and review of any Internet website operated by a portal and records maintained by the portal; and

(7) The records required to be kept and preserved under this subsection must be maintained in a manner, including by any electronic storage media, that will permit the immediate location of any particular document so long as such records are available for immediate and complete access by representatives of the Commissioner. Any electronic storage system must preserve the records exclusively in a non-rewriteable, non-erasable format; verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and can download indexes and records preserved on electronic storage media to an acceptable medium. In the event that a records retention system commingles records required to be kept under this subsection with records not required to be kept, representatives of the Commissioner may review all commingled records.

(f) Filings.

(1) Application. In lieu of the application requirements in §115.2 of this title (relating to Application Requirements), a complete application for a Texas crowdfunding portal consists of the following and must be filed with the Securities Commissioner:

(A) Form 133.15, including all applicable schedules and supplemental information;

(B) Form U-4, for the designated officer and a Form U-4 for each agent to be registered (officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners);

(C) a copy of the articles of incorporation or other documents which indicate the form of organization, certified by the Texas Secretary of State or by an officer or partner of the applicant;

(D) any other information deemed necessary by the Commissioner to determine the financial responsibility, business repute, or qualifications of the portal; and

(E) the appropriate registration fee(s).

(2) Post-reporting requirements. A portal is subject to the dealer and agent requirements in §115.9 of this title (relating to Post-Registration Reporting Requirements).

(3) Renewal. Registration as a portal expires at the close of the calendar year, but subsequent registration for the succeeding year shall be issued upon written application and upon payment of the appropriate renewal fee(s), without filing of further statements or furnishing any further information unless specifically requested by the Commissioner.

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 April 25, 2014.

TRD-201401989

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 305-8303



CHAPTER 133. FORMS

7 TAC §§133.15 - 133.17

The Texas State Securities Board proposes three new rules, concerning forms adopted by reference. Specifically, the State Securities Board proposes §133.15, which would adopt by reference the Texas Crowdfunding Portal Registration form; §133.16, which would adopt by reference the Texas Crowdfunding Portal Withdrawal of Registration form; and §133.17, which would adopt by reference the Crowdfunding Exemption Notice form. The portal forms are tailored to the limited activities performed by a portal and eliminate the need for a portal to use the more comprehensive dealer forms.

Tommy Green, Director, Inspections and Compliance Division, and Patricia Louterback, Director, Registration Division, have determined that for the first five-year period the forms are used, there will be no foreseeable fiscal implications for state or local government as a result of using the forms.

Mr. Green and Ms. Louterback also have determined that for each year of the first five years the forms are used the public benefit anticipated as a result will be that Texas crowdfunding portals will be able to use simplified forms to register and amend their registration (Form 133.15) and to withdraw their registration

(Form 133.16). Issuers will be able to claim the intrastate crowdfunding exemption in §139.25 by filing Form 133.17. There will be no effect on micro- or small businesses. Since the forms will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to use the forms as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or sent by facsimile to (512) 305-8336.

The new rules are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposals regarding §133.15 and §133.16 affect Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18. The proposal regarding §133.17 affects Texas Civil Statutes, Article 581-7.

§133.15. Texas Crowdfunding Portal Registration.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.state.tx.us.

§133.16. Texas Crowdfunding Portal Withdrawal of Registration.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.state.tx.us.

§133.17. Crowdfunding Exemption Notice.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.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 April 24, 2014.

TRD-201401990

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 305-8303



CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.25

The Texas State Securities Board proposes new §139.25, concerning intrastate crowdfunding exemption. The new rule would provide a registration exemption for securities offered in an intrastate crowdfunding offering. The filing used to claim the exemption is new Form 133.17, which is being concurrently proposed. New §115.19, concerning Texas crowdfunding portal registration and activities, is also being proposed to allow offers and

sales of the exempt securities to be made using a Texas crowdfunding portal's Internet website.

During the development of these proposals, the staff had discussions with a number of firms and individuals who are interested and have expertise in the area so their insight and concerns could be considered. Federal crowdfunding proposals and provisions in other states were also reviewed.

Under the proposal, the offering must comply with the federal intrastate offering exemption and Securities and Exchange Commission ("SEC") Rule 147, so the securities do not have to be registered at the federal level. Accordingly, the issuer must be a Texas entity and the offers and sales limited to Texas residents. Some Rule 147 requirements have been incorporated into the proposed exemption to assist issuers in determining if they qualify for the exemption. Rule 147 also places restrictions on resale of the securities and requires certain precautions against interstate offers. These are noted in subsection (k) of the proposal.

The proposal is designed to assist small issuers conducting offerings that are local in nature where many investors are likely to be part of the company's customer base or from the surrounding community that will benefit from the growth of local businesses and the jobs they provide. Accordingly, subsection (b)(2) excludes certain issuers from the exemption, including: (1) investment companies, which engage primarily in the business of investing in other securities; (2) SEC reporting companies; and (3) blind pool and blank check companies.

The offering amount would be capped at \$1 million in a 12-month period. This cap would be reduced by the amount received for sales of the issuer's securities that occur within six months before, during, or within six months after any offers or sales made in reliance upon the exemption.

The issuer cannot accept more than \$5,000 from a single purchaser unless the purchaser is an accredited investor. Funds raised must be placed in an escrow account until the minimum target offering amount specified in the disclosure statement is reached.

The proponents of crowdfunding argue that the hard work of making investment decisions--filtering out the best investments and limiting fraud--can be addressed in part by tapping the "wisdom of the crowd" over the Internet. Individuals interested in the crowdfunding campaign (members of the "crowd") share information about the project or business with each other and use the information to decide whether to fund the campaign based on the collective "wisdom of the crowd." To facilitate this aspect of crowdfunding, subsection (h) of the proposal requires that information about the offering be posted on the Internet website for a minimum of 21 days before the securities may be sold. During this time, and for the course of the offering, all communications between the issuer, prospective purchasers, or investors must occur on the Internet website. The site must provide channels for potential purchasers and investors to communicate with each other, and those communications must be visible to others on the site.

To alert interested persons to an offering, an issuer may distribute a limited notice stating the issuer is conducting an offering, giving the name of the general dealer or Texas crowdfunding portal and a link to the Internet website. To keep the issuer from inadvertently converting an intrastate offering to an interstate one, thereby losing the federal exemption, the proposal restricts distribution of the notice to within Texas and requires it to contain

a disclaimer reflecting that the offering is limited to Texas residents and that offers and sales on the Internet website are made only to Texas residents. A similar disclaimer is required on the Internet website for the same reason. The site also must require evidence of Texas residency before allowing a person to view securities offering materials. As with securities, there is also an exclusion from federal registration available to dealers whose business is exclusively intrastate. The disclaimer, evidence of residency requirement, and regulatory approach taken in the proposal appear adequate for purposes of characterizing the dealer's activities, as well as the securities offering, as one conducted intrastate.

Subsection (i) requires that a disclosure statement be provided to each prospective purchaser on the Internet website. Material information and risk factors must be disclosed and topics to be addressed in the document noted. Additional guidance for content of the disclosure statement will be in a document prepared by the staff and posted on the Agency's website with other small business and crowdfunding information. Required disclosures, common to crowdfunding offerings generally, are in subsection (i)(2). These disclosures also appear in concurrently proposed §115.19, which requires a Texas crowdfunding portal to obtain an affirmative acknowledgment from the investor regarding the disclosures before investment is permitted.

Many proponents of small business incentives cite the requirement to provide audited or reviewed financial statements prepared in accordance with generally accepted auditing standards and generally accepted accounting principles as too costly for small businesses. Subsection (i)(3) allows the issuer's financial statements to be certified by its principal executive officer. However, if the issuer has audited or reviewed financial statements prepared within the last three years, such financial statements must also be provided.

Payments to unregistered persons are prohibited by subsection (l), which also prohibits certain compensation arrangements and affiliations between an issuer and the general dealer or Texas crowdfunding portal operating the website on which its offering appears.

To ensure that the exemption is not misused, subsection (m) contains two types of disqualifications. Bad actor disqualifications are addressed in subsections (m)(2) and (m)(3). Issuers should be aware that, although a prior incident may not be a disqualification under this proposal, it may still need to be disclosed to potential purchasers and investors if it is material information under subsection (i)(1). Subsection (m)(4) prohibits offerings within a 12-month period by different issuers with common control persons or where the proceeds of offerings by different issuers will be combined in a single plan of financing.

Offerings made pursuant to the proposed exemption will not have to meet the filing requirements in the Texas Securities Act, §22.A, and Chapter 137 of the Board Rules (relating to Administrative Guidelines for Regulation of Offers) since those provisions do not apply to transactions exempt under §5, but a notice on new Form 133.17 must be filed with the Securities Commissioner along with a copy of the issuer's disclosure statement and the summary of the offering that appear on the Internet website.

Patricia Loutherbach, Director, Registration Division, and Joe Rotunda, Director, Enforcement Division, have determined that there will be fiscal implications as a result of enforcing or administering the rule on state, but not local government.

The effect on state government for the first five-year period the rule will be in effect is a potential decrease in revenue. Some issuers currently relying on the intrastate limited offering exemption available in §109.13(l) may choose instead to use the proposed exemption. While §109.13(l) requires the payment of a notice filing fee (the lesser of \$500 or 1/10 of 1.0% of the aggregate amount of securities offered), new §139.25 does not. The number of filings made pursuant to §109.13(l) fluctuates every year. Therefore, how much revenue might be lost as a result of issuers switching to the new exemption is unknown, but it is not likely to be significant. Since 2011, 17 issuers filed the notice to claim the exemption in §109.13(l) for offerings of \$1 million or less, amounting to \$6,036.50 in total revenue. The majority of these fees—\$3,416.50—were paid in 2012 when 10 notice filings were made. Only four filings for offerings of \$1 million or less were made in 2011, two filings were made in 2013, and one filing has been made so far this year. Several other self-executing private offering exemptions are also used by small issuers under current law. However, these self-executing exemptions do not require payment of any fee so if an issuer opts to pursue crowdfunding instead of using one of these exemptions, there would be no impact on revenue collected by the Agency.

Ms. Louterback and Mr. Rotunda also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to spur small business development in the state by allowing entrepreneurs and start-ups to raise capital through crowdfunding using the Internet.

The proposed rule is designed to help grow startups and small businesses by making relatively low dollar offerings of securities less costly. Securities offerings in Texas are generally required to be registered, unless an exemption is available, and be sold by registered dealers or agents. The costs of conducting a registered offering, including legal, accounting, and registration fees, can be significant. Offering securities through a private placement exemption can also be complicated and costly. Legal counsel is often needed to ensure that restrictions on general solicitation and general advertising are not violated and purchaser qualification requirements are met. An exempt offering may also have notice filing requirements and fees associated therewith.

There is an anticipated economic cost to entities that are required to comply with the crowdfunding exemption as proposed, including preparing offering documents and disclosure statements, providing current, certified financial statements, and compensating portals for their listing services. Although there is no fee, a notice filing with the Securities Commissioner is also required. While such costs are not insignificant, they are less than the costs associated with registered or private offerings. Therefore, the effect on micro- or small businesses will most likely be a positive one. The anticipated impact on local employment is also expected to be positive. These small businesses, able to raise capital through crowdfunding, may be able to expand and provide additional jobs in the local community. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or sent by facsimile to (512) 305-8336.

The new rule is proposed under Texas Civil Statutes, Articles 581-5.T, 581-12.C, and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-7, 581-12, 581-13, 581-14, 581-15, and 581-18.

§139.25. Intrastate Crowdfunding Exemption.

(a) General. The State Securities Board, pursuant to the Texas Securities Act (Act), §5.T, exempts from the securities registration requirements of the Act, any offer or sale of securities of an issuer through a registered general dealer or a registered Texas crowdfunding portal, provided that all offers and sales made pursuant to the offering are made to Texas residents, completed solely within this state, and all the requirements of this section are satisfied.

(b) Issuer.

(1) The issuer is an entity that has filed a certificate of formation with the Texas Secretary of State, is organized under the laws of Texas, and is authorized to do business in Texas and:

(A) At least 80% of the issuer's gross revenues during its most recent fiscal year prior to the offering are derived from the operation of a business in Texas;

(B) At least 80% of the issuer's assets at the end of its most recent semiannual period prior to the offering are located in Texas;

(C) The issuer will use at least 80% of the net proceeds of this offering in connection with the operation of its business within Texas; and

(D) The principal office of the issuer is located in Texas.

(2) The issuer is not, either before or because of the offering:

(A) A company, that engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities;

(B) Subject to the reporting requirements of the Securities and Exchange Act of 1934, §13 or §15(d), 15 U.S.C. §78m and §78o(d); or

(C) a company that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity.

(c) Coordination with federal securities laws. The transaction meets the requirements of the federal exemption for intrastate offerings in the Securities Act of 1933, §3(a)(11), 15 U.S.C. §77c(a)(11), and Securities and Exchange Commission Rule 147, 17 CFR §230.147.

(d) Offering. The offering must be made exclusively through an Internet website operated by a registered general dealer or registered Texas crowdfunding portal. All consideration received for all sales of the securities in reliance on this exemption shall not exceed \$1 million in a 12-month period. This amount is reduced by the aggregate amount received for all sales of securities by the issuer in another offering that

does not take place prior to the six month period immediately preceding or after the six month period immediately following any offers or sales made in reliance upon this section.

(e) Individual investments. The issuer will not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor as defined in §107.2 of this title (relating to Definitions). The issuer must have a reasonable basis for believing that the purchaser of a security under this section is a Texas resident and, if applicable, an accredited investor.

(f) Escrow. All payments for purchase of securities offered under this section are directed to and deposited in an escrow account with a bank or other depository institution located in Texas and organized and subject to regulation under the laws of the United States or under the laws of Texas, and will be held in escrow until the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan. Investors will receive a return of all their subscription funds if the target offering amount is not raised by the time stated in the disclosure statement.

(g) Communications.

(1) All communications between the issuer, prospective purchasers, or investors taking place during the offer of securities pursuant to this section must occur on the Internet website of the registered general dealer or Texas crowdfunding portal. During the time the offering appears on the Internet website, the website must provide channels through which potential purchasers and investors can communicate with one another and with representatives of the issuer about the offering. These communications must be visible to all those with access to the offering materials on the Internet website.

(2) Notwithstanding the foregoing, the issuer may distribute a notice within Texas limited to a statement that the issuer is conducting an offering, the name of the registered general dealer or portal through which the offering is being conducted and a link directing the potential investor to the dealer or portal's Internet website. The notice must contain a disclaimer that reflects that the offering is limited to Texas residents and offers and sales of the securities appearing on the Internet website are limited to persons that are Texas residents.

(h) Internet website.

(1) The Internet website operated by a registered general dealer or the Texas crowdfunding portal must meet the following requirements:

(A) the website must contain a disclaimer that reflects that access to securities offerings on the website is limited to Texas residents and offers and sales of the securities appearing on the website are limited to persons that are Texas residents;

(B) evidence of residency within Texas is required as a condition of entry before viewing securities-related offering materials on the website and before sale is made to a prospective purchaser. An affirmative representation made by a prospective purchaser that the prospective purchaser is a Texas resident and proof of at least one of the following would be considered sufficient evidence that the individual is a resident of this state:

(i) a valid Texas driver license or official personal identification card issued by the State of Texas;

(ii) a current Texas voter registration; or

(iii) general property tax records showing the individual owns and occupies property in this state as his or her principal residence; and

(C) prior to offering an investment opportunity to residents of Texas and throughout the term of the offering, the registered general dealer or registered portal shall give the Securities Commissioner access to the Internet website.

(2) Information about the issuer and the offering posted on the Internet website, entry onto which is conditioned upon evidence of Texas residency, operated by the registered general dealer or registered portal consists of:

(A) a copy of the disclosure statement required by subsection (i) of this section;

(B) a summary of the offering, including:

(i) a description of the entity, its form of business; principal office, history, business plan, and the intended use of the offering proceeds, including compensation paid to any owner, executive officer, director, or manager;

(ii) the identity of the executive officers, directors, and managers, including their titles and their prior experience and the identity of all persons owning more than 20% of the ownership interests of any class of securities of the company; and

(iii) a description of the securities being offered and of any outstanding securities of the company, the amount of the offering, and the percentage ownership of the company represented by the offered securities.

(3) The information required by paragraph (2) of this subsection must be made available on the Internet website to the Commissioner and potential investors for a minimum of 21 days before any securities are sold in the offering.

(i) Disclosure statement. A disclosure statement must be made readily available and accessible to each prospective purchaser at the time the offer of securities is made to the prospective purchaser on the Internet website. The disclosure statement must contain all of the following:

(1) Material information and risk factors. All information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. Guidance on the categories of information to include can be found by reviewing the small business offering information provided by the Texas State Securities Board on its Internet website. Topics to be addressed include, but are not limited to:

(A) general description of the issuer's business;

(B) history of the issuer's operations and organization;

(C) management of the company and principal stockholders;

(D) how the proceeds from the offering will be used;

(E) financial information about the issuer;

(F) description of the securities being offered; and

(G) litigation and legal proceedings.

(2) Disclosures. The issuer shall inform all prospective purchasers and investors of the following:

(A) There is no ready market for the sale of the securities acquired from this offering; it may be difficult or impossible for an investor to sell or otherwise dispose of this investment. An investor may be required to hold and bear the financial risks of this investment indefinitely;

(B) The securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law.

(C) In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved; and

(D) No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on this Internet website.

(3) Financial statements. Issuers must provide current financial statements certified by the principal executive officer to be true and complete in all material respects. If the issuer has audited or reviewed financial statements prepared within the last three years, such financial statements must also be provided to investors.

(j) Notice filing. At least 21 days before an offer of securities is made in reliance on this section or use of any publicly available Internet website in an offering of securities in reliance on this section, the issuer shall file with the Securities Commissioner:

(1) Form 133.17, Crowdfunding Exemption Notice;

(2) the disclosure statement, required by subsection (i) of this section; and

(3) the summary of the offering, required by subsection (h)(2)(B) of this section.

(k) Resales of securities. The issuer and all its officers, directors, and employees shall make the disclosures required by SEC Rule 147(e) and (f), 17 CFR §230.147(e) and (f). The issuer must place a legend on the certificate or other document evidencing that the securities have not been registered and setting forth the limitations on resale contained in SEC Rule 147(e), including that for a period of nine months from the date of last sale by the issuer of the securities in the offering, all resales by any person, shall be made only to Texas residents.

(l) Commissions and remuneration. A commission or other remuneration shall not be paid or given, directly or indirectly, for the offer or sale of the securities unless the person receiving such compensation is registered in Texas as a dealer or agent or as a Texas crowdfunding portal. The issuer may not list its securities on the Internet website of a general dealer or portal that holds an interest in the issuer. The issuer may not compensate a general dealer or a portal by providing a financial interest in the issuer as compensation for services provided to or on behalf of the issuer. A general dealer or portal may not be affiliated with or under common control with an issuer whose securities appear on its Internet website.

(m) Disqualifications.

(1) For purposes of this subsection, "control person" means an officer; director; other person having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; or a person that owns 20% or more of any class of the outstanding securities of the issuer.

(2) This exemption is not available if the issuer, the issuer's predecessors, any affiliated issuer, or any control person of the issuer:

(A) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(B) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(C) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(D) is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(3) Paragraph (2) of this subsection shall not apply if:

(A) the party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

(B) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(C) the issuer establishes it did not know and exercising reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.

(4) This exemption is not available to an issuer if:

(A) a control person of the issuer is also a control person of another issuer that has made a securities offering in Texas within the previous 12-month period;

(B) a control person of the issuer is also a control person of another issuer that is concurrently conducting a securities offering in Texas; or

(C) the proceeds of the offering will be combined with the proceeds of a securities offering by another issuer as part of a single plan of financing.

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 April 25, 2014.

TRD-201401991

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 305-8303



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 75. CURRICULUM

SUBCHAPTER AA. COMMISSIONER'S

RULES CONCERNING DRIVER EDUCATION

STANDARDS OF OPERATION FOR PUBLIC

SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES

19 TAC §75.1005

The Texas Education Agency (TEA) proposes an amendment to §75.1005, concerning driver education. The section establishes course requirements for a driver education course for minors and adults conducted by public schools, education service centers, and colleges or universities. The proposed amendment would add the requirement for water safety education and increase the number of hours of behind-the-wheel instruction from 20 to 30.

House Bill (HB) 673, 82nd Texas Legislature, Regular Session, 2011, required the Texas Parks and Wildlife Department to create a driver training video for water safety education. HB 673 also requires that the training video be incorporated into a driver training curriculum module for driver education instruction. Additionally, HB 3483, 83rd Texas Legislature, Regular Session, 2013, increased the required number of hours of behind-the-wheel instruction from 20 to 30.

The proposed amendment to 19 TAC §75.1005, Course Requirements, would add recreational water safety as an instructional objective that must be provided to every student enrolled in a minor and adult driver education course and included in Module Eleven: Consumer Responsibilities. The proposed amendment would also increase from 20 to 30 the number of hours required for behind-the-wheel instruction in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

In a separate proposal, the TEA proposes an amendment to 19 TAC §176.1007, Courses of Instruction, to make corresponding changes to the driver education course for minors and adults found in 19 TAC Chapter 176, Driver Training Schools, Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools.

The proposed rule action would have no procedural or reporting implications. The proposed rule action would have no locally maintained paperwork requirements.

Julie Beisert-Smith, director for regional education service centers, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Beisert-Smith has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the enhancement of public safety by requiring instruction on recreational water safety and additional hours of behind-the-wheel instruction. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins May 9, 2014, and ends June 9, 2014. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A

request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 9, 2014.

The amendment is proposed under the Texas Education Code (TEC), §29.9021, which authorizes the agency to incorporate by rule a curriculum module on recreational water safety into driver education instruction, and the TEC, §1001.101, which authorizes the commissioner to establish or approve by rule the curriculum to be used in a driver education course for minors and adults, which must include the requirement that students complete specified hours of behind-the-wheel instruction.

The amendment implements the TEC, §29.9021 and §1001.101.

§75.1005. Course Requirements.

(a) To be approved under this subchapter, a driver education plan shall include one or more of the following course programs.

(1) Core program. This program shall consist of at least 32 hours of classroom instruction; 7 hours of behind-the-wheel instruction in the presence of a certified instructor; 7 hours of in-car observation in the presence of a certified instructor; and 30 [20] hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive only local credit for the course.

(2) In-car only program. This program shall consist of at least 7 hours of behind-the-wheel instruction in the presence of a certified instructor; 7 hours of in-car observation in the presence of a certified instructor; and 30 [20] hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive only local credit for the course.

(3) (No change.)

(4) School day credit program. This program shall consist of at least one class period per scheduled day of school, for a semester (traditional, condensed, accelerated, block, etc.), covering the driver education classroom and in-car program of organized instruction or only the classroom program of organized instruction. This class traditionally consists of at least 56 hours of driver education classroom instruction and, if in-car instruction is provided, must include 7 hours of behind-the-wheel instruction in the presence of a certified instructor; 7 hours of in-car observation in the presence of a certified instructor; and 30 [20] hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive one-half unit of state credit toward graduation.

(5) Non-school day credit program. This program shall consist of at least 56 hours of driver education classroom instruction, and, if in-car instruction is provided, must include 7 hours of behind-the-wheel instruction in the presence of a certified instructor; 7 hours of in-car observation in the presence of a certified instructor; and 30 [20] hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive one-half unit of state credit toward graduation.

(6) Multi-phase school day or non-school day credit program. This program shall consist of at least 40 hours of driver education classroom instruction; 4 hours of behind-the-wheel instruction in the presence of a certified instructor; 8 hours of in-car observation in the presence of a certified instructor; 12 hours of simulator instruction in the presence of a certified instructor; and 30 [20] hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive one-half unit of state credit toward graduation.

(b) (No change.)

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the instructional objectives established by the commissioner of education, as specified in this subsection, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the Texas Education Agency (TEA). Schools may use sample instructional modules developed by the TEA or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; [and] alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety. A student may apply to the Texas Department of Public Safety (DPS) for an instruction permit after completing six hours of instruction as specified in Module One if the student is taking the course in a concurrent program. The minor and adult driver education program instructional objectives shall include:

(1) - (10) (No change.)

(11) Module Eleven: Consumer Responsibilities. The student legally and responsibly performs reduced-risk driving practices in the HTS by: ~~[attending to the vehicle requirements by making wise consumer decisions regarding vehicle use and ownership, vehicle insurance, environmental protection and litter prevention, and anatomical gifts.]~~

(A) attending to the vehicle requirements by making wise consumer decisions regarding vehicle use and ownership;

(B) vehicle insurance;

(C) environmental protection and litter prevention;

(D) anatomical gifts; and

(E) recreational water safety.

(12) (No change.)

(d) - (j) (No change.)

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

Filed with the Office of the Secretary of State on April 25, 2014.
TRD-201401994

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497

◆ ◆ ◆
CHAPTER 176. DRIVER TRAINING SCHOOLS
SUBCHAPTER AA. COMMISSIONER'S
RULES ON MINIMUM STANDARDS FOR
OPERATION OF LICENSED TEXAS DRIVER
EDUCATION SCHOOLS

19 TAC §176.1007

The Texas Education Agency (TEA) proposes an amendment to §176.1007, concerning driver training schools. The section establishes requirements for courses of instruction conducted by licensed Texas driver education schools, including a driver education course for minors and adults. The proposed amendment would add the requirement for water safety education and increase the number of hours of behind-the-wheel instruction from 20 to 30.

House Bill (HB) 673, 82nd Texas Legislature, Regular Session, 2011, required the Texas Parks and Wildlife Department to create a driver training video for water safety education. HB 673 also requires that the training video be incorporated into a driver training curriculum module for driver education instruction. Additionally, HB 3483, 83rd Texas Legislature, Regular Session, 2013, increased the required number of hours of behind-the-wheel instruction from 20 to 30.

The proposed amendment to 19 TAC §176.1007, Courses of Instruction, would add recreational water safety as an educational objective that must be provided to every student enrolled in a minor and adult driver education course. The proposed amendment would also increase from 20 to 30 the number of hours required for behind-the-wheel instruction in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). In addition, the proposed amendment would make a technical edit to update a statutory cross reference.

In a separate proposal, the TEA proposes an amendment to 19 TAC §75.1005, Course Requirements, to make corresponding changes to the driver education course for minors and adults found in 19 TAC Chapter 75, Curriculum, Subchapter AA, Commissioner's Rules Concerning Driver Education Standards of Operation for Public Schools, Education Service Centers, and Colleges or Universities.

The proposed rule action would have no procedural or reporting implications. The proposed rule action would have no locally maintained paperwork requirements.

Julie Beisert-Smith, director for regional education service centers, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Beisert-Smith has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the enhancement of public safety by requiring instruction on recre-

ational water safety and additional hours of behind-the-wheel instruction. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins May 9, 2014, and ends June 9, 2014. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 9, 2014.

The amendment is proposed under the Texas Education Code (TEC), §29.9021, which authorizes the agency to incorporate by rule a curriculum module on recreational water safety into driver education instruction, and the TEC, §1001.101, which authorizes the commissioner to establish or approve by rule the curriculum to be used in a driver education course for minors and adults, which must include the requirement that students complete specified hours of behind-the-wheel instruction.

The amendment implements the TEC, §29.9021 and §1001.101. §176.1007. *Courses of Instruction.*

(a) (No change.)

(b) This subsection contains requirements for driver education courses. All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval.

(1) Minor and adult driver education course.

(A) The driver education classroom phase for students age 14 and over shall consist of:

(i) a minimum of 32 hours of classroom instruction. The in-car phase must consist of seven hours of behind-the-wheel instruction and seven hours of in-car observation in the presence of a person who holds a driver education instructor license; and

(ii) 30 [20] hours of behind-the-wheel instruction, including at least 10 hours of nighttime instruction, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). The 30 [20] hours of instruction must be endorsed by a parent or legal guardian if the student is a minor. Simulation hours shall not be substituted for these 30 [20] hours of instruction. Driver education training endorsed by the parent is limited to one hour per day.

(B) (No change.)

(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the educational objectives established by the commissioner of education in the Program of Organized Instruction in Driver Education and Traffic Safety (POI) and meet the requirements of this subchapter. In addition, the educational objectives that must be provided to every student enrolled in a minor and adult driver education course shall include information relating to

litter prevention, anatomical gifts, leaving children in vehicles unattended, distractions, motorcycle awareness, [and] alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle, and recreational water safety.

(D) - (V) (No change.)

(2) Driver education course exclusively for adults. Courses offered in a traditional classroom setting or online to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222(c) and §521.1601, must be offered in accordance with the following guidelines.

(A) (No change.)

(B) Online approval process. The commissioner may approve a driver education course exclusively for adults to be offered online if the course meets the following requirements.

(i) - (iii) (No change.)

(iv) Course content. The online course must meet the requirements of the course identified in the TEC, §1001.1015 [§1001.101(a)(2)].

(I) - (VI) (No change.)

(v) - (xiii) (No change.)

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

(c) - (i) (No change.)

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

Filed with the Office of the Secretary of State on April 25, 2014.

TRD-201401995

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 475-1497



TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §§601.2, 601.3, 601.9

The Texas Medical Disclosure Panel (panel) proposes amendments to §§601.2, 601.3, and 601.9 concerning informed consent.

BACKGROUND AND PURPOSE

These amendments are proposed in accordance with the Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.2 contains the List A procedures requiring full disclosure of specific risks and hazards to patients

before being undertaken; §601.3 contains the List B procedures for which no disclosure of specific risks and hazards is required; and §601.9 contains the consent form for anesthesia and/or perioperative pain management.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §601.2 is to revise subsection (h), titled "Hematic and lymphatic system," and to add a new subsection (u), titled "Dental Surgery Procedures," to the List A procedures included in this rule which require full disclosure to patients of the specific risks and hazards associated with the procedure before consenting to it.

The proposed amendment to §601.3, the List B procedures requiring no disclosure of specific risks and hazards, removes "other forms of regional anesthesia" under subsection (a), titled "Anesthesia," leaving only "Local" anesthesia in the subsection.

The proposed amendment to §601.9 revises the English and Spanish versions of the Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia) to add "Deep Sedation" and "Moderate Sedation" as two new items on the consent form.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal impact to state or local governments as a result of administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack also has determined that there are no anticipated economic costs to small businesses or micro-businesses that are required to comply with the amendments as proposed because regulated facilities already have an obligation to disclose risks and hazards related to medical care and surgical procedures. The amendments will not add additional costs.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There will be no economic costs to persons required to comply with the sections as proposed, and there will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack 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 or administering these amended disclosure rules will be that patients are better informed about the risks and hazards related to dental surgical procedures they are considering in connection with deciding whether to consent to them.

REGULATORY ANALYSIS

The panel has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment 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 panel has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Pamela Adams, Program Specialist, Facility Licensing Group, Regulatory Licensing Unit, Division of Regulatory Services, Department of State Health Services, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6600, extension 2607, or by email to pamela.adams@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are authorized under the Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure.

The amendments affect Civil Practice and Remedies Code, Chapter 74.

§601.2. Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.

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

(h) Hematic and lymphatic system.

(1) Transfusion of blood and blood components.

(A) Serious infection including but not limited to Hepatitis and HIV which can lead to organ damage and permanent impairment.

(B) Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.

(C) Sever allergic reaction, potentially fatal.

~~[(A) Fever.]~~

~~[(B) Transfusion reaction which may include kidney failure or anemia.]~~

~~[(C) Heart failure.]~~

~~[(D) Hepatitis.]~~

~~[(E) AIDS (acquired immune deficiency syndrome).]~~

~~[(F) Other infections.]~~

(2) (No change.)

(i) - (t) (No change.)

(u) Dental Surgery Procedures.

(1) Oral surgery.

(A) Extraction (removing teeth).

(i) Dry socket (inflammation in the socket of a tooth).

(ii) Permanent or temporary numbness or altered sensation.

(iii) Sinus communication (opening from tooth socket into the sinus cavity).

(iv) Fracture of alveolus and/or mandible (upper and/or lower jaw).

(B) Surgical exposure of tooth in order to facilitate orthodontics.

(i) Injury to tooth or to adjacent teeth and structures.

(ii) Failure to get proper attachment to tooth requiring additional procedure.

(2) Endodontics (deals with diseases of the dental pulp).

(A) Apicoectomy (surgical removal of root tip or end of the tooth, with or without sealing it).

(i) Shrinkage of the gums and crown margin exposure.

(ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(B) Root amputation (surgical removal of portion of one root of a multi-rooted tooth).

(i) Shrinkage of the gums and crown margin exposure.

(ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(C) Root canal therapy (from an occlusal access in order to clean and fill the canal system).

(i) Instrument separation (tiny files which break within the tooth canal system).

(ii) Fenestration (penetration of walls of tooth into adjacent tissue).

(iii) Failure to find and/or adequately fill all canals.

(iv) Expression of irrigants or filling material past the apex of the tooth (chemicals used to clean or materials used to fill a root may go out the end of the root and cause pain or swelling).

(v) Damage to adjacent tissues from irrigants or clamps.

(vi) Fracture or loss of tooth.

(3) Periodontal surgery (surgery of the gums).

(A) Gingivectomy and gingivoplasty (involves the removal of soft tissue).

(i) Tooth sensitivity to hot, cold, sweet, or acid foods.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(B) Anatomical crown exposure (removal of enlarged gingival tissue and supporting bone to provide an anatomically correct gingival relationship).

(i) Tooth sensitivity to hot, cold, sweet, or acid foods.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(C) Gingival flap procedure, including root planing (soft tissue flap is laid back or removed to allow debridement (cleaning) of the root surface and the removal of granulation tissue (unhealthy soft tissue)).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(D) Apically positioned flap (used to preserve keratinized gingival (attached gum tissue) in conjunction with osseous resection (removal) and second stage implant procedure).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(E) Clinical crown lengthening (removal of gum tissue and/or bone from around tooth).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(F) Osseous surgery--including flap entry and closure (modification of the bony support of the teeth).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Loss of tooth.

(iv) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(G) Guided tissue regeneration--resorbable barrier.

(i) Permanent or temporary numbness or altered sensation.

(ii) Accidental aspiration (into the lungs) of foreign matter.

(iii) Rejection of donor materials.

(H) Guided tissue regeneration--nonresorbable barrier (includes membrane removal).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Accidental aspiration (into the lungs) of foreign matter.

(iv) Rejection of donor materials.

(I) Pedicle soft tissue graft procedure.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of donor materials.

(J) Free soft tissue graft protection--including donor site surgery.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of graft.

(K) Sub epithelial connective tissue graft procedures.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of graft.

(L) Distal or proximal wedge procedure (taking off gum tissue from the very back of the last tooth or between teeth). Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(M) Soft tissue allograft and connective tissue double pedicle graft from below (creates or augments gum tissue).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(4) Implant procedures.

(A) Bone grafting (replacing missing bone).

(i) Permanent or temporary numbness or altered sensation.

(ii) Rejection of bone particles or graft from donor or recipient sites.

(iii) Damage to adjacent teeth or bone.

(B) Surgical placement of implant body.

(i) Blood vessel or nerve injury.

(ii) Damage to adjacent teeth or bone fracture.

(iii) Sinus communication (opening from tooth socket into the sinus cavity).

(iv) Failure of implant requiring corrective surgery.

(v) Cyst formation, bone loss, or gum disease around the implant.

§601.3. Procedures Requiring No Disclosure of Specific Risks and Hazards--List B.

(a) Anesthesia.

[(+) Local.

{(2) Other forms of regional anesthesia.}

(b) - (t) (No change.)

§601.9. Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia).

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in anesthesia and/or perioperative pain management (analgesia). Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Department of State Health Services.

(1) English form.

Figure: 25 TAC §601.9(1)

[Figure: 25 TAC §601.9(1)]

(2) Spanish form.

Figure: 25 TAC §601.9(2)

[Figure: 25 TAC §601.9(2)]

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

Filed with the Office of the Secretary of State on April 28, 2014.

TRD-201402022

Lisa Hernandez

General Counsel

Texas Medical Disclosure Panel

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 776-6972

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER M. FILING REQUIREMENTS

The Texas Department of Insurance proposes amendments to 28 TAC Chapter 5, Subchapter M, Division 4, §§5.9310; Division 5, §§5.9320; Division 7, §§5.9340 - 5.9342; Division 8, §§5.9350 - 5.9352; Division 9, §§5.9355 and §5.9357; Division 10, §§5.9360 and §5.9361; and new Division 5, §§5.9321 and §5.9322 and Division 6, §§5.9330 - 5.9337, concerning filing requirements. These amendments and new sections are necessary to conform the rules to the statute, improve clarity and transparency, and adjust the rules for compatibility with the System for Electronic Rate and Form Filing (SERFF). In conjunction with these proposed amendments and new sections, the repeal of Division 6, §§5.9330 - 5.9332, is also proposed in this issue of the *Texas Register*. The following section-by-section summary provides detailed descriptions of these changes.

Amended §5.9310. Property and Casualty Transmittal Information and General Filing Requirements. This amended section replaces the TDI Property and Casualty Filing Transmittal form with general transmittal information requirements. This transmittal information consists of the company and group names and company and group NAIC numbers, whether the filing is new or replaces an existing filing, the line of insurance, the type of filing,

the proposed effective date, and contact information. If applicable, the required transmittal information also includes the TDI file number of the replaced filing, and the TDI file number of any associated or companion filings of a different filing type. For example, the transmittal information for a rate filing must include the TDI file number of an associated form filing. The amendment removes the definition of "line of insurance" to accommodate SERFF filings, which use the NAIC Uniform Property and Casualty Product Coding Matrix.

Amended §5.9310 also contains new language that defines multi-peril insurance as "policies and rates for two or more lines of insurance that are subject to regulation under Insurance Code Chapters 2251 and 2301." TDI adds this language to the section because Insurance Code Chapters 2251 and 2301 refer to multi-peril insurance but do not define it.

Amended §5.9310(e) contains new language regarding use of the word "copyright." This section clarifies that marking documents "copyright" will not affect how TDI will treat their availability or openness under the relevant statute. Rate filings under Insurance Code Chapter 2251 that are marked "copyright" will be subject to Government Code Chapter 552, while form filings under Insurance Code Chapter 2301 and rate filings under Chapters 2053 and 3502 marked "copyright" will be open for public inspection. The intent of the new language is to give filers notice as to what is subject to public disclosure, and the possible public disclosure methods. TDI will continue to comply with copyright law in making documents open or available for public disclosure.

Amended §5.9320. Required Information for the Preparation and Submission of Policy Form, Endorsement, and Manual Rule (Other than Rating Manual) Filings. This section specifies the filing requirements for property and casualty policy form, endorsement, and manual rule filings submitted under Insurance Code Chapters 2052, 2251, 2301, and 3502. The filing requirements in §5.9320 are in addition to those in §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements).

Section 5.9320(f) consists of new language on public information. To the extent that a filing submitted through SERFF includes contact information, the filer affirmatively consents, as contemplated by Government Code §552.137, to the release and disclosure of the contact information, including any email addresses. The filer also certifies that each person associated with an email address contained in the filing has affirmatively consented to the release and disclosure of that email address. TDI will make filings submitted through SERFF available for public disclosure using SERFF. TDI cannot restrict contact information from public disclosure within SERFF. Filers who do not consent to the release and disclosure of contact information, or who cannot make the certification the rule requires, should not file using SERFF.

Section 5.9320(g) amends language regarding an incomplete filing under Division 5 and describes how TDI will process incomplete filings.

Section 5.9320(h) and (i) contain new language to make the rule consistent with TDI's transition to SERFF. TDI will no longer accept filings submitted under Division 5 with rate filings or any other filings submitted under Subchapter M. TDI will no longer accept manual rule filings with any other filings submitted under Division 5.

Proposed §5.9321. Request for Deemer Period Waiver. This section allows insurers to waive the time periods in Insurance

Code §2301.006, after which a form is deemed approved if the commissioner has not disapproved it.

Proposed §5.9322. Insurers Providing Coverage Through a Purchasing Group. This section provides that insurers that provide coverage to participants in a purchasing group must comply with the filing requirements in Division 5.

Proposed §5.9322 also reminds insurers writing commercial group property insurance that they must comply with Insurance Code §2171.003 and file a policy form with the commissioner before using the policy form for a group of businesses or an association in which each member of the group or association is not a large risk.

Proposed §5.9330. Purpose. Proposed §5.9330 sets out the purpose of Division 6, which is to specify requirements for rate filings under Insurance Code Chapters 2053, 2251, and 3502. This division governs rates and related concepts including prospective loss costs, loss cost multipliers, rating manuals, other supplementary rating information, and information concerning fees or other amounts charged or collected by an insurer in connection with a policy. Proposed §5.9330 contains nonsubstantive changes to conform the section to statutory recodifications.

Proposed §5.9331. Definitions. Proposed §5.9331 defines certain terms used in Division 6. Because Insurance Code §2251.101(b)(1)(C) requires the commissioner to adopt rules on fee information included in filings, proposed §5.9331 contains new language defining fees.

"Other amounts" in the definition of fees refers to amounts such as recoveries for assessments under Insurance Code Chapter 2007 for rural fire protection or fees for the Automobile Burglary and Theft Prevention Authority. Insurers must file these amounts or fees so that the commissioner may consider them as they affect insurance rates and the amounts charged to policyholders.

Proposed §5.9331(4) defines and gives examples of a new type of filing called the "short track filing." Short track filings are those for which TDI requires limited supporting information to determine compliance with Texas statutes and rules. TDI will maintain a list of qualifying types of filings on its website. Proposed §5.9334(g) lists information required in short track filings.

Proposed §5.9332. Categories of Supporting Information. As Insurance Code §2251.101(b)(1)(A) requires, proposed §5.9332 determines categories of supporting information. Some of the categories appear in the current §5.9332, and others are new. The proposed rule does not require each category for all filings; instead, §5.9334 details when each category is required.

The categories of supporting information in both the current rule and the proposed rule are "actuarial support," "rate change information," "historical premium and loss information," "historical and projected expense information," "loss cost information for reference filings," and "profit provision information." These categories are in paragraphs (3), (7), (8), (9), (10), and (11) of the proposed rule. Some of the categories of supporting information in the proposed rule differ substantively from the current rule. For example, new language in the "actuarial support" category describes three subcategories - rate indications, relativity analysis, and other actuarial support. The "rate change information" category now specifies a six-year rate change history. New language in the "historical and projected expense information" category addresses additional expense provisions, such as the net cost of reinsurance or an expense offset from fee income. "Loss

cost information for reference filings" now includes supporting documentation for loss cost modification factors other than 1.00.

The proposed §5.9332 contains categories of supporting information that are not listed as distinct categories of supporting information in the current §5.9332, but which TDI has requested or filers have included as supporting documentation with filings under the current rule. These categories are "actuarial memorandum," "SERFF rate data," "policyholder impact information," "average rate change by county," "side-by-side comparison," "mark-up," "sample premium impacts by selected ZIP codes," and "other information" in paragraphs (2), (4), (5), (6), (12), (13), (14), and (16) in the proposed rule, respectively. The "SERFF rate data" category applies to all filers, whether or not they use SERFF.

The proposed §5.9332 contains two new categories of supporting information, "rate filing checklists" and "rate filing templates," which are in paragraphs (1) and (15) of the proposed rule. The checklists and the template should provide clarity to filers. Insurers must submit a rate filing checklist with each filing. Use of rate filing templates, which TDI will make available to insurers, is optional; but they are a convenient way for insurers to file certain supporting information.

Proposed §5.9333. Categories of Supplementary Rating Information. As Insurance Code §2251.101(b)(1)(A) requires, proposed §5.9333 determines categories of supplementary rating information. The section elaborates on the definition of supplementary rating information found in Insurance Code §2251.002(7), so as to name some of the kinds of "similar information" insurers may use to determine the applicable premium for an insured. This information includes rating algorithms and rating plans. Proposed §5.9333(5) makes clear that "classification system" refers to criteria used to place individual risks into groupings for rating purposes, regardless of whether the groupings are called tiers, categories, or some other term.

Proposed §5.9334. Requirements for Rate Filing Submissions. This section describes submission requirements for workers' compensation rate filings, rate filings for insurance governed by Insurance Code Chapter 2251, and mortgage guaranty insurance rate filings.

Section 5.9334(b) specifies that for rates governed by Insurance Code Chapter 2251, insurers must file any new or revised rates, rating manuals, rating rules, all other supplementary rating information, and fees. This information may be used on and after the date of the filing. Subsection (b) has new language to conform the rule to new language in Insurance Code §2251.101(a).

Section 5.9334(e) contains a revised description of the memorandum that must accompany each filing. The filing memorandum must explain the purpose of the filing, describe each change the filing would make, and summarize any related form or endorsement filings.

Section 5.9334(f) describes which categories of supporting information, defined in §5.9332, insurers must include with which filings under Division 6. The goal of subsection (f) is to aid insurers in filing sufficient supporting information for TDI to determine whether a filing produces rates that are not excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply. Section 5.9334(f)(7) requires all owner-occupied homeowner and personal automobile filings to include policyholder impact information if they will result in minimum and maximum policyholder impacts which differ by more than five

percentage points. TDI does not intend to discourage any filings with this requirement; but TDI does intend to get information on how many policyholders the rate change will affect.

Insurers submitting short track filings under §5.9334(g) or who qualify for the reduced filing requirements under Division 9 will not need to file all the supporting information required under Division 6.

Section 5.9334(g) describes which categories of supporting information insurers must file with short track filings, which are defined in §5.9331(b)(4).

Section 5.9334(h) requires that filings be legible, accurate, internally consistent, and complete. Paragraphs (1) - (5) list specific standards that, when followed, will facilitate TDI's review of the filings.

Subsection (i) addresses public information received with a filing. Filers submitting through SERFF affirmatively consent, as contemplated by Government Code §552.137, to the release of any contact information, including email addresses, disclosed in a filing. Filers submitting through SERFF also certify that each person associated with an email address contained in the filing has affirmatively consented to the release and disclosure of that email address. TDI will make filings submitted through SERFF available for public disclosure using SERFF. TDI cannot restrict contact information within SERFF from public disclosure. Filers who do not consent to the release and disclosure of contact information, or who cannot make the certification the rule requires, should not file using SERFF.

For documents filed under Insurance Code Chapter 2251, insurers must mark each page of documents they consider confidential and excepted from disclosure under Government Code Chapter 552. TDI does not consider loss cost multipliers, rates, rating factors and relativities, rating manuals, fees, and summary information about the rate filing as excepted from disclosure under Government Code Chapter 552. Subsection (i) also lists categories of supporting information under Chapter 2251 that will not be considered excepted from disclosure under Government Code Chapter 552. Filings under Insurance Code Chapters 2053 and 3502 will be open for public inspection. TDI will comply with copyright law in making documents open or available for public disclosure.

Subsection (k) directs insurers to the Filings Made Easy Guide on TDI's website for rate filing templates or exhibits they may use to display supporting information.

Subsection (l) contains new language to make the rule consistent with TDI's transition to SERFF. TDI will no longer accept filings submitted under Division 6 with form filings or any other filings submitted under Subchapter M.

Proposed §5.9335. Requests for Information. In compliance with Insurance Code §2251.101(b)(2), proposed §5.9335 prescribes the process by which TDI may request additional supplementary rating information and supporting information. Section 5.9335(b) defines a fully responsive answer to a request.

Section 5.9335(c) explains that additional information may include a comprehensive set of rates, rating manuals, rating rules, fees, and all other supplementary rating information when an insurer has filed a revision to previously filed rates, rating manuals, rating rules, fees, and all other supplementary rating information. This will improve TDI's understanding of the revision by enabling comparison of the revision with the comprehensive set of rates.

Section 5.9335(d) limits to five the number of times TDI may request additional supplementary rating information and limits to five the number of times TDI may request additional supporting information. Follow-up requests for information necessitated by an incomplete response, requests for clarification of an unclear response, and requests for information that would have been included in a complete filing will not count against the limits. Section 5.9335(e) gives examples of requests necessary to make a filing complete.

Proposed §5.9336. Request for Information Limit Waiver. This section would enable an insurer to waive the limits §5.9335 places on the number of times TDI may request additional supplementary rating information and supporting information.

Proposed §5.9337. Insurers Providing Coverage Through a Purchasing Group. This section provides that insurers providing coverage to participants in a purchasing group must comply with the filing requirements in Division 6.

Amended §5.9340. Purpose. This section is amended to specify underwriting guideline filing requirements under Insurance Code §38.003. In addition, nonsubstantive amendments conform this section to statutory recodifications.

Amended §5.9341. Definitions. Nonsubstantive amendments conform this section to statutory recodifications.

Amended §5.9342. Filing Requirements. This section is amended to specify underwriting guideline filing requirements under Insurance Code §38.003, which insurers must follow only if TDI requests underwriting guidelines under that section. Amendments to this section conform the filing requirements for underwriting guidelines for personal automobile, residential property, and workers' compensation insurance to the changes in Division 4. The filing transmittal information required in §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements) must accompany each underwriting guideline filing or update to underwriting guideline filings. The amended section also states that all underwriting guideline filings must relate to only one line of insurance.

Amended §5.9350. Purpose. Nonsubstantive amendments conform this section to statutory recodifications.

Amended §5.9351. Definitions. Nonsubstantive amendments conform this section to statutory recodifications and current TDI style.

Amended §5.9352. Filing Requirements. Amendments to this section conform the filing requirements for credit scoring models to the changes in Division 4. The amendments in subsection (b) impose the same requirements on insurers that file credit scoring models themselves and those that reference a credit scoring model filed by another entity on behalf of an insurer. Subsection (b)(2) adds tiering as a use for credit scoring. This reflects the increased use of tiering in the Texas market. Subsection (b)(3) requires the completion of a questionnaire to verify that the insurer's use of the model complies with Insurance Code Chapter 559.

Subsection (c) describes how TDI will treat information received with a filing. Insurers submitting through SERFF affirmatively consent, as contemplated by Government Code §552.137, to the release of any contact information included with a filing. The filer also certifies that each person associated with an email address contained in the filing has affirmatively consented to the release and disclosure of that email address. TDI will make filings submitted through SERFF available for public disclosure using

SERFF. TDI cannot restrict contact information from public disclosure within SERFF. Filers who do not consent to the release and disclosure of contact information, or who cannot make the certification the rule requires, should not file using SERFF.

New subsections (e) and (f) state that all filings for credit scoring models must relate to only one line of insurance and that the credit scoring model must be refiled before it may be used for another line of insurance that was not identified in the original filing.

Consistent with TDI's use of SERFF, amended §5.9352 no longer addresses credit scoring model filings by insurer groups or groups of affiliated insurers.

Amended §5.9355. Purpose. Nonsubstantive amendments conform this section to statutory recodifications.

Amended §5.9357. Filing Requirements. Amended §5.9357 lists the filing requirements for the three classes of insurers who qualify for reduced rate filing requirements under Insurance Code Chapter 2251, Subchapters E and F. The amendments conform §5.9357 to proposed Division 6 (relating to Filings Made Easy - Requirements for Rate Filings).

Section 5.9357(a) and (c) contain nonsubstantive amendments to the provisions on county mutual insurers writing only nonstandard personal automobile insurance and insurers writing residential property insurance in underserved areas. Both must file in compliance with Division 6, but need not provide some of the supporting information required in §5.9334(f).

Amended §5.9357(d) specifies that insurers submitting a filing under Division 9 must still comply with 28 TAC §5.9941 and §5.9960 (relating to Differences in Rates Charged Due Solely to Difference in Credit Scores and Exception to Rating Territory Requirements under §2253.001 of the Insurance Code). The amendments remove a redundant sentence but do not change this requirement. Amended §5.9357(d) also specifies that §5.9335 (relating to Requests for Information) governs additional requests for information.

Consistent with TDI's use of SERFF, the amended section no longer addresses combined filings.

Amended §5.9357(e) describes how TDI will treat information received with a filing. Insurers submitting through SERFF affirmatively consent, as contemplated by Government Code §552.137, to the release of any contact information included with a filing. The insurer also certifies that each person associated with an email address contained in the filing has affirmatively consented to the release and disclosure of that email address. TDI will make filings submitted through SERFF available for public disclosure using SERFF. TDI cannot restrict contact information from public disclosure within SERFF. Insurers who do not consent to the release and disclosure of contact information, or who cannot make the certification the rule requires, should not file using SERFF.

New §5.9357(f) states that insurers may obtain the certification forms in the Filings Made Easy Guide.

Amended §5.9360. Purpose. Nonsubstantive amendments conform this section to statutory recodifications and changes in division names in this subchapter.

Amended §5.9361. Additional Requirements. Nonsubstantive amendments conform this section to statutory recodifications and changes in section names in this title.

FISCAL NOTE. J'ne Byckovski, chief actuary of the Property and Casualty Actuarial Office, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be no fiscal impact to state and local governments resulting from enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy resulting from the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Byckovski has also determined that for each year of the first five years the proposed amendments and new sections are in effect, the public benefit that will result from the proposal includes more complete filings due to improved predictability and transparency for filers. More complete filings will better enable TDI to fulfill its regulatory function. Another public benefit will be improved government efficiency because the proposal requires filings to be compatible with TDI's transition to SERFF as its system of record. The cost to persons required to comply with the proposal are consistent with the costs filers currently bear in complying with the filing rules. The proposal requires information that filers should already be assembling to comply with current filing requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), TDI has determined that the proposal will not have an adverse economic effect on small or micro businesses. In accord with Government Code §2006.002(c), TDI has determined that a regulatory flexibility analysis is not required.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5 p.m., Central time on June 25, 2014. You may send your comments electronically to the Chief Clerk by email at chief-clerk@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 by email to pcactuarial@tdi.texas.gov, or by mail to J'ne Byckovski, Chief Actuary, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will receive public testimony concerning the proposed amendments and new sections in a public hearing under Docket No. 2765 scheduled for June 18, 2014, at 9 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The commissioner will consider all comments presented at the hearing.

DIVISION 4. FILINGS MADE EASY - TRANSMITTAL INFORMATION AND GENERAL FILING REQUIREMENTS FOR PROPERTY AND CASUALTY FORM, RATE, UNDERWRITING GUIDELINE, AND CREDIT SCORING MODEL FILINGS

28 TAC §5.9310

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of any insurer not writing personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer that is exempt from the filing requirements of Chapter 2251 must file and obtain approval of proposed premium rates meeting certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001.

§5.9310. Property and Casualty [Filing] Transmittal Information and General Filing Requirements [Form].

(a) Purpose. The purpose of this division is to specify [the form and content of] the [filing] transmittal information and general filing requirements for [form that is to be used for] property and casualty form, endorsement, rate, [rule,] underwriting guideline, and credit scoring model filings [and provide information on obtaining such form].

(b) Definitions. Terms [Words and terms] not defined in this division may be defined in [the] Insurance Code Chapters 2053, 2251, and 2301, [Article 5-13-2 and Subchapter D of Chapter 5] and [shall] have the same meaning when used in this division. The following [words and] terms when used in this division [shall] have the following meanings unless the context indicates otherwise:

(1) TDI [Department]--Texas Department of Insurance [(TDI)].

(2) TDI file number--The number assigned by TDI [the department] to a filing [submitted by an individual company].

[(3) TDI link number--The number assigned by the department to link individual TDI file numbers to a filing which is submitted for more than one company within a group.]

(3) [(4)] Interline filing--A filing that may be used for more than one line of insurance submitted for:

(A) an endorsement, [that may be used with more than one line of insurance] provided the endorsement does not have an impact on rates; or

(B) [a rate filing that may be used with more than one line of insurance that contains only information concerning] policy fees, service fees, and other fees that are charged or collected by the insurer under Insurance Code §550.001 or §4005.003 [§§4005.001 - 4005.003 or §550.001].

(4) [(5)] Reference filing--A filing that references the use of [adopted or approved] policy forms, endorsements, manual rules, loss costs, rating manuals, other supplementary rating information, or credit scoring models that TDI has adopted, approved, or accepted [form(s), endorsement(s), manual rule(s), rate(s), or other acceptable policy form(s), or endorsement(s), manual rule(s), or rate(s), to which the department has assigned a TDI file number].

(5) [(6)] Dual filing--A [monoline] filing submitted for one [a specific] line of insurance that may also be used in [written as part of a] multi-peril insurance [policy].

(6) Multi-peril insurance--Policies and rates for two or more lines of insurance that are subject to regulation under Insurance Code Chapters 2251 and 2301.

[(7) Line of insurance--For purposes of this section, each of the following is a line of insurance:]

- [(A) automobile-commercial;]
- [(B) automobile-personal;]
- [(C) boiler and machinery;]
- [(D) casualty (personal and commercial);]
- [(E) credit;]
- [(F) credit-involuntary unemployment;]
- [(G) crime;]
- [(H) crop hail;]

- [(I) excess liability;]
- [(J) excess umbrella;]
- [(K) farm and ranch;]
- [(L) farm liability;]
- [(M) farm and ranch owners;]
- [(N) fidelity bonds;]
- [(O) financial guaranty bonds or insurance;]
- [(P) guaranteed auto protection (GAP) (commercial);]
- [(Q) guaranteed auto protection (GAP) (personal);]
- [(R) general liability;]
- [(S) glass;]
- [(T) identity theft (commercial);]
- [(U) identity theft (personal);]
- [(V) inland marine (commercial);]
- [(W) inland marine (personal);]
- [(X) involuntary unemployment;]
- [(Y) miscellaneous casualty;]
- [(Z) miscellaneous liability;]
- [(AA) mortgage guaranty;]
- [(BB) multi-peril;]
- [(CC) personal liability;]
- [(DD) professional liability;]
- [(EE) property-commercial;]
- [(FF) property-residential (dwelling);]
- [(GG) property-residential (homeowners);]
- [(HH) rain;]
- [(H) surety bonds (other than criminal court appearance bonds);]
- [(JJ) umbrella-commercial;]
- [(KK) umbrella-personal; and]
- [(LL) workers' compensation.]

(c) Transmittal information. Each filing must contain [Form and content of transmittal form. The filing transmittal form must be typed and contain, at a minimum,] the following transmittal information:

- (1) company name and company number assigned by the National Association of Insurance Commissioners (NAIC);
- [(2) NAIC number of the company;]
- (2) [(3)] company group name and group NAIC number;
- (3) whether the filing is new, or revises or replaces an existing filing;
- (4) TDI file number of the revised or replaced filing;
- (5) TDI file number of associated or companion filings of other filing types;
- [(4) type of filing;]

- ~~(A) new filing; or~~
~~(B) revision or replacement of an existing filing. If revising or replacing an existing filing, the TDI file number or link number of the filing that is being revised or replaced must be provided.~~

~~(6) [(5)] line of insurance:~~

~~(A) all filings must specify the line of insurance to [foe] which the filing applies [is being made];~~

~~(B) interline filings must specify [indicate] all lines of insurance to which the filing applies [is applicable];~~

~~(C) dual filings must indicate multi-peril insurance and the [a specific] line of insurance to which the filing applies [is applicable];~~

~~(7) type of filing:~~

~~[(6) basic description of the filing:]~~

~~[(A) rate filing, rating manual filing, and rating rule filing:]~~

~~[(B) policy form:]~~

~~[(C) endorsement:]~~

~~[(D) manual rules, other than rating manual rules:]~~

~~[(E) reference filing—must list the TDI file number or TDI link number of the filing being referenced:]~~

~~[(F) credit scoring model; or]~~

~~[(G) underwriting guidelines:]~~

~~(8) [(7)] proposed effective date; and~~

~~(9) [(8)] contact person, including name, telephone number, mailing address, and fax number[, and e-mail address (if available)].~~

~~(d) Availability of transmittal form. The Filing Transmittal Form (FTF) is a form that is provided by the department for insurers who are making the filings specified in subsection (e)(6) of this section. This form may be obtained from the TDI website at www.tdi.state.tx.us.~~

~~(e) Alternative transmittal forms. An insurer may use, as an alternative, a transmittal form published by the National Association of Insurance Commissioners (NAIC) or any other transmittal form if the information included in the transmittal form, or in an addendum to the transmittal form, contains all the information required under subsection (e) of this section.~~

~~(d) [(f)] Filings Made Easy Guide. TDI [The department] maintains the Filings Made Easy Guide [guide] to assist insurers in submitting filings and complying with statutory requirements. Insurers may obtain this guide from TDI's website at www.tdi.texas.gov. [This guide may be obtained from the TDI website at www.tdi.state.tx.us.]~~

~~(e) Copyright. Information included in rate filings under Insurance Code Chapter 2251 that is marked "copyright" may be made available for public disclosure in the same manner as information filed under Chapter 2251 that is not marked "copyright." Information that is marked "copyright" and that is included in rate filings under Insurance Code Chapter 2053 and Chapter 3502 and in form filings is not confidential and will be open for public inspection in the same manner as information not marked "copyright." Public disclosure methods may include posting filings on TDI's website.~~

~~(f) [(g)] Submission of Filing. Filings under Divisions [4-] 5, 6, 7, 8, and 9 of this subchapter (relating to Filings Made Easy - Re-~~

quirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings; Filings Made Easy - Requirements for Rate Filings; Filings Made Easy - Requirements for Underwriting Guideline Filings; Filings Made Easy - Requirements for Credit Scoring Model Filings for Personal Insurance; and Filings Made Easy - Reduced Filing Requirements for Certain Insurers, respectively) must be submitted either through the System for Electronic Rate and Form Filing (SERFF), delivered to the Texas Department of Insurance, Property and [&] Casualty Intake Unit, William P. Hobby Jr. State Office Building, 333 Guadalupe St., Mail Code 104-3B, Austin, Texas 78701, or mailed to the Texas Department of Insurance, Property and [&] Casualty Intake Unit, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.

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 April 28, 2014.

TRD-201402008

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 463-6327



DIVISION 5. FILINGS MADE EASY - REQUIREMENTS FOR PROPERTY AND CASUALTY POLICY FORM, ENDORSEMENT, AND MANUAL RULE FILINGS

28 TAC §§5.9320 - 5.9322

STATUTORY AUTHORITY. The amendments and new sections are proposed under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of any insurer not writing personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be

included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer that is exempt from the filing requirements of Chapter 2251 must file and obtain approval of proposed premium rates meeting certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001.

§5.9320. *Required Information for the Preparation and Submission of Policy Form, Endorsement, and [Ø] Manual Rule (Other than Rating Manual) [(other than rating manual)] Filings.*

(a) Purpose. The purpose of this section is to specify the filing requirements for property and casualty policy form, endorsement, and manual rule filings that are submitted under [pursuant to Chapter 5 or Article 21.50 of the Texas] Insurance Code Chapter 2052, 2301, or 3502, or 3502.

(b) Definitions. The definitions set forth in §5.9310 of this title (relating to Property and Casualty [Filing] Transmittal Information and General Filing Requirements [Form]) apply to this division.

(c) Filing requirements for policy [Policy] forms and endorsements. All insurer and advisory organization policy form and endorsement filings submitted under [pursuant to Chapter 5 or Article 21.50 of the Texas] Insurance Code Chapter 2052, 2301, or 3502 must[; shall] comply with the [general] filing requirements[; other applicable requirements set forth] in paragraphs (1) - (3) of this subsection, and any other applicable rules adopted by the commissioner.

(1) General filing requirements.

(A) All filings for new and amended policy forms or endorsements must [shall] relate to only one line of insurance except for multi-peril[; dual] and interline filings.

(B) All filings for new and amended policy forms or endorsements must [shall] contain the following:

(i) the [a filing] transmittal information [form as] required in §5.9310 [Division 4] of this title; [subchapter (relating to

Filings Made Easy--Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings):]

(ii) a copy of the proposed policy forms or endorsements [form(s) and/or endorsement(s)]; and

(iii) a [an explanatory] memorandum that contains a detailed explanation of the reasons [reason(s)] for the filing and [the new or revised policy form(s) and/or endorsement(s) or manual rule(s)]; a description of the policy forms [form(s)] or endorsements [endorsement(s)] and their use. For example [the application (e.g.), the type of risk or risks the forms [form(s)] or endorsements [endorsement(s)] will be used with].

(2) Additional filing requirements.

(A) Additional filing requirements specific to new policy forms or endorsements for use with new products. If the [explanatory] memorandum required under paragraph (1)(B)(iii) of this subsection does not fully explain or describe the filed policy forms [form(s)] or endorsements [endorsement(s)], TDI [the department] may request either:

(i) a summary of all policy provisions that includes a detailed description and explanation of the coverages, limitations, exclusions, and conditions; or

(ii) a coverage comparison to a similar policy form or endorsement that the commissioner has [been] previously approved or adopted [by the commissioner] containing a detailed explanation of all the differences including any restrictions in coverage, enhancements in coverage, or clarifications to the previously approved policy forms [form(s)] or endorsements [endorsement(s)].

(B) Additional filing requirements specific to amending previously approved or adopted policy forms or endorsements. In addition to the general requirements outlined in paragraph (1) of this subsection, the filing must [shall] include a coverage evaluation that contains a detailed explanation of the proposed changes including any restrictions in coverage, enhancements in coverage, or clarifications to the previously approved or adopted policy forms [form(s)] or endorsements [endorsement(s)]. The additional requirements under this subsection may be provided in the [explanatory] memorandum required under paragraph (1)(B)(iii) of this subsection or in [by providing]:

(i) a side-by-side comparison showing any differences between the previously approved or adopted policy forms [form(s)] or endorsements [endorsement(s)] and the proposed policy forms [form(s)] or endorsements [endorsement(s)]; or

(ii) a copy of the previously approved or adopted policy forms [form(s)] or endorsements [endorsement(s)] indicating the differences between the approved or adopted policy forms [form(s)] or endorsements [endorsement(s)] and the filed policy forms [form(s)] or endorsements [endorsement(s)] with the new language underlined and the deleted language in brackets with a strikethrough, or other clearly identified or highlighted editorial notations referencing the new and replaced language.

(3) Statutory and regulatory filing requirements.

(A) Filings for new and amended policy forms or endorsements must [form(s) and/or endorsement(s) shall] include all provisions required by statute, administrative rule, or commissioner's order [for a specific line of insurance]. Filers may add the required statutory or administrative rule provisions to a policy form by a Texas amendatory endorsement. The filing must include the [The required statutory or administrative rule provisions may be added to a policy

form by a Texas amendatory endorsement. The] amendatory endorsement, [shall be included in the filing] or the [a] filing may reference an approved amendatory endorsement that is applicable to the policy forms [form(s)] contained in the filing.

(B) All policy forms and endorsements contained in personal automobile and residential property insurance filings must [shall] meet the statutory requirements for plain language in policies as set forth by Commissioner's Order No. 92-0573 [the Commissioner of Insurance by order].

(d) Filing requirements for manual rules. Manual rules are rules other than rating rules that relate to policy forms or endorsements. A [may be filed with policy form(s) or endorsement(s) or may be submitted separately. When submitted separately, in addition to the transmittal form, the] manual rule filing must include the transmittal information required in §5.9310 of this title, [shall] relate to only one line of insurance except for multi-peril[, dual] and interline filings, and include a [an explanatory] memorandum as described in subsection (c)(1)(B)(iii) of this section.

(e) Filing requirements for reference filings. An insurer may make a [A] filing [may be made] referencing approved or accepted policy forms [form(s)], endorsements [endorsement(s)], or manual rules [rule(s)] without including a copy of the referenced material [policy form(s), endorsement(s) or manual rule(s)]. All reference filings must [shall] relate to only one line of insurance except for multi-peril and [dual filings,] interline filings[, and multi-peril filings]. In addition to the transmittal information [form], a reference filing must include the following [information for policy form(s), endorsement(s), or manual rule(s)]:

(1) the name of the insurance company or advisory organization whose filing is being referenced; and

(2) the TDI file number[, link number, or reference number] of the filing being referenced.

(f) Public information. To the extent that a filing submitted through SERFF includes contact information, the filer affirmatively consents to the release and disclosure of the contact information, including any email addresses. The filer also certifies that each person associated with an email address that appears in the filing has affirmatively consented to the release and disclosure of that email address.

(g) [(#)] Incomplete filings [filing].

(1) TDI will consider a filing [will be considered] incomplete if the filing does not comply with the filing requirements contained in subsections (c), (d), and (e) of this section.[;]

(2) If TDI determines that a filing is incomplete, TDI will provide a notice that states the filing is incomplete and identifies the additional information required to complete the filing. A filing that is not completed before the date specified in the notice will be rejected. A rejected filing:

(A) is not considered filed with TDI for the purposes of this division;

(B) will not be reopened for purposes of resubmission; and

(C) must be resubmitted as a new filing.

[(2) a filing that is determined to be incomplete by the department will be returned to the filer with a letter or electronic notification, indicating the reason(s) for the filing being returned; and]

(3) The [the] deemer period does not commence until a complete filing is received by TDI [the department].

(h) Filings under this division may not be combined with any other filings submitted under this subchapter.

(i) Manual rule filings submitted under this division may not be combined with any other filings submitted under this division.

[(g) Combining filings. Filings under this division may be combined with filings made in accordance with Division 6 or 9 of this subchapter (relating to Filings Made Easy--Rate and Rate Manual Filing Requirements and Reduced Filing Requirements for Certain Insurers). These combined filings may utilize a single transmittal form. Filings under this division may not be combined with filings made in accordance with Division 7 or 8 of this subchapter (relating to Filings Made Easy--Underwriting Guideline Filing Requirements for Personal Automobile and Residential Property Insurance and Filings Made Easy--Credit Scoring Models Filing Requirements for Personal Insurance) due to distinct and separate statutes governing underwriting guidelines and credit scoring models.]

§5.9321. Request for Deemer Period Waiver.

An insurer may, by sending written notice to TDI, waive the deadlines by which the commissioner, under Insurance Code §2301.006, must approve or disapprove a form before it is deemed approved.

§5.9322. Insurers Providing Coverage Through a Purchasing Group.

(a) Insurers that provide coverage to participants in a purchasing group are not exempt from the filing requirements of this division.

(b) As Insurance Code §2171.003 requires, insurers writing commercial group property insurance under Insurance Code §2171.002 must file a policy form with the commissioner before using the form for a group of businesses or an association described by §2171.002 in which each member of the group or association is not a large risk.

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

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General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6327



DIVISION 6. FILINGS MADE EASY - REQUIREMENTS FOR RATE FILINGS

28 TAC §§5.9330 - 5.9337

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of any insurer not writing personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed

managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer that is exempt from the filing requirements of Chapter 2251 must file and obtain approval of proposed premium rates meeting certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001.

§5.9330. Purpose.

The purpose of this division is to specify requirements for rate filings under Insurance Code Chapters 2053, 2251, and 3502. Rate filings may include rates, prospective loss costs, loss cost multipliers, rating manuals, and other supplementary rating information. Rate filings may also include information concerning policy fees, service fees, and other fees that are charged or collected by the insurer under Insurance Code §550.001 or §4005.003, or any other amounts collected by the insurer in connection with a policy.

§5.9331. Definitions.

(a) Terms not defined in this section, but which are defined in Insurance Code Chapter 2053, 2251, or 3502, or §5.9310 of this title (relating to Property and Casualty Transmittal Information and Gen-

eral Filing Requirements), have the same meaning when used in this division unless the context indicates otherwise.

(b) The following terms when used in this division have the following meanings, unless the context indicates otherwise:

(1) Disallowed expenses--Applies only to filings submitted under Insurance Code Chapter 2251. Disallowed expenses include the expenses in Insurance Code §2251.002(1). Payments anticipated to be made to advisory organizations that are licensed to do business in Texas for services authorized by Insurance Code Chapter 1805, Subchapter B, are not disallowed expenses.

(2) Fees--Information concerning all policy fees, service fees, and other fees that are charged or collected by an insurer under Insurance Code §550.001 or §4005.003, or any other amounts collected by the insurer in connection with a policy, other than the premium. This information includes both the amount of the fees and the rules governing when the fees are charged and how they are earned.

(3) Insurer--An insurer authorized to write property and casualty insurance in Texas, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, association, Lloyd's plan, or other entity writing insurance in this state. The term includes an affiliate, as described by Insurance Code §823.003, if that affiliate is authorized to write insurance in Texas. The term includes an appointed managing general agent, district, or local chapter program of a county mutual insurance company described by Insurance Code §912.056(d) that manages a portion of that county mutual insurance company's business, independent of all other business of that county mutual insurance company, and that is to be treated as a separate insurer for the purposes of Insurance Code Chapters 544, 2251, 2253, and 2254, as provided in Insurance Code §912.056(e). The term does not include a farm mutual insurance company, an eligible surplus lines insurer under the Insurance Code, the Texas Windstorm Insurance Association, the Texas FAIR Plan Association, or the Texas Automobile Insurance Plan Association.

(4) Short track filing--A filing requiring limited supporting information to determine compliance with Texas statutes and rules. For example, a filing making an editorial change to a rating rule that does not result in the use of rates that are not on file or a filing referring to certain advisory organization filings may qualify as a short track filing. TDI will maintain a list of qualifying types of filings on the TDI website.

§5.9332. Categories of Supporting Information.

Supporting information is the documentation needed to verify compliance with Texas statutes and rules. Section 5.9334 of this title (relating to Requirements for Rate Filing Submissions) lists the categories of supporting information that different rate filings require. The categories of supporting information include:

(1) Rate filing checklists. These are found in the Filings Made Easy Guide and show the information filers need to include with the filing.

(2) Actuarial memorandum. This memorandum describes the methodologies for determining each component used in developing the actuarial support, as well as a qualitative discussion on the selections for each component. It includes an explanation for any changes in methodologies or any changes to the component selections from the previous analysis.

(3) Actuarial support. This type of support consists of sufficient documentation and analysis to allow a qualified actuary to understand and evaluate the rates, each component used in developing the

rates, and the appropriateness of each material assumption. Actuarial support is divided into the following subcategories:

(A) Rate indications consist of the analyses the insurer relies on to support its filed rates, each component used to develop the rate indications, and support for each of these components, including the data and methodologies used by the insurer. Rate indications may be on an overall basis or by coverage, class, form, or peril when appropriate. Rate indications must include each of the following with documentation in support of each, to the extent applicable:

(i) premiums, on-level factors, and premiums at current rate level;

(ii) incurred and paid losses;

(iii) loss and claim development factors;

(iv) premium and loss trend factors;

(v) hurricane and non-hurricane catastrophe factors or loss provisions including the definition of a catastrophe and how the definition has changed over the experience period used to calculate the provisions;

(vi) off-balance factors if there are changes in relativities (for example, discounts, surcharges, or territorial definitions);

(vii) the measure of credibility, the compliment of credibility, the criteria for full credibility, and the method for determining partial credibility;

(viii) expenses including general expenses; other acquisition expenses; commissions and brokerage expenses; taxes, licenses and fees; loss adjustment expenses; and expense offsets from fee income;

(ix) the net cost of reinsurance;

(x) for rates filed under Insurance Code Chapter 2251, profit provisions, including risk loads;

(xi) for rates filed under Insurance Code Chapters 2053 and 3502, profit and contingency provisions, including risk loads;

(xii) the effect on premiums of individual risk variations based on loss or expense considerations; and

(xiii) any other component used in developing a rate indication.

(B) Relativity analysis consists of both the analysis and support for the selected rating factors, including the data and methodologies used by the insurer to derive the indicated rating factors. Supporting information must include:

(i) the current relativity;

(ii) the indicated relativity;

(iii) support for the indicated relativities, including the data and methodologies used by the insurer to derive such indications;

(iv) the selected relativity;

(v) support for the selected relativities if they differ from the indicated relativities; and

(vi) the percent change from current to selected relativity.

(C) Other actuarial support consists of both the analysis and support for the selected rates, including the data and methodologies used by the insurer to derive them. Examples include:

(i) description and support for new discounts and surcharges;

(ii) description and support for rates for new endorsements; and

(iii) competitive analysis.

(4) SERFF rate data. This data consists of all information necessary to complete the company rate information fields in SERFF. For filers not using SERFF, this information includes the company name, the overall percentage and effective date of the last rate revision, the overall indicated change as a percent, the overall rate impact as a percent, the written premium change for the program, the number of policyholders affected for the program, the written premium for the program, and the maximum and minimum percentage change for the filing.

(5) Policyholder impact information. This information consists of the following provided separately by homeowners form and personal automobile coverage:

(A) a histogram which graphically depicts the impact of the filed changes to policyholders in five percentage point intervals;

(B) the policy counts in each interval displayed in either the histogram or a separate table;

(C) the minimum and maximum policyholder impact; and

(D) a description of the changes that contributed to the minimum and maximum policyholder impact.

(6) Average rate change by county. This is the average impact of all changes included in a filing by county, provided separately by homeowners form.

(7) Rate change information.

(A) For loss cost reference filings, rate change information consists of:

(i) the proposed percentage change in the underlying loss costs;

(ii) the change in the insurer's loss cost multiplier;

(iii) the combined change in the loss costs and the loss cost multipliers;

(iv) a six-year rate change history; and

(v) the effect that changes in fee income have on the total average rate change for all coverages and forms combined.

(B) For workers' compensation filings using classification relativities established under Insurance Code §2053.051, rate change information consists of:

(i) the percentage change in the underlying classification relativities;

(ii) the change in the insurer's deviation;

(iii) the combined change in the classification relativities and the insurer's deviation;

(iv) a six-year rate change history; and

(v) the effect that changes in fee income have on the total average rate change.

(C) For all other filings, rate change information consists of:

(i) the average proposed rate change for each applicable coverage or form;

(ii) the total average rate change for all applicable coverages and forms combined;

(iii) a six-year rate change history; and

(iv) the effect that changes in fee income have on the total average rate change for all applicable coverages and forms combined.

(8) Historical premium and loss information. This information consists of an insurer's most recent five-year experience, for both Texas and countrywide, of direct premiums written, direct premiums earned, direct losses and defense and cost containment expenses paid, direct losses and defense and cost containment expenses incurred, and the ratio of the direct losses and defense and cost containment expenses incurred to direct earned premiums. The Texas experience is the amounts, or a subset of the amounts, pertinent to the line of business reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement. The countrywide experience is the amounts, or a subset of the amounts, pertinent to the line reported on the insurer's Insurance Expense Exhibit (IEE), Part III in the insurer's Annual Statement.

(9) Historical and projected expense information. This information consists of Texas experience, and, if applicable, countrywide experience. The loss adjustment expenses must be shown as a dollar amount as well as a ratio-to-incurred losses. All other expenses must be shown as a dollar amount as well as a ratio to premium. All expense items must be on a direct basis.

(A) Three years of historical Texas experience must be included for commissions and brokerage expenses incurred; taxes, licenses, and fees incurred; losses incurred; and defense and cost containment expenses incurred. These must be the amounts, or a subset of the amounts, reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement.

(B) Three years of historical countrywide experience must be included for commissions and brokerage expenses incurred, other acquisition expenses incurred, general expenses incurred, losses incurred, defense and cost containment expenses incurred, and adjusting and other loss adjustment expenses incurred. These must be the amounts reported in the insurer's IEE, Part III in the insurer's Annual Statement.

(C) Three years of historical countrywide experience must be included for each category of disallowed expenses. These must be the amounts reported in the insurer's response to the annual TDI Disallowed Expense Call. Other acquisition and general expenses, each adjusted to remove disallowed expenses, must be listed separately. The total adjusted general expense percentage must reflect any necessary adjustment due to the capping of general expenses at 110 percent of the industry median for the line of insurance.

(D) To the extent that the expense provisions differ from the historical expenses, the filing must provide additional support for the expense provisions underlying the rates. Provisions for commissions and brokerage expenses; other acquisition expenses; general expenses; taxes, licenses, and fees; and profit and contingencies must be displayed and a sum computed. For filings submitted under Insurance Code Chapter 2251, the expense provisions must exclude disallowed expenses.

(E) When additional expense provisions are included, such as the net cost of reinsurance or an expense offset from fee income, the filing must include expected or historical experience. Sup-

port for provisions for the net cost of reinsurance may include reinsurance premiums, expected reinsurance recoverables, and a description of reinsurance coverage including attachment points and limits.

(10) Loss cost information for reference filings. This information consists of the following:

(A) the TDI file number of the loss costs being referenced;

(B) the derivation of the proposed loss cost multiplier including any loss cost modification factor and the following expense and profit provisions:

(i) commissions and brokerage expenses;

(ii) other acquisition expenses, adjusted to remove disallowed expenses;

(iii) general expenses, adjusted to remove disallowed expenses;

(iv) taxes, licenses, and fees; and

(v) underwriting profit and contingencies;

(C) supporting documentation for loss cost modification factors other than 1.00;

(D) the loss cost multiplier to be used as of the effective date of the filing;

(E) the loss cost multiplier used immediately prior to the effective date of the filing; and

(F) the effective rate level change due to any change in the loss cost multiplier.

(11) Profit provision information. This information consists of a description of the methodology and assumptions used to arrive at the profit provisions underlying the proposed rates.

(12) A side-by-side comparison. This comparison must show any differences between the previously filed and the proposed rates, rating manual, or other supplementary rating information.

(13) A mark-up. This is a copy of the previously filed rates, rating manuals, rating rules, or other supplementary rating information indicating the differences between it and the revised version, with any new language or factors underlined and the deleted language or factors in brackets with a strikethrough, or other clearly identified or highlighted editorial notations referencing the new and replaced language or factors.

(14) Sample premium impacts by selected ZIP codes. These are sample premiums and premium changes based on all changes included in a filing for certain specified policy types and ZIP codes.

(15) Rate filing templates. These are found in the Filings Made Easy Guide and provide insurers with an optional means of providing certain supporting information and supplementary rating information.

(16) Other information. This includes any other information required by the commissioner necessary to determine that the rates meet the rate standards.

§5.9333. Categories of Supplementary Rating Information.

Section 5.9334 of this title (relating to Requirements for Rate Filing Submissions) lists the categories of supplementary rating information that different rate filings require. The categories of supplementary rating information include:

(1) Rating manual. This type of manual consists of any rating schedule, plan of rules, and rating rules. A rating manual may contain factors and relativities, including increased limits factors, classification relativities, deductible relativities, territory relativities, premium discounts, and other similar factors. A rating manual may also include some or all information in the remaining categories of supplementary rating information.

(2) Rating algorithm.

(3) Rating plan.

(4) Territory codes and descriptions.

(5) Classification system. This consists of any other criteria, guidelines, models, and methods that place individual risks into rating classifications, such as tiers, categories, or similar groupings, regardless of the name used.

(6) Factors and relativities, including increased limits factors, classification relativities, deductible relativities, territory relativities, premium discounts or surcharges, and other similar factors.

(7) Other information. This is any other information used by the insurer to determine the applicable premium for an insured.

§5.9334. Requirements for Rate Filing Submissions.

(a) Insurers must file any new rates or revisions to previously filed rates governed by Insurance Code Chapter 2053 at least 30 days before they become effective. The insurer must file any supplementary rating information not prescribed under Insurance Code Article 5.96.

(b) For rates governed by Insurance Code Chapter 2251, insurers must file any new rates, rating manuals, rating rules, all other supplementary rating information, and fees, or revisions to these items. An insurer may use the information filed under this division on and after the date of the filing.

(c) Insurers must file any new rates and supplementary rating information or revisions to previously filed rates and supplementary rating information governed by Insurance Code Chapter 3502 at least 15 days before they become effective.

(d) Each filing must include the transmittal information required in §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements). If the proposed effective date in the filing transmittal information changes, insurers must inform TDI of the new proposed effective date prior to the original proposed effective date.

(e) Each filing must include a filing memorandum that explains the purpose of the filing and provides all material background details relating to the filing, including a statement on the overall impact of the filing. The filing memorandum must briefly describe each change to the rates, rating manuals, rating rules, any other supplementary rating information and fees used by the insurer, and briefly describe the supporting information provided for each change. A brief summary of any related policy form or endorsement filings, including the coverages, limitations, and exclusions, must be included.

(f) Except as provided in Division 9 of this subchapter (relating to Filings Made Easy - Reduced Filing Requirements for Certain Insurers), or subsection (g) of this section, each filing must include supporting information. Sufficient supporting information is necessary for TDI to establish that a filing produces rates that are not excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply. Insurers must provide sufficient documentation to justify specific rates or revisions they are proposing. To the extent the information originally submitted in a rate filing is insufficient, TDI may

request additional information as deemed necessary by TDI or the commissioner. Each filing must contain the following items:

(1) a completed rate filing checklist;

(2) rate change information;

(3) SERFF rate data;

(4) loss cost information, if the filing references an advisory organization loss cost filing;

(5) an actuarial memorandum;

(6) actuarial support appropriate to the rating information being filed, as specified in subparagraphs (A) - (C) of this paragraph:

(A) All filings that propose changes to relativities, such as territory or class, as well as those applied through discounts, surcharges, or tiers, must include relativity analyses. The related territory codes and descriptions, classification systems and descriptions, or rules must also be included.

(B) All except the following filings must include rate indications:

(i) filings for new rates that will not replace, modify, or supersede any existing rates, unless the rates are derived from the experience of an affiliate, including an eligible surplus lines insurer;

(ii) fee filings; or

(iii) filings containing changes only to supplementary rating information with no overall rate impact. Examples include filings with no overall rate impact that contain only items such as relativity changes or rates for endorsements.

(C) Filings must include other actuarial support when neither subparagraph (A) nor (B) of this paragraph applies;

(7) policyholder impact information for owner-occupied homeowner and personal automobile filings that include changes that will result in a difference between the minimum and maximum policyholder impact that is greater than five percent;

(8) the average rate change by county for owner-occupied homeowners rate filings;

(9) historical premium and loss information, if the filing changes or replaces existing rates;

(10) historical and projected expense information, if the filing changes or replaces existing rates; and

(11) profit provision information, if the filing changes or replaces existing rates.

(g) Instead of the items in subsection (f) of this section, short track filings must include:

(1) a completed rate filing checklist;

(2) rate change information; and

(3) SERFF rate data.

(h) Each filing submitted must be legible, accurate, internally consistent, complete, and contain all required documents. In each filing:

(1) each table must be clearly labeled, including titles and column and row headings, so as to clearly identify the contents;

(2) row and column headings must be repeated on each page of tables displayed on multiple pages;

(3) all pages must print to at least 10-point font;

(4) text shading, with the exception of yellow highlighting, may not be used; and

(5) each page should include a page number or other unique identifier.

(i) Paragraphs (1) - (4) of this subsection address public information.

(1) To the extent that a filing submitted through SERFF includes contact information, the filer affirmatively consents to the release and disclosure of the contact information, including any email addresses. The filer also certifies that each person associated with an email address that appears in the filing has affirmatively consented to the release and disclosure of that email address.

(2) If an insurer believes a portion of the information required to be filed under Insurance Code Chapter 2251 is confidential and excepted from disclosure under Government Code Chapter 552, the insurer must mark each page excepted.

(3) For filings submitted under Insurance Code Chapter 2251 and that are marked confidential, TDI will request an attorney general decision under Government Code Chapter 552 before making the filings open for public inspection. TDI does not consider the following excepted from disclosure under Government Code Chapter 552: loss cost multipliers, rates, rating factors and relativities, rating manuals, fees, and summary information about the rate filing, including date filed, rate impact, effective dates, and a summary of the changes. TDI does not consider the following categories of supporting information excepted from disclosure under Government Code Chapter 552: rate change information, SERFF rate data, average rate change by county, sample premium impacts by selected ZIP codes, historical premium and loss information, and historical expense information.

(4) Each filing submitted under Insurance Code Chapters 2053 and 3502, including any supporting information filed, will be open for public inspection as of the date of the filing.

(j) The insurer is responsible for ensuring that its filing complies with Texas statutes and rules.

(k) TDI maintains the Filings Made Easy Guide to assist insurers in complying with Texas statutes and rules. Insurers may refer to the Filings Made Easy Guide for rate filing templates or exhibits that insurers can use to display necessary supporting information required in subsection (f) of this section. Insurers may obtain this guide from TDI's website at www.tdi.texas.gov.

(l) Filings under this division may not be combined with any other filings submitted under this subchapter.

§5.9335. Requests for Information.

(a) When reviewing each filing under this division, TDI may request additional supplementary rating information and supporting information.

(b) To be considered fully responsive to a request for information, an insurer's responses must:

(1) fully address all of the requests and questions in a manner that is clear and in sufficient detail to allow a qualified actuary to understand and evaluate the material and any explanations provided;

(2) contain appropriate supporting data and calculations, including material assumptions, with sufficient narrative to clearly explain the methodology used, the nature and source of the data, as well as any conclusions drawn; and

(3) provide an explanation of any apparent anomalies in the data and how the insurer mitigated or accounted for them in arriving at the proposed rates.

(c) TDI may request that an insurer file a comprehensive set of rates, rating manuals, rating rules, fees, and all other supplementary rating information when filing a revision to previously filed rates, rating manuals, rating rules, fees, and all other supplementary rating information.

(d) For each filing under Insurance Code Chapter 2251, TDI may request additional supplementary rating information and supporting information five times each. The insurer must respond by the date specified in the request. Correspondence requesting information that should have been included in the response, or clarifications of the information included in the response, will not constitute a new request for information.

(e) Requests that are necessary to make the filing complete are not a request for information under subsection (d) of this section. Examples of this type of request include:

(1) requests for information required by §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements);

(2) requests for information required by §5.9334 of this title (relating to Requirements for Rate Filing Submissions); and

(3) requests arising from discrepancies in the filing.

§5.9336. Request for Information Limit Waiver.

An insurer may, by sending written notice to TDI, waive the limits that §5.9335(d) of this title (relating to Requests for Information) imposes on the number of times TDI may request additional supplementary rating information and supporting information.

§5.9337. Insurers Providing Coverage Through a Purchasing Group.

Insurers that provide coverage to participants in a purchasing group are not exempt from the filing requirements of this division.

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

Filed with the Office of the Secretary of State on April 28, 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



DIVISION 7. FILINGS MADE EASY - REQUIREMENTS FOR UNDERWRITING GUIDELINE FILINGS

28 TAC §§5.9340 - 5.9342

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI

may obtain a copy of the underwriting guidelines of any insurer not writing personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer that is exempt from the filing requirements of Chapter 2251 must file and obtain approval of proposed premium rates meeting certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001.

§5.9340. Purpose.

The purpose of this division is to specify underwriting guideline filing requirements under Insurance Code §§38.002 and §38.003, and Chapter 2053 [Article 5.55A for those insurers writing personal automobile insurance, residential property insurance, or workers' compensation insurance in this state].

§5.9341. Definitions.

The definitions set forth in §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements) apply to this division. The definitions set forth in Insurance Code §38.002 apply to insurers filing underwriting guidelines for personal automobile or residential property insurance. The definitions set forth in Insurance Code Chapter 2053 [Article 5.55A] apply to insurers filing underwriting guidelines for workers' compensation insurance. The definitions set forth in Insurance Code §38.003 apply to insurers filing underwriting guidelines for lines of property and casualty insurance not subject to Insurance Code §38.002.

§5.9342. Filing Requirements.

(a) An insurer must file with TDI [the department]:

(1) at least once every three calendar years on or before March 1, beginning March 1, 2004, a written, comprehensive set of each underwriting guideline used by the insurer or the insurer's agent; and

(2) not later than the 10th day after the underwriting guideline has changed, a written update to the underwriting guideline clearly identifying each section of the previously filed underwriting guideline that has changed.

(b) For purposes of compliance with this section, an oral or electronic underwriting guideline must be converted to written form.

(c) An insurer group or group of affiliated insurers may file one set of underwriting guidelines or update to underwriting guidelines on behalf of individual insurers in the group under [in accordance with] the requirements of this section if the group clearly identifies which underwriting guidelines apply to each insurer within the group.

(d) An insurer that files underwriting guidelines or updates to underwriting guidelines under this section must submit the [a] filing transmittal information [form as] required in §5.9310 [by Division 4] of this title [subchapter] (relating to Property and Casualty Transmittal Information and General Filing Requirements [Filings Made Easy—Filing Transmittal Form and Requirements for Property and Casualty Form; Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings]) with the filing for each underwriting guideline and update.

(e) All filings for underwriting guidelines must relate to only one line of insurance.

(f) Underwriting guidelines contemplated by Insurance Code §38.003 are required only if requested. Underwriting guidelines submitted in response to a request under Insurance Code §38.003 must be filed in compliance with subsections (b), (c), and (d) of this section.

(g) [(e)] Filings under this division may not be combined with any other filings submitted under this subchapter. [filings made in accordance with Divisions 5, 6 or 8 of this subchapter (relating to Filings Made Easy—Requirements for Property and Casualty Policy Form; Endorsement, and Manual Rule Filings; Filings Made Easy—Rate and Rate Manual Filing Requirements, and Filings Made Easy—Credit Scoring Models Filing Requirements for Personal Insurance) due to distinct and separate statutes governing underwriting guidelines and credit scoring models.]

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 April 28, 2014.

TRD-201402011



DIVISION 8. FILINGS MADE EASY - REQUIREMENTS FOR CREDIT SCORING MODEL FILINGS FOR PERSONAL INSURANCE

28 TAC §§5.9350 - 5.9352

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of any insurer not writing personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer that is exempt from the filing requirements of Chapter 2251 must file and obtain approval of proposed premium rates meeting certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to

TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001.

§5.9350. Purpose.

The purpose of this division is to specify filing requirements for credit scoring models and to specify other regulatory requirements under [pursuant to] Insurance Code Chapter 559 [Article 21.49-2U] for those insurers that use credit scoring in [the] writing [of] personal insurance in this state.

§5.9351. Definitions.

(a) The definitions set forth in §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements) apply to this division. Words and terms not defined in this division may be defined in [the] Insurance Code Chapter 559 [Article 21.49-2U] and will [shall] have the same meaning when used in this division.

(b) [The following words and terms when used in this division shall have the following meanings unless the context indicates otherwise:] Credit scoring model [or models]--The algorithm, computer application, model, or other process that is based on credit information used to derive a credit score or insurance score.

§5.9352. Filing Requirements.

(a) All models must be filed before they can [may] be used. Insurers referencing models that have been filed with TDI [the department] by another entity on behalf of an insurer in this state must [shall] specify the exact name of the model being referenced instead [in lieu] of filing the model itself. Insurers making independent credit scoring model filings must [should] file the entire model, including definitions.

(b) An insurer that files a credit scoring model or references a model that has been filed with TDI by another entity on behalf of another insurer in this state [under this division] must submit the following information with the filing:

(1) the filing transmittal information [as] required in §5.9310 [Division 4] of this title [subchapter] (relating to Property and Casualty Transmittal Information and General Filing Requirements [Filings Made Easy—Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings]); [and]

(2) [an indication of] whether the insurer uses the score resulting from the model for underwriting, rating, or tiering; and [both.]

(3) a completed questionnaire, used to verify compliance with Insurance Code Chapter 559.

(c) Each filing, and any supporting information filed with it, is open to public inspection as of the date of the filing. To the extent that a filing submitted through SERFF includes contact information, the filer affirmatively consents to the release and disclosure of the contact information, including any email addresses. The filer also certifies that each person associated with an email address that appears in the filing has affirmatively consented to the release and disclosure of that email address.

[(c) An insurer group or group of affiliated insurers may file models on behalf of the individual insurers in the group if the individual filings made by each insurer in the group would otherwise be identical.]

(d) TDI maintains the Filings Made Easy Guide to assist insurers in complying with Texas statutes and rules. Insurers may refer to the Filings Made Easy Guide for the questionnaire described in subsection (b)(3) of this section. Insurers may obtain this guide from TDI's website at www.tdi.texas.gov. Filings under this section may not be combined with any other filings submitted under this subchapter [filings made in accordance with Divisions 5, 6 or 7 of this subchapter (relating to Filings Made Easy--Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings, Filings Made Easy--Rate Filing Requirements, and Filings Made Easy--Underwriting Guideline Filing Requirements for Personal Automobile and Residential Property Insurance) due to the distinct and separate statutes governing underwriting guidelines and credit scoring models.]

(e) All filings for credit scoring models must relate to only one line of insurance.

(f) An insurer must refile a credit scoring model before the insurer may use the credit scoring model for a line of insurance not identified in the credit scoring model's original filing.

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

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Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 463-6327



DIVISION 9. FILINGS MADE EASY - REDUCED FILING REQUIREMENTS FOR CERTAIN INSURERS

28 TAC §5.9355, §5.9357

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of any insurer not writing personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each

insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer that is exempt from the filing requirements of Chapter 2251 must file and obtain approval of proposed premium rates meeting certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001.

§5.9355. Purpose.

The purpose of this division is to specify requirements for certain insurers who qualify [meet the requirements] for reduced rate filing requirements under the provisions of Insurance Code Chapter 2251, Subchapter E or F [Article 5-13-2, §13(F) or 5-13-2C].

§5.9357. Filing Requirements.

(a) County mutual insurers writing nonstandard [non-standard] personal automobile insurance. County mutual insurers required to file under the provisions of Insurance Code Chapter 2251 [Article 5-13-2] may make rate filings for personal automobile insurance according to the requirements described in this subsection if they issue policies only at nonstandard [non-standard] rates as defined under Insurance Code §2251.204, [Article 5-13-2, §13(F)] and if the insurer and the insurer's affiliated companies or group have a market share of less than 3.5 percent. Insurers who qualify to file under this subsection must file in compliance with Division 6 of this subchapter (relating to Filings Made Easy - Requirements for Rate Filings) with the following modifications:

[(1) Insurers who qualify to file under this subsection shall file in accordance with Division 6 of this subchapter (relating to Fil-

ings Made Easy--Rate and Rate Manual Filing Requirements) with the following exceptions:}]

(1) [(A)] Insurers must include a Certification of Sections 2251.201 - 2251.204 [Article 5-13-2, §13] Exemption Compliance (EC-2), found in the Filings Made Easy Guide, with each filing. Instead[, or in lieu] of submitting the EC-2, an insurer may submit a certification of compliance which certifies that the insurer writes only at nonstandard [non-standard] rates and that [the market share of] the insurer and the insurer's affiliated companies or group have a market share of less than 3.5 percent.

(2) Insurers are not required to comply with §5.9334(f)(5), (6), (9), (10), and (11) of this title (relating to Requirements for Rate Filing Submissions).

[(B)] In lieu of the supporting information required in §5.9332(e) of this subchapter (relating to Filing Requirements), insurers may substitute rate change information as described in §5.9332(e)(5) of this subchapter.}]

(2) The Certification of Article 5-13-2, §13 Exemption Compliance (EC-2) form is provided by the department for use by insurers seeking an exemption from rate filing and approval requirements pursuant to Article 5-13-2, §13. This form may be obtained from the Texas Department of Insurance website <http://www.tdi.state.tx.us> or by requesting such form from the Property and Casualty Actuarial Division, Mail Code 105-5F, P.O. Box 149104, Austin, TX 78714-9104.}]

(b) Insurers writing personal automobile insurance. An insurer that writes personal automobile insurance and [that] meets the criteria in [the] Insurance Code §2251.205 may make rate filings for personal automobile insurance according to the [Article 5-13-2 §13(h), is subject to the filing] requirements specified in subsection (a) of this section if:

(1) the insurer, along with the insurer's affiliated companies or group, issues personal automobile liability insurance policies only below 101 percent of the minimum limits required by the Transportation Code Chapter 601; and

(2) the insurer, along with the insurer's affiliated companies or group, has a market share of less than 3.5 percent of the personal automobile insurance market in this state.

(c) Insurers writing [Underserved] residential property in underserved areas. In compliance [accordance] with Insurance Code §2251.252(c) [Article 5-13-2C, §3(b)], insurers otherwise exempt from the rate filing requirements of Insurance Code Chapter 2251 must submit [Article 5-13-2, shall make] rate filings in compliance [accordance] with this subsection. Insurers who qualify to file under this subsection must file in compliance with Division 6 of this subchapter with the following modifications [shall file as required in §5.9332(a) - (b) of this subchapter (relating to Filings Made Easy--Rate and Rate Manual Filing Requirements) and must]:

(1) Insurers must include a Certification of Section 2251.251 and Section 2251.252 [Article 5-13-2C] Exemption Compliance (EC-1), found in the Filings Made Easy Guide [as specified in §5.3702 of this chapter (relating to Designation of Underserved Areas for Residential Property Insurance for Purposes of the Texas Insurance Code Article 5-13-2C)].

(2) Insurers are not required to comply with §5.9334(f)(5), (6), (9), (10), and (11) of this title [submit rate change information when applicable as described in §5.9332(e)(5) of this subchapter].

(d) Additional provisions. The following provisions apply to any rate [or rate manual] filing submitted under [made pursuant to] subsection (a), (b), or (c) of this section:

(1) The reduced filing requirements provided under this division do not affect the requirements [to file supporting data] under §5.9941 and §5.9960 of this title [chapter] (relating to Differences in Rates Charged Due Solely to Difference in Credit Scores and Exception to Rating Territory [Rating] Requirements under §2253.001 of the Insurance Code [Insurance Code Article 5-171]). [Insurers making a rate or rate manual filing under this division may include supporting data required under §5.9941 and §5.9960 of this chapter with the filing made under this division.}]

(2) Requests for additional information are as outlined in §5.9335 of this title (relating to Requests for Information).

[(2) Any filings that do not fully comply with all of the filing requirements described in this division may be considered incomplete and may be returned to the filer for completion with a notice stating that the filing is not complete and shall identify the additional information that is required for completion of the filing.}]

[(3) The department may request additional information related to a rate filing, including actuarial or other reasonable support of rates, as deemed necessary by the department or commissioner. The insurer shall respond by the date specified in the request.}]

[(4) Filings under this division may be combined with filings made in accordance with Division 5 of this subchapter (relating to Filings Made Easy--Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings). These combined filings may utilize a single transmittal form. Filings under this division may not be combined with filings made in accordance with Division 7 or 8 of this subchapter (relating to Filings Made Easy--Underwriting Guideline Filing Requirements for Personal Automobile, Residential Property, and Workers' Compensation Insurance and Filings Made Easy--Credit Scoring Models Filing Requirements for Personal Insurance) due to distinct and separate statutes governing underwriting guidelines and credit scoring models.}]

(e) Public information. To the extent that a filing submitted through SERFF includes contact information, the filer affirmatively consents to the release and disclosure of the contact information, including any email addresses. The filer also certifies that each person associated with an email address that appears in the filing has affirmatively consented to the release and disclosure of that email address.

(f) Filings Made Easy Guide. TDI maintains the Filings Made Easy Guide to assist insurers in complying with Texas statutes and rules. Insurers may refer to the Filings Made Easy Guide for the Certification of Section 2251.251 and Section 2251.252 Exemption Compliance (EC-1) form referenced in subsection (c)(1) of this section and the Certification of Sections 2251.201 - 2251.204 Exemption Compliance (EC-2) form referenced in subsection (a)(1) of this section. Insurers may obtain this guide from TDI's website at www.tdi.texas.gov.

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 April 28, 2014.

TRD-201402013

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 463-6327



DIVISION 10. FILINGS MADE EASY -
ADDITIONAL FILING REQUIREMENTS FOR
CERTAIN COUNTY MUTUAL INSURANCE
COMPANIES

28 TAC §5.9360, §5.9361

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of any insurer not writing personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer that is exempt from the filing requirements of Chapter 2251 must file and obtain approval of proposed premium rates meeting certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001.

§5.9360. Purpose.

The purpose of this [section and §5.9361 of this] division [(relating to Additional Filing Requirements)] is to specify [additional] filing requirements in addition to those in [under] Divisions 4 and 6 of this subchapter (relating to Filings Made Easy - [~~Filing~~] Transmittal Information [~~Form~~] and General Filing Requirements for Property and Casualty Form, Rate, [~~Rule~~] Underwriting Guideline, and Credit Scoring Model Filings[;] and Filings Made Easy - Requirements for Rate Filings[~~-Rate and Rate Manual Filing Requirements~~], respectively) for:

(1) a county mutual insurance company described by [the] Insurance Code §912.056(d); and

(2) an appointed managing general agent, district, or local chapter program of a county mutual insurance company described by [the] Insurance Code §912.056(d) that manages a portion of that county mutual insurance company's business independent of all other business of that county mutual insurance company, and that is to be treated as a separate insurer for the purposes of Insurance Code Chapters 544, 2251, 2253, and 2254 [of the Insurance Code] as provided in Insurance Code §912.056(e) [of the Insurance Code].

§5.9361. Additional [~~Filing~~] Requirements.

(a) Filing transmittal [~~Transmittal~~]. In addition to the information required by Division 4 of this subchapter (relating to Filings Made Easy - [~~Filing~~] Transmittal Information [~~Form~~] and General Filing Requirements for Property and Casualty Form, Rate, [~~Rule~~] Underwriting Guideline, and Credit Scoring Model Filings), the following information must [shall] be included:

(1) the name and license number of the managing general agent, district, or local chapter of a county mutual insurance company; and

(2) contact information for the county mutual insurance company if the county mutual insurance company's contact information has not already been provided under §5.9310(c)(9) [§5.9310(e)(8)] of this title [subchapter] (relating to Property and Casualty [~~Filing~~] Transmittal Information and General Filing Requirements [~~Form~~]).

(b) Rate filings [~~Filings~~].

(1) All rate filings must [shall] be made directly by the county mutual insurance company on the county mutual insurance company's letterhead unless the county mutual insurance company submits written notice with the filing authorizing the submission of rate filings by the managing general agent, district, or local chapter.

(2) Each rate filing must [shall] include:

(A) all information required under §5.9334 [§5.9332] of this title [subchapter] (relating to [~~Filing~~] Requirements for Rate Filing Submissions) which must [shall] be specific to the managing general agent, district, or local chapter; and

(B) a list of policy forms and endorsements, including their name, number, and the TDI [department] file number, used [utilized] by the managing general agent, district, or local chapter. The submission of a list of policy forms and endorsements under this subsection does not constitute a form filing under Insurance Code Chapter 2301 [of 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 April 28, 2014.

TRD-201402014

Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6327



DIVISION 6. FILINGS MADE EASY--RATE AND RATE MANUAL FILING REQUIREMENTS

28 TAC §§5.9330 - 5.9332

(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 Chapter 5, Subchapter M, Division 6, §§5.9330 - 5.9332, concerning requirements for rate filings. The repeal of Division 6, §§5.9330 - 5.9332 is necessary to issue proposed new Division 6, §§5.9330 - 5.9337, which implements the requirements of HB 1951, 82nd Legislature, Regular Session, effective September 1, 2011. The proposed new Division 6 also contains adjustments for clarity and transparency and is compatible with TDI's use of the System for Electronic Rate and Form Filing (SERFF). A separate rule proposal in this issue of the *Texas Register* concerns the proposed new Division 6 and amendments to 28 TAC Chapter 5, Subchapter M, Division 4, §5.9310; Division 5, §5.9320; Division 7, §§5.9340 - 5.9342; Division 8, §§5.9350 - 5.9352; Division 9, §5.9355 and §5.9357; and Division 10, §5.9360 and §5.9361. Those amendments relate to filing requirements for property and casualty insurers.

FISCAL NOTE. J'ne Byckovski, chief actuary of the Property and Casualty Actuarial Office, has determined that for each year of the first five years the proposed repeals 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 these rule sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Byckovski has also determined that for each year of the first five years the proposed repeals are in effect, the anticipated public benefit will be the elimination of rules that do not comply with current statute and that are incompatible with TDI's transition to SERFF as its system of record. There are no anticipated economic costs to persons who are required to comply with the proposed repeals. 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 flex-

ibility 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 repeals. There is no anticipated adverse economic effect on small or micro businesses regarding the regulatory cost of compliance with the repeals, so preparation of an economic impact statement and regulatory flexibility analysis is not statutorily required.

TAKINGS IMPACT ASSESSMENT. TDI 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 be considered, written comments on the proposed repeal of the sections must be submitted no later than 5 p.m., Central time on June 25, 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 by email to pcactuarial@tdi.texas.gov, or by mail to J'ne Byckovski, Chief Actuary, 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 TDI holds a hearing, the commissioner will consider all comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the repeals under Insurance Code §§2053.003, 2251.101, 3502.108, and 36.001. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§2053.003, 2251.101, 3502.108, and 36.001.

§5.9330. *Purpose.*

§5.9331. *Definitions.*

§5.9332. *Filing Requirements.*

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

Filed with the Office of the Secretary of State on April 28, 2014.

TRD-201402015
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: June 8, 2014
For further information, please call: (512) 463-6327



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 18. TEXAS GROUNDWATER PROTECTION COMMITTEE

CHAPTER 601. GROUNDWATER CONTAMINATION REPORT

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO PUBLIC FILES AND JOINT REPORT

31 TAC §601.2

The Texas Groundwater Protection Committee (TGPC or committee) proposes to amend §601.2.

Background and Summary of the Factual Basis for the Proposed Rule

The rules in Chapter 601 define the conditions that constitute groundwater contamination for the purpose of inclusion of cases in the public files for each state agency having responsibilities related to the protection of groundwater. The rules also describe the contents of the committee's Joint Groundwater Monitoring and Contamination Report required under Texas Water Code (TWC), §26.406. The report: describes the current status of groundwater monitoring activities conducted by or required by each agency at regulated facilities or associated with regulated activities; contains a description of each case of groundwater contamination documented during the previous calendar year; contains a description of each case of contamination documented during the previous year for which enforcement action was incomplete at the time of issuance of the preceding report; and indicates the status of enforcement action for each case of contamination which is listed. The rules also specify the form and content of notices of groundwater contamination that must be mailed to each owner of a private drinking water well that may be affected by documented cases of groundwater contamination and to each applicable groundwater conservation district as directed by TWC, §26.408.

The purpose of the proposed amendment is to update the names of the members of the committee.

The committee also is proposing, in concurrent action, the review of Chapter 601 as required by Texas Government Code, §2001.039. The proposed notice of review can be found in the Review of Agency Rules section in this issue of the *Texas Register*.

Section Discussion

The proposed amendment to §601.2, Applicability, adds "Texas" to the Department of State Health Services and State Soil and Water Conservation Board for consistency with the agencies'

names. The proposed amendment also corrects the name of the Water Well Drillers and Pump Installers Program of the Texas Department of Licensing and Regulation; currently §601.2 refers to the program as the "Water Well Drillers and *Water Well* Pump Installers Program" (emphasis added). Additionally, the Texas Agricultural Experiment Station is now referred to as Texas A&M AgriLife Research.

Fiscal Note: Costs to State and Local Government

Mr. Cary Betz, designated chairman of the committee, determined that during the first five-year period the proposed amendment is in effect, there will be no fiscal implications to state and local government as a result of the administration of the proposed amendment. The purpose of the proposed amendment is to update the names of three member agencies and one member program. The effect of the proposed amendment is not anticipated to be significant for any individual agency or organization that is a member of the committee or impose substantial costs. Similarly, fiscal implications are not anticipated to be significant for units of local government that are currently providing information for the report. Because the amendment governs the actions of the committee member agencies and organizations, no fiscal implications or employment impacts are anticipated for any other party.

Public Benefits and Costs

Mr. Betz also determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of this proposed amendment will be improved public knowledge of committee activities. No public cost of the proposed amendment is anticipated because the proposed amendment only updates the names of three member agencies and one member program.

Small Business and Micro-Business Assessment

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed amendment which only updates the names of three member agencies and one member program.

Small Business Regulatory Flexibility Analysis

No adverse fiscal implications are anticipated for small or micro-business as a result of the proposed rule because the proposed amendment is to update the names of three member agencies and one member program.

Local Employment Impact Statement

The committee reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendment does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The committee reviewed the proposed rulemaking in light of the regulatory impact 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 Texas Government Code, §2001.0225(g)(3). The proposed rulemaking updates the names of three member agencies and one member program. The proposed amendment is not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the en-

vironment, or the public health and safety of the state or a sector of the state. Furthermore, even if the proposed rule did meet the definition of a "major environmental rule," the proposed rule is not subject to Texas Government Code, §2001.0225 because it does not accomplish any of the four results specified in Texas Government Code, §2001.0225(a).

First, the proposal does not exceed a standard set by federal law because there is no equivalent federal statute for the reporting of groundwater contamination or for maintaining public files containing documented cases of groundwater contamination.

Second, this proposal does not exceed an express requirement of state law. The committee is specifically authorized under TWC, §26.406(d) to adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the joint report. Also, the proposed amendment only updates the names of three member agencies and one member program.

Third, this proposal 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 because this proposal only updates the names of three member agencies and one member program. Finally, this proposal does not adopt a rule solely under the general powers of the committee instead of under a specific state law. The amendment is specifically proposed under TWC, §26.406(d).

Takings Impact Assessment

The committee prepared a takings impact assessment for the rules in accordance with Texas Government Code, §2007.043. The purpose of this rulemaking is to update the names of three member agencies and one member program.

These rules provide for a listing of the duties and responsibilities assigned to the committee under TWC, §26.406, concerning the maintenance by certain state agencies of public files containing documented cases of groundwater contamination and the publication by the committee, in conjunction with the Texas Commission on Environmental Quality (TCEQ), of annual groundwater monitoring and contamination reports and establish general policies of the committee to guide such implementation. Because the rule governs the actions of the member agencies and organizations on the committee, it does not affect private real property and does not, in whole or in part, or temporarily or permanently, restrict or limit a property owner's right to the property that would otherwise exist in the absence of the rule.

Consistency with the Coastal Management Program

The proposed committee rulemaking does not authorize actions contained in the Coastal Coordination Act Implementation Rules in 31 TAC §505.11(a)(6) or (b)(2) or the Natural Resources Code (NRC), Chapter 33. The NRC, §33.205(a), states that "An agency or subdivision that takes an agency or subdivision action described by §33.2051 or §33.2053 that may adversely affect a coastal natural resource area shall comply with the goals and policies of the coastal management program."

31 TAC §505.11(a)(6) and (b)(2), which corresponds directly with NRC, §33.2051 and §33.2053, describes agency rulemaking actions that require certain agencies to comply with NRC, §33.205(a) and (b), when adopting or amending a rule governing certain activities. However, these provisions do not list the committee as an agency subject to the provisions of NRC, §33.205(a) and (b), or that must demonstrate compliance

with the goals and policies of the Coastal Management Program (CMP). The committee is described as "an interagency committee" in TWC, §26.403, with the power to adopt rules under TWC, §26.406(d). TWC, §26.403(b), designates the TCEQ as the lead agency for the committee, and provides that the TCEQ shall administer the activities of the committee; however, the committee is given separate statutory power to adopt rules under TWC, §26.406(d) and §26.408(c). Therefore, cited provisions of the TAC and the NRC do not apply to the committee's adoption of rules.

Nonetheless, should the rulemaking actions of the committee be interpreted for any reason as the TCEQ's adoption of rules, none of the proposed rules falls under the actions described in 31 TAC §505.11(a)(6) and (b)(2) or NRC, §33.2051 or §33.2053. Therefore, the requirements of the CMP do not apply to this rulemaking.

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.

Submittal of Comments

Written comments may be submitted to Patricia Durón, 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. The comment period closes June 9, 2014. For further information, please contact Kathy Humphreys, Environmental Law Division, (512) 239-3417.

Statutory Authority

The amendment is proposed under TWC, §26.406, which provides the committee with rulemaking authority.

The proposed amendment implements TWC, §§26.401 - 26.408.

§601.2. *Applicability.*

This chapter [~~These rules~~] specifically applies [~~apply~~] to each state agency or organization having membership on the committee. The committee is composed of:

- (1) the Texas Commission on Environmental Quality;
- (2) the Texas Department of State Health Services;
- (3) the Texas Department of Agriculture;
- (4) the Railroad Commission of Texas;
- (5) the Texas Water Development Board;
- (6) the Texas Alliance of Groundwater Districts;
- (7) the Texas A&M AgriLife Research [~~Agri-cultural Experiment Station~~];
- (8) the Bureau of Economic Geology of the University of Texas at Austin;
- (9) the Texas State Soil and Water Conservation Board; and
- (10) the Water Well Drillers and [~~Water Well~~] Pump Installers Program of the Texas Department of Licensing and Regulation.

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 April 28, 2014.
TRD-201402000

Robert Martinez
Director, Environmental Law Division, Texas Commission on
Environmental Quality
Texas Groundwater Protection Committee
Earliest possible date of adoption: June 8, 2014
For further information, please call: (512) 239-2613

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TITLE 34. PUBLIC FINANCE

**PART 11. TEXAS EMERGENCY
SERVICES RETIREMENT SYSTEM**

**CHAPTER 310. ADMINISTRATION OF THE
TEXAS EMERGENCY SERVICES RETIREMENT
SYSTEM**

34 TAC §310.6

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes an amendment to §310.6, concerning local contributions to the System. The purpose of the proposed amendment is to create a mechanism within the existing local contribution that does not directly affect the amount of retiree annuities to be paid, but rather assists the System in maintaining an adequate contribution arrangement. Government Code, §862.002, authorizes the System to adopt rules for a contribution formula that may include additional contributions in order to reduce the unfunded accrued actuarial liability of the System.

The System proposes the amendment to §310.6 in order to create a mechanism to assist the System in maintaining a pension fund that is actuarially sound.

Elsewhere in this issue, the System withdraws an earlier proposed amendment to §310.6 that was published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1096). The amended language that was proposed in that rulemaking notice has been included in the current proposal.

Michelle Jordan, Executive Director, has determined that the public benefit for the first five years that the amended rule is in effect will be to improve the actuarial valuation of the System and provide long-term security to the System. This contribution mechanism will provide a method to achieve actuarial soundness for the System, in lieu of the only existing remedies which involve a reduction in retiree benefits for volunteer firefighters and emergency services personnel.

Ms. Jordan also has determined the cost to local governments that are members of the System will be the addition of a Part Two portion to the current contribution. The maximum amount of the Part Two contribution is equal to 15% of the Part One contribution, which is currently a minimum of \$36 per member per month. For example, if a department were contributing \$36 per month on behalf of ten persons (\$360), its monthly contribution could never be increased by more than \$54 per month in total. Every two years, the Part Two contribution will be calculated and may be adjusted up or down by the System, based on the actuarial valuation. Ms. Jordan has also determined that for the first five years the rule will be in effect it is estimated that there will be neither additional cost nor a reduction in cost to state government for enforcing or administering the rule; that for the first five

years the rule is in effect there will be no loss or gain in revenue to state or local governments; and that for the first five years the rule is in effect it will not result in a cost to state government but may result in a cost to certain local governments of up to 15% of the amount that a local government contributes to the System for the provision of benefits for its volunteers through the System.

The US Fire Administration states, in the introduction to its 2007 Report on Retention and Recruitment for Volunteer Emergency Services, that the average savings a volunteer firefighter brings to a local community is \$45,000 per year. The System recognizes the financial difficulties that local communities face; however, it has a fiduciary responsibility to ensure that the pension system remains financially stable, continuing as the 1) vital recruiting and retention tool that it has become; and 2) source of security for local volunteer fire and emergency services personnel.

The System will gain substantial actuarial soundness as a result of adoption of the amended rule.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendment may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 125777, Austin, Texas 78711-2577, not later than June 9, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendment is proposed under the statutory authority of Government Code, Title 8, Subtitle H, Texas Emergency Services Retirement System, §862.002.

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

§310.6. Local Contributions.

(a) Except as otherwise provided by this section, each participating department shall make a contribution [contribute at least \$12] for each month or a portion of a month a member performs emergency services for the department. The monthly contribution is composed of two parts, as follows. Part One is the legacy portion of the contribution that directly impacts future retiree annuities, that includes a minimum contribution amount set by the state board. A participating department may elect to make contributions at a greater rate by notifying the Executive Director [commissioner] of the rate. Part Two is the portion of the local contribution that does not impact annuities. Part Two may be adjusted near the end of every even numbered calendar year by the state board based on the most recent actuarial valuation to be effective for the next two state fiscal years, beginning September 1. The Part Two portion of the contribution may be adjusted up or down. The purpose of Part Two is to assist the system in achieving an adequate contribution rate for system obligations. In no case shall the Part Two portion of the contribution, exceed 15 percent of the Part One portion of the contribution. Contributions are payable for each month or portion of a month of service regardless of whether the member receives a year of qualified service. Contributions are payable as provided by §865.014, Government Code, and §310.8 of this title.

(b) The minimum contribution rate for each participating [a] department [that begins participation in the pension system after September 1, 2005,] is \$36 per member. After August 31, 2015, the minimum contribution rate for each participating department is \$36 per member plus any Part Two rate that might be charged by the system, as outlined in subsection (a) of this section.

{(e) The minimum monthly contribution rate for a department participating in the pension system on September 1, 2005, is subject to increase according to the following schedule:}

- {(1) on September 1, 2006, \$16;}
- {(2) on September 1, 2007, \$20;}
- {(3) on September 1, 2008, \$24;}
- {(4) on September 1, 2009, \$28;}
- {(5) on September 1, 2010, \$32; and}
- {(6) on September 1, 2011, \$36.}

{(c) [(d)] Contributions are payable during a period of temporary disability or when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.), but are not payable when a member is performing active military duty, although the member receives credit for qualified service when performing active military duty.

{(d) [(e)] Contributions required under this section are not considered compensation to the members for whom they are made.

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

Filed with the Office of the Secretary of State on April 25, 2014.

TRD-201401993

Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 936-3474



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) proposes amendments to §4.1, concerning Transportation of Hazardous Materials. The proposed amendment is necessary to harmonize updates in Title 49, Code of Federal Regulations with those laws adopted by Texas.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply

with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, Chapter 2001, and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, June 2, 2014, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding the proposed amendments to §4.1, regarding Transportation of Hazardous Materials, proposed under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051, is affected by this proposal.

§4.1. *Transportation of Hazardous Materials.*

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through April 1, 2014 [~~May 1, 2012~~]. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through April 1, 2014 [~~May 1, 2012~~].

(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.

Filed with the Office of the Secretary of State on April 28, 2014.

TRD-201402017

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 8, 2014

For further information, please call: (512) 424-5848



SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11

The Texas Department of Public Safety (the department) proposes amendments to §4.11, concerning General Applicability and Definitions. The proposed amendment is necessary to harmonize updates in Title 49, Code of Federal Regulations with those laws adopted by Texas.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with this rule as proposed. There is no anticipated negative impact on local employment.

Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, Chapter 2001, and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, June 2, 2014, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding the proposed amendments to §4.11, regarding General Applicability and Definitions, proposed under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051, is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through April 1, 2014 [~~May 1, 2012~~]. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through April 1, 2014 [~~May 1, 2012~~]. The rules adopted herein are to ensure that:

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

(b) - (c) (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 April 28, 2014.

TRD-201402018



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER B. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §700.211

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §700.211, concerning an Internet application for court-appointed volunteer advocates, in its chapter governing Child Protective Services. House Bill (HB) 1227, as codified in Texas Family Code (TFC) §264.614, required DFPS to develop an Internet application that allows a court-appointed volunteer advocate (also known as a Court Appointed Special Advocate or CASA) to: (1) access the case file of the child for whom the volunteer advocate was appointed through DFPS' automated case tracking and information management system; and (2) add the volunteer advocate's findings and reports to the child's case file.

The requirement to develop the application was contingent on the receipt of funding by the legislature. DFPS received funding and is currently working to develop, in a staged fashion, the required Internet application, with the initial access being granted to volunteer advocates in approximately September 2014. A staged rollout is necessary so that DFPS can provide on-line access to certain core data as soon as possible, while working to modernize the department's Information Management Protecting Adults and Children of Texas (IMPACT) database system to make it possible to provide additional information to volunteer advocates in the future. Current technology limits expanded data sharing because the system commingles data to which volunteer advocates are entitled with data that the volunteer advocates would not be entitled to, such as privileged attorney-client communications. Similarly, the technology needed to allow CASA to upload reports to the child's case file will take longer to develop than the technology needed to provide access to certain core information by September 2014.

New §700.211: (1) Requires DFPS to develop an Internet application that: (a) provides access to a child's case file as further specified in the rule and memorandum of understanding (MOU) adopted thereto; and (b) will allow a volunteer advocate to add the advocate's findings and reports to the case file. (2) Requires DFPS to enter into an MOU with the statewide organization representing court-appointed volunteer advocates. (3) Specifies that the MOU must grant access at a minimum to the following information as it relates to the current conservatorship case of a child for whom the volunteer has been appointed: (a) demo-

graphic, locating, and contact information for principal and collateral participants; (b) information regarding the child's current placement and any prior placements during the same conservatorship episode; (c) information regarding the child's authorized service level, including supporting documentation in the current Common Application for Placement of Children in Residential Care; (d) the case plan as that term is defined in §700.1319 of this title (relating to What is a case plan?), including the child service plan and any family service plan then in effect; (e) information related to the child's permanency plan, including documentation related to permanency planning meetings held on the child's behalf; (f) the temporary visitation schedule or visitation plan in effect for the case; (g) list of all legal actions and statuses in the case; (h) educational status information; (i) information regarding the child's medical care, including the identity of the child's medical consentor, a listing of the child's medical and mental health assessments, and the child's medical and developmental history page; and (j) a listing of the external documents associated with the case. (4) Requires the MOU to provide that the types of information to which a volunteer advocate may gain access will be expanded upon mutual agreement of the parties as technological enhancements are made. (5) Sets forth other required aspects of the MOU: minimum security protocols; consequences for security breach and improper disclosure; and responsibilities of each party to the MOU. (6) Clarifies that information transmitted through the application remains confidential, and transmission does not operate as a waiver of confidentiality. (7) Clarifies that for the purposes of the rule, the term "volunteer advocate" includes staff with authority to access the records of a child in DFPS conservatorship.

Tracy Henderson, 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 more efficient access by court-appointed volunteer advocates to key information in the case file of the child for whom the volunteer advocate has been appointed by the court. 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 new section 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 Audrey Carmical at (512) 438-3854 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-500, 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 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 HB 1227 from the 83rd Regular Session, as enacted in Texas Family Code §264.614.

§700.211. Internet Application for Court-Appointed Volunteer Advocates.

(a) The Department of Family and Protective Services (DFPS) shall develop an Internet application that allows a court-appointed volunteer advocate representing a child in DFPS' managing conservatorship to:

(1) access the child's case file, as further specified in subsection (b) of this section and Memorandum of Understanding (MOU) entered into pursuant thereto; and

(2) add the volunteer advocate's findings and reports to the child's case file.

(b) DFPS shall enter into a MOU with the statewide organization representing court-appointed volunteer advocates in order to set forth the portions of a child's case file to which an appointed volunteer advocate shall have access. The MOU shall at a minimum:

(1) grant access to the following as it relates to the current conservatorship case of the child for whom the advocate has been appointed:

(A) demographic, locating, and contact information for principal and collateral participants;

(B) information regarding the child's current placement and any prior placements during the same conservatorship episode;

(C) information regarding the child's authorized service level, including supporting documentation in the current Common Application for Placement of Children in Residential Care;

(D) the case plan as that term is defined in §700.1319 of this title (relating to What is a case plan?), including the child service plan and any family service plan then in effect;

(E) information related to the child's permanency plan, including documentation related to permanency planning meetings held on the child's behalf;

(F) the temporary visitation schedule or visitation plan in effect for the case;

(G) list of all legal actions and statuses in the case;

(H) educational status information;

(I) information regarding the child's medical care, including the identity of the child's medical consentor, a listing of the child's medical and mental health assessments, and the child's medical and developmental history page; and

(J) a listing of the external documents associated with the case.

(2) provide that the types of information to which a volunteer advocate may gain access through the Internet application will be expanded upon the mutual agreement of the parties as technological enhancements are made to the Internet application and to DFPS' Information Management Protecting Adults and Children of Texas (IMPACT) case management system;

(3) set forth minimum security protocols CASA organizations and their volunteers must adhere to in order to minimize the unauthorized redisclosure of the information contained in the Internet application;

(4) detail the consequences for breaches of security or the unauthorized redisclosure of information accessed through the Internet application; and

(5) clarify the responsibilities of each party to the MOU, including any responsibilities for volunteer advocates in registering for the application and conditions of continued access to the system.

(c) Information available to court-appointed volunteer advocates through the Internet application remains confidential, and nothing in this rule shall be construed as a waiver of the confidentiality of the information transmitted by the application.

(d) For purposes of this rule, the term "volunteer advocate" includes any staff of the volunteer advocate organization with authority to access the records of a child in DFPS' managing conservatorship.

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

Filed with the Office of the Secretary of State on April 23, 2014.

TRD-201401971

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Proposed date of adoption: September 1, 2014

For further information, please call: (512) 438-3437

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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 §§749.43, 749.101, 749.103, 749.667, 749.2447, 749.2449, 749.2453, 749.2471, and 749.2815 in its chapter governing Minimum Standards for Child-Placing Agencies. The purpose of the amendments is to improve the safety of children in foster care. Protecting children is the core mission of DFPS.

Late last year the Commissioner of DFPS directed the agency to conduct a Child Safety Project to minimize the risk to children. As part of that project DFPS held six statewide forums where provider groups could share ideas about best practices around the provision of safe, nurturing care to children who have suffered abuse and neglect. The forums discussed several different areas, including changes to Child Protective Services (CPS) policy and procedure, training, contract changes, and minimum standard changes. Regarding the minimum standard changes, some of the discussion in the forums related specifically to foster home screenings and verifications: "taking the necessary time to screen and select foster parents", "contacting as many references as possible", "relatives are a critical source of information", and "carefully assess for gaps or 'red flags'". There was also some discussion relating to the supervision of foster homes.

In January of 2014, the Licensing Division convened the Committee for Advancing Residential Practices (CARP), which was created in the Spring of 2013. The Committee is made up of

approximately eight child-placing agency representatives from diverse geographic regions of the state, a CPS representative, a Licensing Division representative, and several advocates. Partially in response to the information obtained during the six statewide forums noted above, the Committee met twice to discuss possible changes to the minimum standards relating to the screening and verification of foster homes and the supervision of foster homes. The Committee also made recommendations for additional changes to the standards.

These proposed amendments are the first of two sets of rule changes to adjust minimum standards to improve safety for children in foster care. The second recommended rule changes will be later in the year. The proposed amendments establish additional requirements for screenings and verifications of new foster homes, as well as for supervisory visits in new and existing foster homes.

A summary of the changes follows:

The amendment to §749.43 adds the term and definition for "trauma informed care" because that terminology has been added as paragraph (22) to the table of required information in §749.2447 of this title (relating to What information must I obtain for the foster home screening?). As a result of the new definition, the remaining definitions in the section are renumbered.

The amendment to §749.101(6)(F): (1) Moves and rewords the requirement that was previously found at §749.103(7) of this title (relating to What are my operational responsibilities as the permit holder?) to conduct ongoing evaluations of foster homes. This was done by clarifying that a CPA's required plan to evaluate the effectiveness of their system for meeting the rules of this chapter must include the evaluation of the accuracy of foster home screenings; (2) Adds a requirement that the plan must also evaluate the comprehensiveness of supervisory visits; and (3) Moves and rewords the requirement that was previously found at §749.103(7) to document the unmet rules of this chapter and correct all deficiencies. This was done by clarifying that a CPA's required plan must identify problems, correct the problems, and document the problems identified and when and how the problems were corrected.

The amendment to §749.103 concerns paragraph (7). Paragraph (7): (1) Clarifies that the plans required to be developed pursuant to §749.101(6) of this title (relating to What are my responsibilities as the permit holder before I begin operating?) must be implemented, which was always the intent of the rules; (2) The previous requirement to conduct ongoing evaluations of foster homes, including documenting unmet rules of this chapter and correcting all deficiencies, was moved to §749.101(6)(F); (3) Adds a requirement that a CPA's plan to evaluate the effectiveness of their system for meeting the rules of this chapter must also evaluate the comprehensiveness of supervisory visits; and (4) Adds a requirement for current CPAs to update their plans as necessary to achieve compliance with these changes. The current CPAs must submit the updated plan and implement the plan by March 1, 2015. Paragraphs (6) and (14) are also clarified with minor non-substantive changes to the language of the rule.

The amendment to §749.667 adds paragraph (1)(B), which adds that child placement management staff must review and approve "documentation of supervisory visits."

The table of required information in §749.2447 lists the information that a child-placing agency must obtain, document, and as-

sess when screening a prospective foster parent. The changes are as follows:

Paragraphs (4) and (10) are amended to require the gathering of information (in addition to any current marital information) on current and previous relationships, including common-law marriages and other relationships between people who share or have shared a domestic life without being married, and assessing the impact that any significant prior or current interpersonal relationships might have on the current environment and the prospective foster parents' ability to care for foster children.

Paragraph (6) is amended to require specific proof of a prospective foster family's income for the past 60 days, by requiring two bank statements, a tax return, or other documented verification, and a monthly itemized household expense report.

Paragraph (7) adds a requirement that a CPA must request service call information from law enforcement for the foster parents' addresses for the past two years, in addition to the current requirement to obtain law enforcement information only on domestic violence calls identified by the foster parent in the previous one year period. The requirement to obtain law enforcement information directly from foster parents has been changed to include any type of law enforcement service call information (not just domestic violence calls) and lengthen the time frame from one year to two years. Any information obtained from law enforcement must be discussed with the foster parents, assessed, and documented.

Paragraph (8) clarifies that when a prospective foster parents' motivation to foster is being assessed, this also includes their "willingness" to foster.

Paragraph (9) clarifies that if there are any health related issues noted, there must be a discussion with the prospective foster parents regarding how the health issue may affect their ability to care for a child.

Paragraph (13) clarifies that any disciplinary methods approved by a CPA must comply with the current disciplinary rules in Chapter 749.

Paragraph (19) clarifies that when discussing support systems for the prospective foster parents, the discussion must include any information on any person that might provide support as a caregiver during an unexpected event or crisis like the death of a family member. The identity and availability of each person that will provide support as a caregiver must be verified and documented.

Paragraph (22) clarifies the discussion that must be had with the prospective foster parents regarding the foster home's willingness and ability to work with children with respect to challenging behaviors, age range, gender, number of children, and services to be provided (e.g., respite child care). This paragraph also adds the requirement to discuss with the prospective foster parents their understanding of the concepts of trauma informed care and how they would use those concepts in relation to the children placed in their home.

Paragraph (23) clarifies that the assessment by the CPA must address with the prospective foster parents a previous closure of their home by another CPA, including any potential risk indicators that were not adequately addressed by the prior CPA, before approval and verification of the home.

Paragraphs (2), (12), (14), (16), and (17) have minor non-substantive changes for purposes of consistency, clarity, accuracy, and gender neutrality.

The amendment to §749.2449: (1) requires all adult children to be interviewed before verification by deleting a prior exception for a CPA that documented reasonable but unsuccessful efforts to contact the adult child; (2) requires three additional interviews for a foster home screening: one with a family member not living in the home; and two with neighbors, school personnel, clergy, or other community members; and (3) clarifies other portions of this rule for consistency.

The amendment to §749.2453 requires foster home screenings to be updated when there is a major life change in the foster family. The update may be done by using an addendum.

The amendment to §749.2471 clarifies that indicators of potential risk to children must be addressed with the prospective foster parents prior to verification of the home, and all of this must be documented in the foster home screening.

The amendment to §749.2815 increases from one to two the number of supervisory visits of foster homes that must be unannounced; and adds minimum requirements that must be evaluated and documented at each supervisory visit, including: (1) any change to household members, frequent visitors, or persons that will provide support as caregivers during an unexpected event or crisis situation; (2) any major life changes in the foster family; (3) any change to disaster and emergency plans; and (4) discussions with the foster family about challenging behaviors of children, the level of stress of the foster family, and methods for responding to a child's challenging behavior and/or alleviating any significant stress the foster family is experiencing.

Tracy Henderson, 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 significant fiscal implications for state or local government as a result of enforcing or administering the sections. Aspects of the CPS program operate as a certified child-placing agency, and the CPS foster and adoption development (FAD) staff perform the foster and adoptive home screening and supervision functions that are the subject of these rule changes. The FAD staff are currently meeting the new requirements for additional interviews and discussions about Trauma Informed Care (TIC). In order to comply with these rule changes, FAD staff will be required to spend some additional time assessing and evaluating prospective foster parents and conducting supervisory visits, but it is anticipated that this additional staff time can be absorbed within existing resources. In addition, the FAD management will have to spend some time setting up a system to evaluate the comprehensiveness of supervisory visits, but it is anticipated that management can set up an ongoing evaluation system within existing resources by working with the current CPS system that already looks at continuous quality improvement throughout the CPS system.

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 safety of children in foster care and the quality of their care will be improved due to updating standards that will require child-placing agencies to take additional time to assess, evaluate, and supervise foster homes. There is an anticipated adverse impact on large, small, or micro-businesses that must comply with these rule changes, namely child-placing agencies that provide foster care services. The rule changes do not impact child-placing

agencies that only provide adoption services. There is no anticipated economic cost to persons who are required to comply with the proposed sections - other than those persons in the capacity of a CPA.

The DFPS 2012 Annual Report and Data Book states that there are 209 child-placing agencies (CPAs). Of those, it is estimated that 163 CPAs provide foster care services (which can be foster care services only, or foster care and adoption services). The other estimated 46 CPAs that only provide adoption services will not be discussed in this fiscal impact analysis, because the rule changes do not impact the CPAs that only provide adoption services.

Of the 163 CPAs that provide foster care services, 152 are private CPAs. There are also 11 CPS regional divisions that operate as certified CPAs. The 11 CPS CPAs will not be discussed in this section of the fiscal impact analysis, because they do not meet the legal definition of a large, small, or micro-business. However, the impact to CPS was discussed in the paragraph concerning impact to state or local government.

Licensing has identified the following proposed rules in Chapter 749 as potentially having an adverse fiscal impact on CPAs:

- (1) §749.101(6)(F) of this title (relating to What are my responsibilities as the permit holder before I begin operating?);
- (2) §749.103(7) of this title (relating to What are my operational responsibilities as the permit holder?);
- (3) §749.667(1)(B) of this title (relating to What are the responsibilities of child placement management staff?);
- (4) §749.2447(4), (6), (7) and (22) of this title (relating to What information must I obtain for the foster home screening?);
- (5) §749.2449(a)(6), (7) and (8) of this title (relating to Whom must I interview when conducting a foster home screening?);
- (6) §749.2453 of this title (relating to When must I update the foster home screening?); and
- (7) §749.2815(c) of this title (relating to How often must I have supervisory visits with the foster home and what must be evaluated during the supervisory visit?).

Of the 152 private CPAs, the number of foster homes that each agency verifies from year to year varies significantly. A few CPAs have hundreds of foster homes that are currently verified and are under the CPA's purview. Other CPAs have 20 to 50 foster homes, while still others may only have a handful of foster homes. Given this variation, it is not possible to project the fiscal impact to each CPA; however, it is possible to project an average "unit cost" for certain types of activities newly required by the amended rules.

The fiscal impact primarily results from additional staff time needed to: (1) further assess prospective foster parents; (2) develop and implement evaluation plans; and (3) provide closer supervision of foster homes. For use in the impact analysis, DFPS estimated the additional staff time required to comply with the standards through discussions with CARP during the January 2014 meetings, through individual discussions with members of CARP, and through individual discussions with CPS staff.

The staff time required to comply with the standards will impact CPA administrative assistants, child placement staff, child placement management staff, and the child-placing agency administrator. For use in the impact analysis, DFPS calculated hourly

wages for each of these categories of CPA staff, as follows (actual salaries paid to staff by a CPA may be greater or less than the averages used for these projections):

Administrative Assistant - To estimate the current wages for an administrative assistant for a CPA, Licensing gathered data from the Texas Workforce Commission's SOCRATES 2020 (Standardized Occupational Components for Research and Analysis Trends in Employment System) program. The statewide average wage for an administrative assistant was listed as \$31,016 per year or \$14.91 per hour. Licensing estimated that administrative assistants that would be performing the new requirements would have comparable wages.

Child Placement Staff - The 2013 average salary for FAD Workers (CPS Specialists I - V) was used to determine the salary costs for the child placement staff because the FAD Workers are the child placement staff for CPS. The FY 2013 average salary for a FAD Worker is \$41,415 per year or \$19.91 per hour.

Child Placement Management Staff - The 2013 average salary for FAD Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the child placement management staff because the FAD Supervisor is the position that most often meets the minimum qualifications for and acts as the child placement management staff for CPS. The FY 2013 average salary for a FAD Supervisor is \$48,238 per year or \$23.19 per hour.

CPA Administrator - The 2013 average salary for CPS Regional Directors was used to determine the salary costs for the CPA administrator because the CPS Regional Directors act as the CPA administrator for each CPS region. The FY 2013 average salary for a CPS Regional Director is \$70,393 per year or \$33.84 per hour.

Fiscal Impact for Proposed §749.101(6)(F): This section relates to the plan that a CPA must submit to Licensing before operating. The plan must describe how the CPA will evaluate the effectiveness of their system for meeting the rules of this chapter. The amendment requires the CPA to specify in the plan how the CPA will evaluate the accuracy of foster home screenings, the comprehensiveness of supervisory visits, and how the evaluation process will identify problems, correct the problems, and document both. Because this new task is just one of many ways in which the CPA must describe how it will ensure compliance with minimum standards, it is expected that the additional costs for completing the plan will be relatively minimal. It is anticipated that the CPA Administrator will spend an average of 1 - 2 additional hours to develop the newly required information in the plan submitted to Licensing. Therefore, the one-time cost for the CPA Administrator to develop a more specific plan that effectively evaluates meeting the rules of this chapter will be between approximately \$33.84 and \$67.68.

Fiscal Impact for Proposed §749.103(7): This section clarifies that the plans required to be developed pursuant to §749.101(6) must be implemented, which was always the intent of the rule. The previous requirement to conduct ongoing evaluations of foster homes, including documenting unmet rules of this chapter and correcting all deficiencies was moved to §749.101(6)(F). However, the new requirement to the plan is that it must also evaluate the comprehensiveness of supervisory visits, which will have to be implemented. In addition, the rule requires current CPAs to update their plan to meet this requirement and implement the update by March 1, 2015.

Pursuant to §749.101(6)(F), a CPA has wide latitude in developing a system to effectively evaluate meeting the rules of this

chapter, including evaluating the comprehensiveness of the supervisory visits. CPAs will have a cost associated with implementing the extended plan that is developed for the operation. However, the cost should be minimal, because it will be incorporated into the system the CPA develops. It is impossible to estimate this fiscal impact, because the evaluation systems to be developed by the individual CPAs are unknown and will be varied. For large CPAs there may be a quality control unit. For small operations, that responsibility may lie with the Administrator or the child placement management staff. In any event, it is not anticipated that this cost will be significant to CPAs.

The fiscal impact to existing CPAs to implement amended plans to come into compliance with the new requirements in §749.101(6)(F) is anticipated to be the same as the impact to new CPAs. The existing CPAs will also be incorporating the system for evaluating the comprehensiveness of supervisory visits into their current system that already effectively evaluates meeting the rules of this chapter.

Fiscal Impact for Proposed §749.667(1)(B): This section requires child placement management staff to review and approve the documentation of supervisory visits for compliance with §749.2815. Discussions with the CARP and its members indicated that many providers already have child placement management staff reviewing and approving the documentation of the supervisory visits. For CPAs that are not currently complying with this amendment, it is anticipated that the review and approval of the documentation of supervisory visits will require an average of one additional hour of child placement management staff time per supervisory visit. Since quarterly visits are required, the additional time would be four hours per year for each of the CPAs' verified foster homes. Therefore, the child placement management staff cost for the additional time needed to review and approve the documentation of the supervisory visits for each foster home per year will be approximately \$92.76.

Fiscal Impact for Proposed §749.2447(4): This section requires child placement staff to discuss with the foster parents current and previous significant interpersonal relationships, not just current marriages. Discussions with CARP and its members indicated that much of this information is already being obtained. However, for those CPAs that have not been gathering this information, it is anticipated that the additional time needed by the child placement staff to gather and discuss this information is an average of 30 minutes - one additional hour (a one-time cost per foster home screened). Therefore, the child placement staff cost for the additional time needed to discuss additional relationships for each foster home screened will be between approximately \$9.95 and \$19.91.

Fiscal Impact for Proposed §749.2447(6): This section requires child placement staff to verify proof of income, including obtaining two bank statements, a tax return, or other documented verification and an itemized monthly household expense report. This requirement is a much more specific than current standards. It is anticipated that it will take child placement staff an average of one - three additional hours to meet this new requirement (a one-time cost per foster home screened). In addition, it will take child placement management staff an average of 15 minutes - one additional hour to review and approve this additional information (a one-time cost per foster home screened). Therefore, the child placement staff cost for the additional time needed to discuss and verify proof of income for each foster home screened will be between approximately \$19.91 and \$59.73. The child place-

ment management staff cost for the additional time needed to review and approve proof of income for each foster home screened will be between approximately \$5.80 and \$23.19. The total staff costs for the additional time needed to gather, review and approve the foster home screening information related to proof of income will be between approximately \$25.71 and \$82.92 per foster home screened.

Fiscal Impact for Proposed §749.2447(7): This section requires a CPA to obtain and assess service call information from law enforcement for the foster parents' addresses for the past two years. This rule may result in two different types of fiscal impact on providers.

(1) Information obtained from different law enforcement agencies indicate that the request will usually need to be in writing (letterhead by letter, fax, or e-mail) and the time frame for responding should be 5 - 10 days. It is anticipated that an average of two to five additional hours of staff time will be needed to obtain this information, track the request, discuss it with the prospective foster parents, and assess the situation (a one-time cost per foster home screened). It is estimated that a mixture of administrative assistant staff time and child placement staff time will be used for this purpose. For purposes of calculating a cost, the time will be split evenly between these two types of staff. Therefore, the staff cost for the additional time needed to obtain the information, track the request, discuss it, and assess it for each foster home screened will be between approximately \$34.82 and \$87.06 {1 hour X \$14.91 (administrative assistant hourly costs) + 1 hour X \$19.91 (child placement staff hourly costs)} and {2.5 hours X \$14.91 (administrative assistant hourly costs) + 2.5 hours X \$19.91 (child placement staff hourly costs)}.

(2) Many law enforcement agencies will not charge for e-mail responses or for five pages or less sent through the mail, but some agencies charge 10 cents to 25 cents per page and/or postage costs. While an occasional check may result in a nominal charge to a CPA for the costs of making this information available, it is anticipated that most foster parent applicants will have no prior law enforcement calls in their homes and therefore the per page and mailing costs for most CPAs are projected to be very minimal.

Fiscal Impact for Proposed §749.2447(22): This section requires a discussion with prospective foster parents regarding their understanding of the concepts of trauma informed care (TIC) and how they will use those concepts in relation to children placed in their care. More than likely, a discussion with prospective foster parents regarding TIC will require some type of training to be provided to the foster parents before the prospective foster parent will be able to discuss and understand TIC. This rule may result in two different types of fiscal impact on providers: costs for training and costs for additional staff time.

Of the 152 private CPAs providing foster care services, 112 currently contract with DFPS to provide foster care services to children in the managing conservatorship of DFPS. The CPAs that currently contract with DFPS have been required by contract since 2012 to train their foster parents on TIC. Discussions with the CARP and its members indicated that the DFPS contracted providers are also already discussing TIC with their prospective foster parents and documenting the discussions in the foster home screening. For the CPAs that currently contract with DFPS, there will be no additional costs for training or additional staff time.

There are approximately 40 CPAs that provide foster care services and do not contract with DFPS. Of the 40 CPAs that do not contract with DFPS, approximately 90% or 36 of those CPAs oversee three or fewer foster homes (11 CPAs have no current foster homes, and nine CPAs were not in operation at the time this fiscal analysis was prepared). The number of CPAs that provide foster care services and do not contract with DFPS is small, and the large majority only verify a small number of foster homes. This rule does not specifically require training, so there are no specifications on how training is to be provided. Since the training can be self-taught and there are web-based trainings for foster parents that are currently available at no cost, it is not anticipated that the trainings of these foster parents will have a fiscal impact. However, it is anticipated that to obtain and document the information regarding TIC for the prospective foster parents will take an average of one - two additional hours of child placement staff time (a one-time cost per foster home screened). Therefore, the child placement staff cost for the additional time needed to discuss and document the information regarding TIC for each foster home screened will be between approximately \$19.91 and \$39.82.

Fiscal Impact for Proposed §749.2449(a)(6): This section makes it mandatory in the foster home screening that all adult children must be interviewed before verification by deleting a prior exception for a CPA that documented reasonable but unsuccessful efforts to contact an adult child. The impact this rule will have on specific foster homes is difficult to assess. In many instances, all adult children are interviewed and no exception was previously used. However, in those situations where the previous exception would have been used, then additional time will be needed to locate and interview the adult child. If the adult child cannot be found or refuses to talk to the CPA, then the CPA will need to request a variance from Licensing in order to verify the home. To request a variance will require additional time to determine the need for a variance, request the variance, track the variance, and respond to any Licensing questions.

(1) It is impossible to know how many adult children that would not have previously been found, will now be found and will require an interview. If CPAs have to conduct additional interviews of adult children that previously could not be found, it is anticipated that it will take an average of one - three additional hours of child placement staff time to locate and interview the adult child and document the interview. Therefore, the child placement staff cost for the additional time for an adult child interview will be between approximately \$19.91 and \$59.73. The total costs to any given CPA will vary depending upon the number of additional adult children of the prospective foster parent who will be interviewed as a result of this rule.

(2) It is impossible to know how many adult children will not be found or will refuse to talk to a CPA, but it is assumed that there will not be a large number of these. If the adult child cannot be found or refuses to talk to the CPA, then the CPA will need to request a variance to verify the home. It is anticipated that it will take an average of one - three additional hours to exhaust all attempts to locate the adult child, determine a need for a variance, request the variance, track the variance, and respond to any Licensing questions. Licensing estimated that this additional time would be divided evenly between an administrative assistant, child placement staff, and child placement management staff. Therefore, the staff cost for the additional time needed to request the variance will be between \$19.14 and \$58.01 {0.33 hours X \$14.91 (administrative assistant hourly costs) + 0.33 hours X \$19.91 (child placement staff hourly costs) + 0.33 hours X \$19.91 (child placement management staff hourly costs)}.

X \$23.19 (child placement management staff hourly costs)} and {1 hour X \$14.91 (administrative assistant hourly costs) + 1 hour X \$19.91 (child placement staff hourly costs) + 1 hour X \$23.19 (child placement management staff hourly costs)}.

Fiscal Impact for Proposed §749.2449(a)(7) and (8): This section requires three additional interviews for a foster home screening, including one with a family member not living in the home and two with other community members. The interviews will relate to the suitability of the prospective foster parents to provide care to children. Discussions with the CARP and its members indicated that most CPAs already conduct similar interviews, usually of unrelated individuals. Therefore, this rule will have little to no fiscal impact on most CPAs. However, for any CPA that does not currently conduct these additional interviews, it is anticipated that it will take an average of one - three additional hours per individual interviewed to contact the individual, make an appointment if necessary, interview the individual, and document the interview. Since three interviews are required, it is anticipated that it will take an average of three - nine additional hours of child placement staff time per foster home screened. Therefore, the child placement staff cost for the additional time to conduct and document these three interviews will be between approximately \$59.73 and \$179.19, per foster home screened for any CPA not already conducting such interviews.

Fiscal Impact for Proposed §749.2453: This section requires a foster home screening to be updated when there is a "major life change in a foster family." Major life changes include such matters as divorce, serious illness, or prolonged period of unemployment of a foster parent. It is not anticipated that major life changes in a foster home will occur very often. However, if a major life change does occur, then this update, which can be made with an addendum, will be required. On the occasions when an update is needed, it is anticipated that it will take an average of one - three hours of child placement staff time to update the home study and an average of 15 - 30 minutes of child placement management staff time to review and approve the update. Therefore, the child placement staff cost for the additional time needed to update a foster home screening, as needed, will be between approximately \$19.91 and \$59.73. The child placement management staff cost for the additional time needed to review and approve the update will be between approximately \$5.80 and \$11.60. The total staff costs for the additional time needed to update a foster home screening will be between approximately \$25.71 and \$71.33.

Fiscal Impact for Proposed §749.2815(c): Quarterly supervised visits with the foster home are currently required and must be conducted and documented by child placement staff. This section adds a requirement that certain matters (e.g. changes to the foster home, challenging behaviors of a child, and the stress level of the foster parents) must be evaluated at each supervisory visit. Discussions with providers indicate that while staff do currently discuss many of the items noted in this change, they do not discuss all of these items and some are not discussed at every supervisory visit. More in depth discussions with the foster parents will be needed to meet this new requirement. It is anticipated that it will take child placement staff an average of 15 minutes - one additional hour per supervisory visit to meet this new requirement. Since quarterly visits are required, the additional time is an average of one - four additional hours per year for each of the CPAs verified foster homes. Therefore, the staff cost for the additional time needed for supervisory visits for each foster home per year will be between approximately \$19.91 and \$79.64.

Regulatory Flexibility Analysis: As previously noted in this preamble, these rule amendments only apply to the approximately 163 CPAs that currently provide foster care services (which can be foster care services only, or foster and adoption services). Of those 163 CPAs, only 18 potentially meet the statutory definition of a small or micro-business, because only 18 of the CPAs are for-profit businesses. Of those 18 CPAs, 14 of them currently contract with DFPS to provide foster care services. For the other four that do not contract with DFPS to provide foster care services, three have no current foster homes under their purview and the fourth CPA only has two verified foster homes under its purview.

Of these 18 CPAs it is estimated that almost all of them are small businesses and probably half are micro-businesses (note: foster parents are not being counted as employees). The projected economic impact on small businesses was addressed in the foregoing section of the preamble. This impact applied to all CPAs that provide foster care services and is the same for the 18 CPAs identified as small or micro-businesses. And as noted above, with the widely varying number of foster homes verified by each CPA, the fiscal impact of these rules to any particular CPA will vary widely, with the total dollar impact likely to be greater for larger CPAs and less for smaller CPAs.

DFPS did not consider any alternatives to the rule amendments being proposed to ameliorate the impact on CPAs who are small or micro-businesses, because the very purpose of all of these rule changes is to ensure the health and safety of children in foster homes - regardless of the size of the CPA that verifies and supervises the foster home.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 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-497, 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 §749.43

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; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.43. *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) - (57) (No change.)

(58) Trauma Informed Care (TIC)--Care for children that is child-centered and considers the unique culture, experiences, and beliefs of the child. TIC takes into consideration:

(A) The impact that traumatic experiences have on the lives of children;

(B) The symptoms of childhood trauma;

(C) An understanding of a child's personal trauma history;

(D) The recognition of a child's trauma triggers; and

(E) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment.

(59) [(58)] Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

(60) [(59)] Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(61) [(60)] Volunteer--A person who provides [services]:

(A) Child-care services, treatment services, or programmatic services under the auspices of the agency without monetary compensation, including a "sponsoring family;" or

(B) Any type of services under the auspices of the agency without monetary compensation when the person has unsupervised access to a child in care.

(62) [(61)] Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

(63) [(62)] 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.

Filed with the Office of the Secretary of State on April 23, 2014.

TRD-201401965

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Proposed date of adoption: September 1, 2014

For further information, please call: (512) 438-3437



SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §749.101, §749.103

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 HRC §42.042.

§749.101. What are my responsibilities as the permit holder before I begin operating?

Before you begin operating, you are responsible for:

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

(6) Developing and providing us your plan for ensuring that:

(A) - (E) (No change.)

(F) You evaluate the effectiveness of your system for meeting the rules of this chapter, including evaluating the accuracy of foster home screenings and the comprehensiveness of the supervisory visits. This plan must describe how your evaluation process will: [and describe the process your agency will use to address problems that your evaluation system identifies; and]

(i) Identify problems, including deficiencies;

(ii) Correct the problems identified; and

(iii) Document the problems identified and when and how the problems were corrected; and

(7) (No change.)

§749.103. What are my operational responsibilities as the permit holder?

When you begin operating, you must:

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

(6) Allow us to inspect or monitor any [one] of your foster homes at any time;

(7) Implement the plans that you developed and provided to us according to §749.101(6) of this title (relating to What are my responsibilities as the permit holder before I begin operating?). If you obtained your permit before September 1, 2014, and your current evaluation plan does not comply with §749.101(6)(F) of this title, then you must update the evaluation plan, provide it to us, and implement it by March 1, 2015; [Conduct ongoing evaluations of verified foster homes, including documentation of unmet rules of this chapter and correction of all deficiencies;]

(8) - (13) (No change.)

(14) Prior to implementing any changes, inform us of any changes to the plan you developed under §749.101(6) [§749.101] of this title [(relating to What are my responsibilities as the permit holder before I begin operating?)];

(15) - (18) (No change.)

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

Filed with the Office of the Secretary of State on April 23, 2014.

TRD-201401966

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Proposed date of adoption: September 1, 2014

For further information, please call: (512) 438-3437



SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS

DIVISION 3. CHILD PLACEMENT STAFF

40 TAC §749.667

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 §42.042.

§749.667. *What are the responsibilities of child placement management staff?*

Child placement management staff must:

(1) Review and approve:

(A) (No change.)

(B) Documentation of supervisory visits for compliance with §749.2815 of this title (relating to How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?);

(C) [~~(B)~~] Investigation findings; and

(D) [~~(C)~~] Corrective and adverse action plans involving foster families; and

(2) (No change.)

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

Filed with the Office of the Secretary of State on April 23, 2014.

TRD-201401967

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Proposed date of adoption: September 1, 2014

For further information, please call: (512) 438-3437



SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS DIVISION 2. FOSTER HOME SCREENINGS

40 TAC §§749.2447, 749.2449, 749.2453

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 HRC §§42.042, 42.0535, and 42.0561.

§749.2447. *What information must I obtain for the foster home screening?*

You must obtain, document, and assess the following information about a prospective foster home:

Figure: 40 TAC §749.2447

§749.2449. *Whom must I interview when conducting a foster home screening?*

(a) Interviews for a foster home screening must be documented and must include at least:

(1) (No change.)

(2) One individual interview with each child three years old or older living in the home either full- or part-time [~~full or part time~~];

(3) One individual interview with each other person living in the home either full- or part-time [~~full or part time with the family~~];

(4) (No change.)

(5) One family group interview with all family members living in the home; [~~and~~]

(6) One interview, by telephone, in person, or by letter, with each [~~any~~] minor child 12 years old or older or adult child of the prospective foster parents not living in the home; [~~If you cannot reach an adult child to interview, you must document your reasonable efforts to reach the child.~~]

(7) A minimum of one interview, by telephone, in person, or by letter with a family member not living in the home and not already interviewed; and

(8) A minimum of two interviews, by telephone, in person, or by letter with neighbors, school personnel if the prospective foster parents have school age children, clergy, or any other member of the prospective foster parents' community who are unrelated to the foster parents and can provide a description of the prospective foster parents' suitability to provide care for children.

(b) (No change.)

§749.2453. *When must I update the foster home screening?*

(a) You must [~~may~~] update a foster home screening [~~you completed~~], as follows: [~~but you are not required to do so except under~~]

(1) Under the circumstances described in §749.307(a) of this title (relating to What happens to the foster homes supervised by [~~under~~] a branch office when the branch office closes?); and[-]

(2) When there is a major life change in the foster family as described in §749.2805 of this title (relating to What is a "major life change in the foster family"?).

(b) A foster home screening update may be made by using an addendum.

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 April 23, 2014.

TRD-201401968

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Proposed date of adoption: September 1, 2014

For further information, please call: (512) 438-3437



DIVISION 3. VERIFICATION OF FOSTER HOMES

40 TAC §749.2471

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 §§42.042, 42.0535, and 42.0561.

§749.2471. *What must I do to verify a foster home?*

Verifying a foster home includes the following steps:

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

(3) Obtaining the following:

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

(D) An approved health inspection₂[-]

(4) (No change.)

(5) If the home will provide treatment services, ensuring that the home complies with the policies developed according to §749.349 of this title (relating to What additional policies must I develop for foster parents [~~homes~~] that provide treatment services?);

(6) (No change.)

(7) Evaluating all areas required in this subchapter [~~for the foster home screening and verification~~], and making [~~make~~] recommendations regarding the home's ability to care for and work with children with respect to a child's gender and age, the [~~their age, gender,~~] number of children, and the types of services to be provided;

(8) If there are any indicators of potential risk to children based on the assessment and evaluation of an area required in this subchapter, documenting the indicators and how you addressed them with

the prospective foster family prior to approval and verification of the home;

(9) [~~(8)~~] Obtaining from the child placement management staff review and approval of the home screening, and the recommended verification of the home; and

(10) [~~(9)~~] Issuing a verification certificate that specifies the:

(A) Name of the foster home;

(B) Foster home address and/or location;

(C) Foster [~~The foster~~] home's total capacity, which includes the biological and adopted children of the caregivers who live in the foster home, any children receiving foster or respite child-care, and children for whom the family provides day care;

(D) Foster [~~The foster~~] home's foster care capacity, a subset of the total capacity which includes only children placed for foster care or respite child care;

(E) Ages [~~The ages~~] and gender(s) of children for which the home is verified to provide foster care or respite child care;

(F) Types [~~The types~~] of services the foster home will provide;

(G) Agency's [~~The agency's~~] main office or branch office which issued the verification; and

(H) Expiration [~~The expiration~~] date of a time-limited verification, if applicable.

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 April 23, 2014.

TRD-201401969

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Proposed date of adoption: September 1, 2014

For further information, please call: (512) 438-3437



SUBCHAPTER N. FOSTER HOMES: MANAGEMENT AND EVALUATION

40 TAC §749.2815

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 §42.042.

§749.2815. *How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?*

(a) (No change.)

(b) At least ~~two~~ ~~[one]~~ supervisory visits ~~[visit]~~ per year must be unannounced.

(c) At a minimum, you must evaluate and document the following at each supervisory visit:

(1) Any change to household members, frequent visitors, or persons who will provide support as a caregiver during an unexpected event or crisis situation;

(2) Any major life change in the foster family as described in §749.2805 of this title (relating to What is a "major life change in the foster family"?);

(3) Any change to the foster home disaster and emergency plans as described in §749.2907 of this title (relating to What disaster and emergency plans much each foster home have?); and

(4) Any challenging behaviors of the current children in the home, the level of stress the foster family is currently experiencing, and any methods for responding to each child's challenging behavior and/or alleviating any significant stress the foster family is experiencing.

(d) ~~[(e)]~~ You must document each visit in the home's record. The documentation must include specific issues identified and any rules evaluated, results of the evaluation, deficiencies found, plans

for achieving compliance, plans for follow-up to ensure compliance was achieved, and any changes to the information in the foster home screening since the last supervisory visit, including the reasons for any change in the home's verification.

(e) ~~[(d)]~~ For each supervisory visit, documentation of the visit must be signed by each foster parent ~~[the foster parent(s)]~~ present for the visit and the child-placement staff conducting the visit.

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 April 23, 2014.

TRD-201401970

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Proposed date of adoption: September 1, 2014

For further information, please call: (512) 438-3437

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 1. OPEN-ACCESS COMPARABLE TRANSMISSION SERVICE FOR ELECTRIC UTILITIES IN THE ELECTRIC RELIABILITY COUNCIL OF TEXAS

16 TAC §25.192

Proposed amended §25.192, published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7230), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on April 22, 2014.

TRD-201401921



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 13. UNCLAIMED PROPERTY REPORTING AND COMPLIANCE

34 TAC §13.20

The Comptroller of Public Accounts withdraws the proposed new §13.20, which appeared in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7420).

Filed with the Office of the Secretary of State on April 22, 2014.

TRD-201401906

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: April 22, 2014

For further information, please call: (512) 475-0387



PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.6

The Texas Emergency Services Retirement System withdraws the proposed amendment to §310.6, which appeared in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1096).

Filed with the Office of the Secretary of State on April 28, 2014.

TRD-201402019

Michelle Jordan

Executive Director

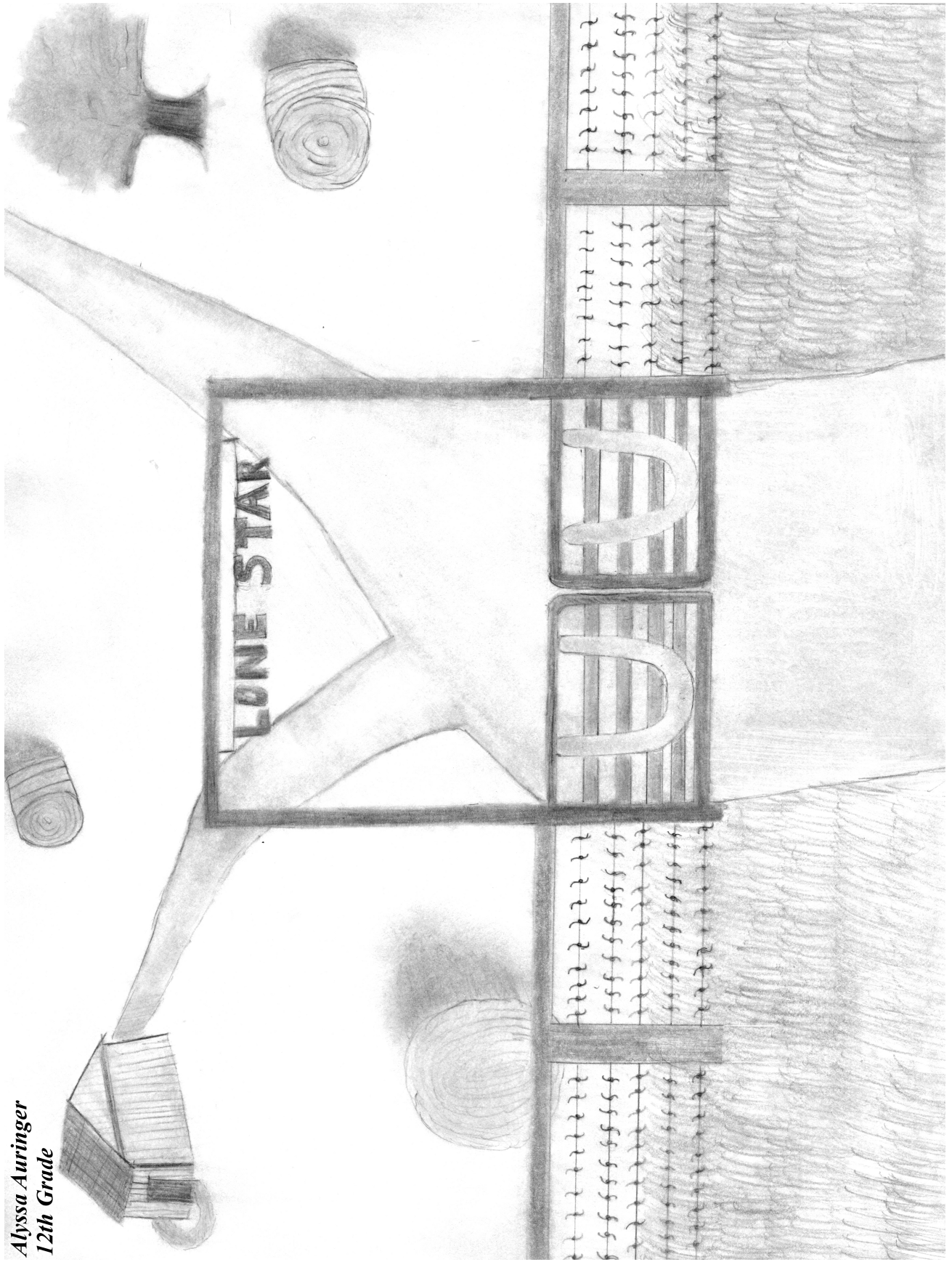
Texas Emergency Services Retirement System

Effective date: April 28, 2014

For further information, please call: (512) 936-3474



Alyssa Auringer
12th Grade



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER C. 3E'S GRANT PROGRAMS

The Texas Department of Agriculture (the department) adopts amendments to Chapter 26, Subchapter C, Division 1, §26.30, concerning the Nutrition Outreach Program; Division 2, §§26.41 - 26.46, concerning the Expanding the 3E's Grant Program; and Division 3, §26.54 and §26.55, concerning the Establishing the 3E's Grant Program, without changes to the proposed text as published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1560).

In 2009, the department was charged with administering a Nutrition Outreach Program to promote better health and nutrition programs and to prevent obesity among Texas children. In response, the department created two grant programs, the Best Practices in Nutrition Education Grant Program and the Nutrition Education Grant Program. The department administered these programs in 2010 and 2011, at which time the department updated the program names to Expanding the 3E's Grant Program and Establishing the 3E's Grant Program, respectively.

The department evaluated the benchmarks of success for each of these programs as administered over the past four years with the goal of maximizing the impact of each dollar granted statewide in order to realize the core goals of the programs - health and nutrition programs and preventing obesity among Texas children. The department determined that revisions to focus and refine the grant program objectives would drive results toward these goals. Specifically, the department determined that the best use of grant funds is to assist schools and organizations who want to implement nutrition education through coordinated school health (CSH) programs, but have thus far been unable to do so due to lack of available funding. By partnering with CSH schools and operations, grant funds can reach their intended audiences, supplement existing programs, enhance existing best practices, and meet program goals to benefit Texas children. The adopted amendments make changes to update definitions and requirements to allow more flexibility in eligibility to expand program participation; create more uniform, quantifiable measures; clarify administration of the department's 3E's grant programs; and add transparency to the process of expending grant funds. The amendments also make the rules consistent for both the Expanding the 3E's and Establishing the 3E's grant programs and remove selection criteria from the rules.

The Texas Education Agency is responsible for making available a list of CSH programs that meet specific criteria recommended by a panel of experts and approved by the Commissioner of Education. These amendments are adopted to allow school campuses more flexibility in implementing nutrition education programs, including the use of CSH programs; create more uniform, quantifiable measures; and to clarify administration for both grant programs.

No comments were received on the proposal.

DIVISION 1. NUTRITION OUTREACH PROGRAM

4 TAC §26.30

The amendment to §26.30 is adopted under the authority of the Texas Agriculture Code, §12.0027, which provides the department with the authority to develop a nutrition outreach program and adopt rules as necessary to administer an outreach program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2014.

TRD-201401915

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: May 12, 2014

Proposal publication date: March 7, 2014

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



DIVISION 2. EXPANDING THE 3E'S GRANT PROGRAM

4 TAC §§26.41 - 26.46

The amendments to §§26.41 - 26.46 are adopted under Texas Education Code, §38.026, which provides the department with the authority to establish a grant program for best practices in nutrition education and to adopt rules as necessary to administer the program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2014.

TRD-201401916

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: May 12, 2014
Proposal publication date: March 7, 2014
For further information, please call: (512) 463-4075



DIVISION 3. ESTABLISHING THE 3E'S GRANT PROGRAM

4 TAC §26.54, §26.55

The amendments to §26.54 and §26.55 are adopted under Texas Human Resources Code, §33.028, which provides the department with the authority to establish a grant program for nutrition education and to adopt rules as necessary to administer the program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2014.

TRD-201401917
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: May 12, 2014
Proposal publication date: March 7, 2014
For further information, please call: (512) 463-4075



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.14

The Texas State Securities Board adopts an amendment to §113.14, concerning statements of policy, without changes to the proposed text as published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 459).

The amendment adopts by reference certain updated North American Securities Administrators Association ("NASAA") statements of policy ("SOPs") that were amended on May 6, 2012, to revise the cross-reference sheets to correspond to earlier changes in the SOPs.

Review of applications to register securities will be facilitated by having the cross-reference sheets correspond to the uniform SOPs used in this and other states.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules

and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-7.

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 April 25, 2014.

TRD-201401987
John Morgan
Securities Commissioner
State Securities Board
Effective date: May 15, 2014
Proposal publication date: January 31, 2014
For further information, please call: (512) 305-8303



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING INSTRUCTIONAL MATERIALS ALLOTMENT

19 TAC §§66.1301, 66.1307, 66.1309, 66.1311, 66.1313, 66.1325, 66.1327

The Texas Education Agency (TEA) adopts amendments to §§66.1301, 66.1307, 66.1309, 66.1311, and 66.1313 and new §66.1325 and §66.1327, concerning state adoption and distribution of instructional materials. The amendment to §66.1301 is adopted with a change to the proposed text as published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 463). The amendments to §§66.1307, 66.1309, 66.1311, and 66.1313 and new §66.1325 and §66.1327 are adopted without changes to the proposed text as published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 463) and will not be republished. The sections address provisions relating to the instructional materials allotment. The adopted amendments and new sections implement the requirements of the Texas Education Code (TEC), Chapter 31, as amended by Senate Bill (SB) 6, 82nd Texas Legislature, First Called Session, 2011, and House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013.

SB 6, 82nd Texas Legislature, 2011, requires the commissioner to provide funds from the instructional materials fund to every school district, open-enrollment charter school, and alternative school. The funds can be used to acquire instructional materials, technological equipment, and technology services. HB 5, 83rd Texas Legislature, Regular Session, 2013, made modifications relating to the use of the instructional materials allotment, including requirements for new purchase and payment options.

A technical edit was made at adoption to 19 TAC §66.1301, Definitions, to reflect person first respectful language requirements under the TEC, §7.063.

Adopted revisions to 19 TAC Chapter 66, Subchapter DD, clarify prohibitions related to the use of the instructional materials allotment; outline calculations for enrollment growth; change references from "Braille and large type" to "specialized instructional material formats" for students who are blind or visually impaired and provide more specifications for specialized instructional material formats, including accessibility requirements; and add definitions for specialized instructional material format and computerized files. The revisions also add a new section regarding reimbursement of funds to local education agencies and a new section explaining the delayed publisher payment option.

The adopted amendments and new sections have no new procedural and reporting implications. The adopted amendments and new sections have no new locally maintained paperwork requirements. All reporting requirements will be incorporated into the Educational Materials (EMAT) system.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began January 31, 2014, and ended March 3, 2014. Following is a summary of the public comments received and corresponding agency responses regarding proposed revisions to 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials, Subchapter DD, Commissioner's Rules Concerning Instructional Materials Allotment.

Comments: An individual requested a rule change so that students who are deaf and hearing impaired have access to all public school material.

Four individuals requested that instructional materials be more equitable by requiring publishers to guarantee that all learners who are blind or sighted or deaf or hearing are given instructional materials in accessible formats.

Eight individuals requested that §66.1311, Special Instructional Materials, include the words "deaf or hard of hearing, or other persons with disabilities, as authorized by the Vocational-Rehabilitation Act and the Americans with Disabilities Act."

Two individuals requested the same access to materials for students who are deaf and hearing impaired as their peers who are blind have to accessible instructional materials to better their education and maximize their reading and cognitive skills.

Two individuals requested support for materials needed for students and teachers who are deaf or hearing impaired in Texas schools.

An individual requested that actions be taken and needs be considered for students who are hearing impaired.

An individual expressed concern that the proposed revisions to Chapter 66 do not ensure accessibility for students who are deaf and hard of hearing. The individual stated that the definition for specialized instructional material format in the rules is inclusive when it says "or other persons with disabilities, as authorized by the Vocational Rehabilitation Act and the American with Disabilities Act." The individual also commented that the needs of students who are deaf and hard of hearing are NOT currently be-

ing met by publishers at the same level as the needs of students who are blind.

A teacher serving students who are deaf and hard of hearing in the mainstream classroom commented about the necessity of the proposed changes for textbooks and other curriculum materials to include the access needs for students who are hearing impaired.

An educator who serves students who are deaf and hard of hearing commented about the many situations where these students do not have access to the same information in the classrooms as their peers and stated that this student population needs to be considered when decisions about new materials to be used in the classroom are being made because this affects a large population of students.

An individual requested the inclusion of accessibility for all students who are deaf and their teachers by making American Sign Language interpretation a part of the adoption process of new textbooks and all other materials being adopted.

Agency Response: The agency provides the following clarification. The Texas Education Code (TEC), Chapter 31, Instructional Materials, does not authorize the commissioner to provide special instructional materials to students who are deaf or have a hearing impairment. The TEC, §31.028, authorizes the commissioner to purchase special instructional materials for the education of students who are blind and visually impaired. However, if a student with a disability requires special instructional materials to receive a free appropriate public education (FAPE), the local educational agency may use local, state, or federal special education funds to provide the materials needed.

Comment: An individual requested that with a new adoption in place, the TEA should keep current on many of the new instructional materials in digital formats. The individual stated that for audio, the addition of sign language interpretation (American Sign Language) would increase access for a significant number of students and teachers.

Agency Response: This comment is outside of the scope of the proposed rule making.

The amendments and new sections are adopted under the Texas Education Code (TEC), §31.0211, which authorizes the commissioner to adopt rules as necessary to implement the instructional materials allotment; §31.0214, which authorizes the commissioner to adopt rules as necessary to implement adjustments for high enrollment growth districts; §31.0215, which authorizes the commissioner to adopt rules to implement instructional material allotment purchases; §31.028, which authorizes the commissioner to purchase instructional materials for the education of blind and visually impaired students in public schools; and §31.029, which authorizes the commissioner to adopt rules regarding the purchase of bilingual instructional materials.

The amendments and new sections implement the TEC, §§31.0211, 31.0214, 31.0215, 31.028, and 31.029.

§66.1301. Definitions.

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

- (1) Computerized files--Files that conform with National Instructional Materials Accessibility Standards.
- (2) Disbursement--A request made through the Texas Education Agency online ordering system for funds for non-adopted in-

structional materials, technological equipment, and/or technology services.

(3) Educational Materials (EMAT) system--The Texas Education Agency online ordering system through which school districts, open-enrollment charter schools, and juvenile justice alternative education programs submit requisitions for instructional materials and requests for disbursement.

(4) Instructional materials--Content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book; supplementary materials; a combination of a book, workbook, and supplementary materials; computer software; magnetic media; DVD; CD-ROM; computer courseware; online services; or an electronic medium or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional materials.

(5) Instructional materials allotment (IMA)--A specified enrollment-based amount of funds set aside from the state instructional materials fund, as determined by the commissioner in accordance with the Texas Education Code, §31.0211, allocated each school year to every Texas school district, open-enrollment charter school, and juvenile justice alternative education program.

(6) Juvenile justice alternative education program (JJAEP)--A juvenile justice alternative education program established under the Texas Education Code, §37.011.

(7) Open-source instructional materials--Electronic instructional materials that are available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional materials.

(8) Publisher--Any developer or distributor of instructional materials or online service.

(9) Requisition--A request made through the Texas Education Agency online ordering system for State Board of Education or commissioner of education adopted instructional materials.

(10) Specialized instructional material format--Any form of published material converted into an alternative medium that is exclusively for use by persons who are blind or with other disabilities, as authorized by the Vocational-Rehabilitation Act and the Americans with Disabilities Act.

(11) Technological equipment--Hardware, device, or equipment necessary for instructional use in the classroom, including to gain access to or enhance the use of electronic instructional materials, or for professional use by a classroom teacher.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER D. UNIFORM BANK BID OR REQUEST FOR PROPOSAL AND DEPOSITORY CONTRACT

19 TAC §109.51, §109.52

The State Board of Education (SBOE) adopts amendments to §109.51 and §109.52, concerning uniform forms for depository bank bid or request for proposal, depository contract, depository bank contract, and surety bonds. The amendments are adopted without changes to the proposed text as published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1599) and will not be republished. Section 109.51 establishes the requirement that each school district submit a blank uniform bid form or request for proposal form to each bank located in the district and, if desired, to other banks interested in acting as depository for all funds. The section includes the bid and request for proposal forms prescribed by the SBOE. Section 109.52 establishes the requirement that each school district select a bank as a school depository and enter into a depository contract with the bank. A school district may select and contract with more than one bank. The section includes the depository contract and surety bond forms with the content prescribed by the SBOE. The adopted amendments reduce paperwork a district must file with the Texas Education Agency (TEA) and streamline the process by which a school district selects a depository bank.

The rules in 19 TAC Chapter 109, Subchapter D, establish rules related to a school district's selection of and contract with a bank to serve as the district's depository for all funds.

Section 109.51 establishes the requirement that each school district, before the current depository contract expires, choose whether to select a depository bank through competitive bidding or through requests for proposals and then submit a blank uniform bid or proposal form to each bank in the district and, if desired, to other interested banks. Section 109.51 also establishes the requirement that a district file the selected form with the TEA. The section includes the bid and proposal forms prescribed by the SBOE.

Section 109.52 establishes the requirement that each school district select at least one bank as a depository and enter into a depository contract with the bank, providing the completed contract to the TEA. Section 109.52 also establishes the requirement that a district provide a completed surety bond form to the TEA if the depository bank uses a surety bond to secure district deposits. The section includes the depository contract form and surety bond form with the content prescribed by the SBOE.

The adopted amendment to 19 TAC §109.51, Uniform Depository Bank Bid or Proposal Form, removes the requirement in subsection (b) for the district to file its bid or proposal with the TEA and would add a requirement for the district to make the selected bid or proposal available to the TEA on request. The uniform bid blank form, adopted as Figure: 19 TAC §109.51(c), and the uniform proposal blank form, adopted as Figure: 19 TAC §109.51(d), were revised to update and clarify language.

The adopted amendment to 19 TAC §109.52, Uniform Depository Bank Contract and Surety Bond Forms, clarify language and add a provision in subsection (a) to require a district to electron-

ically file the contract with the TEA. The adopted amendment also adds a provision for the TEA to notify a district by email if its depository contract is incomplete and a provision stating that a district that has no depository contract in force and filed with the TEA will receive its warrants from the TEA by US mail.

The uniform depository bank contract form, adopted as Figure: 19 TAC §109.52(b), was revised to remove the signature line for a TEA staff member to approve the contract because the TEA's approval is not considered necessary; to delete any requirement for the bid or proposal to be attached to the contract and to add a provision that the district must provide the bid or proposal upon the TEA's request; to remove language stating that the contract becomes binding only upon acceptance by the TEA; and to add a requirement for the district to file the contract or extension electronically with the TEA. The surety bond form, adopted as Figure: 19 TAC §109.52(d), was revised to update and clarify language.

The adopted amendments have procedural and reporting implications. The adopted amendments update and streamline the filing process and reduce paperwork for a district to select and contract with a depository bank. The adopted amendments have locally maintained paperwork requirements. The adopted amendments require the district to keep the selected bid or proposal in the district and make it available to the TEA upon request.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The SBOE took action to approve the proposed amendments to 19 TAC Chapter 109, Subchapter D, for second reading and final adoption during its April 11, 2014, meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendments for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2014-2015 school year in order to implement the latest policy in a timely manner. The effective date for the amendments is 20 days after filing as adopted.

No public comments were received on the proposal.

The amendments are adopted under the Texas Education Code (TEC), §§7.102(c)(34), 45.206, and 45.208, which authorize the State Board of Education to prescribe uniform bid blank and request for proposal forms for a school district to use in selecting a depository bank and to prescribe uniform depository contract and bond forms.

The amendments implement the Texas Education Code, §§7.102(c)(34), 45.206, and 45.208.

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 April 25, 2014.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) adopts amendments to §§231.333, 231.481, 231.623, and 231.643 and new §231.645, concerning requirements for public school personnel assignments. The amendments to §§231.333, 231.481, 231.623, and 231.643 and new §231.645 are adopted without changes to the proposed rule text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9184) and will not be republished. The sections establish criteria for assignments in principles of arts, audio video technology, and communications, Grades 9-12; information technology, Grades 9-12; special education counseling services; educational diagnostician; speech therapy services; and vocational adjustment coordinator; and administrators and other instructional and professional support personnel. The new section provides for assignment of professional support personnel requiring other professional license.

The adopted amendments to 19 TAC §231.333 and 19 TAC §231.481 are necessary as a result of House Bill (HB) 3573, 83rd Texas Legislature, Regular Session, 2013, which amended the Texas Education Code (TEC), §21.0486, to require that a person who holds a technology applications certification be authorized to teach principles of arts, audio video technology, and communications and principles of information technology.

The adopted amendments to 19 TAC §231.623 and 19 TAC §231.643 clarify that the no-longer-issued Vocational Counselor and Special Education certificates may be used for the assignments of Special Education Counseling Services and School Counselor.

Adopted new 19 TAC §231.645 clarifies the requirements of the TEC, §21.003(b), regarding assignments that require a professional license rather than educator certification, including licensed professional counselor as a result of Senate Bill (SB) 715, 83rd Texas Legislature, Regular Session, 2013, and marriage and family therapist, with an exception, as a result of HB 1386, 82nd Texas Legislature, Regular Session, 2011.

As a result of HB 3573, 83rd Texas Legislature, Regular Session, 2013, SBEC rules regarding personnel assignments in 19 TAC Chapter 231, Subchapter E, were amended to increase district flexibility when assigning educators to specific courses. The adopted amendments to 19 TAC §231.333, Principles of Arts, Audio Video Technology, and Communications, Grades 9-12, and 19 TAC §231.481, Information Technology, Grades 9-12, allow the holder of a Technology Applications: Early Childhood-Grade 12, Technology Applications: Grades 7-12, or Technology Applications: Grades 8-12 certificate to teach those specific assignments in Grades 9-12.

The School Counselor certificate replaced three separate counseling certificates that are no longer issued by the SBEC: Counselor, Special Education Counselor, and Vocational Counselor. A person holding a Special Education Counselor or Vocational Counselor certificate had to have met all the requirements for the Counselor certificate, as well as satisfy additional training and coursework requirements for the specialized counseling covered by those certificates. The adopted amendments to 19 TAC §231.623, Special Education Counseling Services;

Educational Diagnostician; Speech Therapy Services; and Vocational Adjustment Coordinator, and 19 TAC §231.643, Administrators and Other Instructional and Professional Support Personnel, clarify that the holders of the no-longer-issued Special Education Counselor and Vocational Counselor certificates are qualified for Special Education Counseling Services and School Counselor assignments.

The TEC, §21.003(b), provides that a person may not be employed by a school district to perform services within specified professions unless the person holds the appropriate credential or license from the appropriate state agency for that profession. Adopted new 19 TAC §231.645, Professional Support Personnel Requiring Other Professional License, establishes professional support assignments that require a professional license rather than educator certification, including the licensed professional counselor assignment, as authorized by SB 715, 83rd Texas Legislature, Regular Session, 2013, which amended the TEC, §21.003(b). As a result of HB 1386, 82nd Texas Legislature, Regular Session, 2011, which also amended the TEC, §21.003(b), the adopted new rule includes an exception for the marriage and family therapist assignment for an individual who was employed by a school district before September 1, 2011, and is still employed by the same district as a marriage and family therapist. In accordance with the Texas Occupations Code, §401.054, the adopted rule also provides an exception for speech therapy services performed under certain no-longer-issued certificates.

The adopted amendments and new section have no procedural and reporting implications. Also, the adopted amendments and new section have no locally maintained paperwork requirements.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The following comment was received regarding the proposed amendments and new section.

Comment: An individual commented that counselors who work with special education students must have vocational experiences either as a career and technical education teacher or vocational counselor.

Board Response: The SBEC disagreed that the specific content requirements listed by the commenter should be placed on all avenues of qualifications for special education counselors. Special education counselors address a range of needs with students, including vocational education skills. The rule recognizes five different counseling certifications that each cover the range of topics necessary to prepare a person to provide special education counseling. School districts may require their particular special education counselor to have a certain certification if they want certain skill sets emphasized. The SBEC took action to adopt, subject to State Board of Education (SBOE) review, the revisions to 19 TAC Chapter 231, Subchapters E-G, as published as proposed.

The State Board of Education (SBOE) took no action on the review of the amendments to 19 TAC §§231.333, 231.481, 231.623, and 231.643 and new §231.645 at the April 11, 2014, SBOE meeting.

SUBCHAPTER E. GRADES 9-12 ASSIGNMENTS

DIVISION 12. ARTS, AUDIO VIDEO TECHNOLOGY, AND COMMUNICATIONS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.333

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0486, which allows one with a technology applications certificate to teach principles of arts, audio/video technology, and communications, and to teach principles of information technology, in addition to teaching technology applications courses.

The adopted amendment implements the TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.0486.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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For further information, please call: (512) 475-1497



DIVISION 19. INFORMATION TECHNOLOGY, GRADES 9-12 ASSIGNMENTS

19 TAC §231.481

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0486, which allows one with a technology applications certificate to teach principles of arts, audio/video technology, and communications, and to teach principles of information technology, in addition to teaching technology applications courses.

The adopted amendment implements the TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.0486.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. SPECIAL EDUCATION-RELATED SERVICES PERSONNEL ASSIGNMENTS

19 TAC §231.623

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. PARAPROFESSIONAL PERSONNEL, ADMINISTRATORS, AND OTHER INSTRUCTIONAL AND PROFESSIONAL SUPPORT ASSIGNMENTS

19 TAC §231.643, §231.645

The amendment and new section are adopted under the Texas Education Code (TEC), §21.003(b), which requires, for certain employment positions within a school district, a professional license rather than educator certification, with an exception for certain marriage and family therapists; §21.031(a), which states

that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and the Texas Occupations Code (TOC), §401.054, which allows people already working within an organization in Texas Education Agency's (TEA's) jurisdiction and who possess a TEA certification in speech language pathology (SLP) to provide SLP services in the same specific location.

The adopted amendment and new section implement the TEC, §§21.003(b), 21.031(a), and 21.041(b)(1) and (2), and the TOC, §401.054.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.11

The State Board for Educator Certification (SBEC) adopts an amendment to §232.11, concerning certificate renewal and continuing professional education requirements. The amendment to §232.11 is adopted without changes to the proposed rule text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9187) and will not be republished. The section establishes the number and content of required continuing professional education hours. The adopted amendment is necessary as a result of House Bill (HB) 642, 83rd Texas Legislature, Regular Session, 2013, and HB 3793, 83rd Texas Legislature, Regular Session, 2013, both of which amended the Texas Education Code (TEC), §21.054. HB 642 requires classroom teachers, principals, and school counselors to earn continuing professional education (CPE) units in specific areas related to collecting and analyzing information, recognizing early warning indicators for dropouts, and educating diverse student populations. HB 3793 allows educators to fulfill up to 12 clock-hours of CPE by participating in a mental health first aid training program. The adopted amendment to 19 TAC §232.11 establishes CPE requirements that conform to HB 642 and HB 3793.

The TEC, §21.054(a), states that the SBEC shall propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

HB 642 and HB 3793, which amended the TEC, §21.054, require the SBEC to amend 19 TAC §232.11, Number and Content of Required Continuing Professional Education Hours, to align the CPE requirements with new statutory assignment-specific requirements for teachers, principals, and school counselors, in order to make CPE requirements more relevant and useful for teachers, principals, and school counselors. The requirements in subsection (c) were amended to include CPE requirements related to data analysis, use of technology, working with diverse student populations, dropout prevention, and career planning, as required by HB 642. Adopted subsection (g) was added to allow an educator to participate in a mental health first aid training program offered by a local mental health authority to fulfill up to 12 clock-hours of required CPE activities, as required by HB 3793.

The adopted amendment has no procedural and reporting implications. Also, the adopted amendment has no locally maintained paperwork requirements. The CPE tracking forms that are available to educators on the Texas Education Agency website will be updated and may be maintained locally by educators.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

No comments were received regarding the proposed amendment.

The State Board of Education (SBOE) took no action on the review of the amendment to 19 TAC §232.11 at the April 11, 2014, SBOE meeting.

The amendment is adopted under the Texas Education Code (TEC), §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and options for meeting those requirements and directs the State Board for Educator Certification to propose rules relating to continuing education courses and programs for educators.

The adopted amendment implements the TEC, §21.054.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.16

The State Board for Educator Certification (SBEC) adopts an amendment to §249.16, concerning disciplinary proceedings, sanctions, and contested cases. The amendment to §249.16 is adopted without changes to the proposed rule text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9189) and will not be republished. The section establishes requirements for eligibility of persons with criminal convictions for a certificate under Texas Occupations Code, Chapter 53. The adopted amendment is necessary as a result of House Bill (HB) 798, 83rd Texas Legislature, Regular Session, 2013, which amended the Texas Occupations Code (TOC), §53.021, to define the types of misdemeanor convictions that may be pursued under the TOC. The adopted amendment to 19 TAC §249.16 aligns the requirements to conform with HB 798.

The Texas Education Code (TEC), §21.060, and the TOC, §53.021, provide the SBEC authority to suspend, revoke, or disqualify the certification of an educator on the basis of a criminal conviction.

In October 2007, an Attorney General opinion was requested by the commissioner of education regarding whether a proposed rule of the SBEC that related to certification eligibility of persons with criminal convictions was "preempted" by the TEC, §21.060. Subsequently, Attorney General Opinion No. GA-0614, issued April 7, 2008, ruled that the two provisions are nonexclusive. As a result, in 2009, 19 TAC §249.16 was amended to include subsection (d) to reflect that grounds under the TOC, Chapter 53, were cumulative of grounds and remedies under the TEC, §21.060.

The 83rd Texas Legislature (2013) enacted HB 798, which modified the TOC, §53.021. This legislation removes a licensing authority's power existing under that provision to sanction or withhold certification for convictions of Class C misdemeanors unless the person is an applicant for or the holder of a license that authorizes the person to possess a firearm and the misdemeanor crime was domestic violence as defined by 18 United States Code, §921. Class C misdemeanors are punishable only by a fine not to exceed \$500. The following describes the adopted amendment in response to HB 798.

The adopted amendment to 19 TAC §249.16 adds subsection (b) to implement the requirements of HB 798 when exercising authority under the TOC, §53.021. Subsequent subsections were re-lettered accordingly.

The adopted amendment has no procedural and reporting implications. Also, the adopted amendment has no locally maintained paperwork requirements.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

No comments were received regarding the proposed amendment.

The State Board of Education (SBOE) took no action on the review of the amendment to 19 TAC §249.16 at the April 11, 2014, SBOE meeting.

The amendment is adopted under the Texas Education Code (TEC), §21.041(b)(7), which requires the State Board for Educator Certification (SBEC) to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; and §21.060, which allows the SBEC to suspend or revoke educator certificates based on conviction for certain offenses related to the duties and responsibilities of the education profession; and Texas Occupations Code, §53.021(a), which provides that a licensing agency may suspend, revoke, or deny a license to a person convicted of an offense related to the duties and responsibilities of the education profession and certain other offenses; §53.021(a-1), which limits SBEC's authority to take disciplinary action under Chapter 53 for convictions of Class C misdemeanors except under certain circumstances; and §53.025, which requires the SBEC to issue guidelines providing the reasons for determinations made by the SBEC pursuant to Chapter 53.

The adopted amendment implements the TEC, §21.041(b)(7) and (8) and §21.060; and Texas Occupations Code, §53.021(a) and (a-1) and §53.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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For further information, please call: (512) 475-1497



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. AUTOMOBILE INSURANCE

DIVISION 3. MISCELLANEOUS INTERPRETATIONS

28 TAC §5.204

The commissioner of insurance adopts amendments to 28 TAC §5.204, concerning the standard proof of motor vehicle liability insurance form prescribed under Transportation Code §601.081. Section 5.204 is adopted with changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1058).

REASONED JUSTIFICATION. The amendments to §5.204 are necessary to implement the named driver disclosure require-

ment in SB 1567, 83rd Legislature, Regular Session (2013). SB 1567 amended Transportation Code §601.081 by requiring a disclosure for named driver policies on the prescribed standard proof of motor vehicle liability insurance form.

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

The amendment to Transportation Code §601.081(b) states that, for a named driver policy, the standard proof of motor vehicle liability insurance form prescribed by the Texas Department of Insurance must include the disclosure required under Insurance Code §1952.0545. Section 5.204 adds the disclosure to the list of requirements for the ID card and includes nonsubstantive editorial and formatting changes to improve the rule's clarity. TDI has replaced the outdated graphics with written descriptions of the ID card requirements. The prescribed form will now be available on the TDI website and upon request. Additionally, §5.204 corrects errors in spelling and translation for the Spanish versions of Side A and Side B of the ID card, and allows for optional communication by email.

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

In response to comments, TDI has made the following changes to the proposed text: amended the Spanish translation; added a reference to Insurance Code §1952.0545, which defines a named driver policy; included a reference to the definition of "conspicuous" in Business and Commerce Code §1.201(b)(10)(B); and inserted new §5.204(a) to clarify the section's applicability. TDI has also made several nonsubstantive editorial changes.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from the Office of Public Insurance Counsel; Texas Watch; and Thompson, Coe, Cousins, & Irons, L.L.P. (on behalf of the Insurance Council of Texas). All three commenters were for adopting the proposed amendments to §5.204, with changes.

Comment: A commenter suggested an improvement to the Spanish translation of the disclosure in §5.204(b)(9).

Agency Response: TDI agrees that the commenter's suggested translation is a better description of the disclosure. TDI has amended the Spanish translation in §5.204(b)(9)—which has been relettered as §5.204(c)(9)—accordingly.

Comment: A commenter stated that, to ensure that the disclosure in §5.204(b)(9) is conspicuous, TDI should require insurers to provide it in 11-point font, in a different font and color than the surrounding text, and set off by a lined border or text box. The commenter cited Insurance Code §1952.0545(d) and Business and Commerce Code §1.201(b)(10)(B).

Agency Response: TDI agrees that including a reference to the definition of "conspicuous" in Business and Commerce

Code §1.201(b)(10)(B) would clarify the requirement. TDI has amended §5.204(b)(9)—which has been relettered as §5.204(c)(9)—to include the reference.

Comment: A commenter stated that §5.204 should be clear that it applies only to paper auto ID cards, and not to information displayed on a digital device, which Transportation Code §601.053 also allows as evidence of financial responsibility.

Agency Response: TDI agrees that displaying an image on a digital device is a method of complying with the evidence of financial responsibility requirement in Transportation Code §601.053 that is distinct from TDI's prescribed standard proof of motor vehicle liability insurance form. TDI has inserted §5.204(a) to clarify the section's applicability and provide references to the statutes that apply to evidence of financial responsibility exhibited as an image displayed on a wireless communication device.

Comment: A commenter suggested that §5.204(b)(9) include the statutory definition of "named driver policy" and clarify that a named driver policy does not include a policy that has been endorsed to exclude one or more specific drivers.

Agency Response: TDI has added a reference to Insurance Code §1952.0545, which defines "named driver policy" in §5.204(b)(9), which has been relettered as §5.204(c)(9).

TDI declines to include a statement in this section that a named driver policy does not include a policy that has been endorsed to exclude one or more specific drivers. This rule amends the ID card requirements to include the statutorily required disclosure. It does not address which policies trigger the disclosure requirements or how to fulfill the requirements. TDI anticipates proposing a separate rule to implement the broader named driver disclosure requirements in §1952.0545, and will consider this comment when drafting the proposal for that rule.

STATUTORY AUTHORITY. The commissioner adopts amendments to §5.204 under Transportation Code §601.081 and Insurance Code §§1952.0545, 2301.008, and 36.001. Transportation Code §601.081, as amended by SB 1567, requires that, for a named driver policy, the standard proof of motor vehicle liability insurance form prescribed by TDI must include the disclosure required under Insurance Code §1952.0545. Insurance Code §1952.0545 requires the following written disclosure for a named driver policy, "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY." Insurance Code §2301.008 allows the commissioner of insurance to adopt standard insurance policy forms, printed endorsement forms, and related forms other than insurance policy forms and printed endorsement forms, that an insurer may use instead of the insurer's own forms in writing insurance subject to Chapter 2301, Subchapter A. Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§5.204. Motor Vehicle Safety Responsibility.

(a) **Applicability.** This section does not apply to evidence of financial responsibility exhibited as an image displayed on a wireless communication device. Under Transportation Code §601.053(a)(2-a), the image must include the information required by Transportation Code §601.081, as provided by a liability insurer, including the named driver disclosure that Insurance Code §1952.0545 requires.

(b) **Form.** For each motor vehicle insurance policy, the liability insurer must issue a standard proof of motor vehicle liability insurance form. The form must be titled "Texas Liability Insurance Card." The insurer may use its own form or TDI's prescribed form. TDI's prescribed form is available on the TDI website or upon request.

(c) **Side A.** Side A of the form must be written in at least 10-point type, except where otherwise specified in this subsection. The insurer must provide Side A in English, or in English and Spanish. Side A of the form must include all of the following (optional Spanish language in parentheses):

(1) the name and address of each insured or covered person (el nombre y la dirección del asegurado)

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

(3) the effective date of the policy (la fecha de efectividad de la póliza)

(4) the expiration date of the policy (la fecha de vencimiento de la póliza)

(5) the policy number (el número de la póliza)

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

(7) the name and phone number of the agent, if applicable (el nombre del agente y el número de teléfono)

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

(9) for a named driver policy under Insurance Code §1952.0545, the following statement, which must comply with the Business and Commerce Code §1.201(b)(10)(B) definition of conspicuous, "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY." If Side A contains Spanish, the warning in Spanish should read, "ADVERTENCIA: ESTA PÓLIZA NO PROVEE COBERTURA A LAS PERSONAS QUE RESIDEN EN EL HOGAR DEL ASEGURADO QUE NO SON MENCIONADAS EN LA PÓLIZA DE SEGUROS."

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

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

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

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6327



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 61. VOLUNTEER AND COMMUNITY ENGAGEMENT

40 TAC §61.103, §61.106

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §61.103, concerning definitions; and §61.106, concerning the relationship of private organizations to DADS and employees of DADS, in Chapter 61, Volunteer and Community Engagement, without changes to the proposed text as published in the January 10, 2014, issue of the *Texas Register* (39 TexReg 203).

The Volunteer Services State Council, Inc. (VSSC), a corporation under the Texas Non-Profit Corporation Act, was formed in 1993 to provide assistance to the member volunteer groups that provide fundraising assistance to the DADS state supported living centers. The VSSC filed articles of dissolution with the Secretary of State in December 2007 and is no longer an active council.

The adoption deletes references to the VSSC because it no longer exists. The adoption also changes references to "state school or state center" to "state supported living center" to reflect current terminology.

DADS received no comments regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lorri Hadden

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For further information, please call: (512) 438-4162



CHAPTER 68. ELECTRONIC VISIT VERIFICATION (EVV) SYSTEM

40 TAC §§68.101 - 68.103

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §68.101, concerning application; §68.102, concerning definitions; and §68.103, concerning use and availability of EVV system, in Chapter 68, Electronic Visit Verification (EVV) System, without changes to the proposed text as published in the January 17, 2014, issue of the *Texas Register* (39 TexReg 270).

The amendments are adopted to implement a portion of Senate Bill (SB) 7, 82nd Legislature, First Called Session, 2011, relating to EVV. EVV is a telephone- and computer-based system that electronically verifies that service visits occur and documents the precise time that the provision of services begins and ends.

Currently, EVV is used to track and document the delivery of attendant-like services in select community-based programs. The adoption amends the rules in Chapter 68 to add nursing services as a type of service that is documented with EVV as applicable to each program. Additional amendments update program references and definitions.

DADS received no comments regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §531.0005, 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-4162



PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 732. CONTRACTED SERVICES

The Health and Human Services Commission adopts, 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 without changes to the proposed text as published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 928). 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 adopts 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 repealed; (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 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 this content of this rule via the signed contract.

Section 732.275 is repealed because it is preempted by VPTS in Government Code Chapter 2155.

The sections will function by reflecting current procedures.

No comments were received regarding adoption of the sections.

SUBCHAPTER A. GENERAL PROCEDURES

40 TAC §732.103, §732.109

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Human Resources Code §40.058, which grants DFPS the authority to enter into contracts, and Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

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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 adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Human Resources Code §40.058, which grants DFPS the authority to enter into contracts, and Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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40 TAC §§732.243 - 732.255, 732.260, 732.263, 732.266, 732.275

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Human Resources Code §40.058, which grants DFPS the authority to enter into contracts, and Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. AUDITING

40 TAC §732.305

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Human Resources Code §40.058, which grants DFPS the authority to enter into contracts, and Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopts, 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 without changes to the proposed text published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 933). The justification for 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 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 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 Edition*, Licensing is amending rules 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.

The amendments will function by ensuring that children will have greater protection and operations will have access to clearer information.

During the public comment period, DFPS received comments from the Texas Medical Association and a listed family home. A summary of the comments and responses follows:

Comment: The Texas Medical Association supports the rule changes in this chapter regarding the vaccine policy. The Texas Medical Association stated they have worked to support evidence-based immunization practices in many settings and believe vaccine policies in the child-care setting are an important factor in protecting a vulnerable population.

Response: DFPS appreciates the comment.

Comment regarding §744.3255: The commenter indicated that imposing loose fill requirements on child care homes would create a financial burden to home providers.

Response: This rule does not apply to listed family homes or registered child care homes. The requirements only apply to operations exclusively providing before and after-school care services as defined by the Human Resources Code (HRC) §42.002(20) and school-age program services as defined by the HRC §42.002(22). The revisions to the rule do not create a new financial burden for the providers that this rule does apply to. The purpose of the revision is to clarify that operations licensed prior to September 1, 2010, must maintain at least six inches of loose-fill surfacing material in playground use zones until September 1, 2015, at which point the operation must add three additional inches of loose-fill surfacing material to bring the minimum amount of loose-fill surfacing up to a total of nine inches. DFPS is adopting this section without change.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 4. OPERATIONAL POLICIES

40 TAC §744.501

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. HEALTH PRACTICES DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §744.2501

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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DIVISION 3. ILLNESS AND INJURY

40 TAC §744.2579, §744.2581

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER N. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT

DIVISION 4. SURFACING

40 TAC §744.3255

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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40 TAC §744.3257

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER P. FIRE SAFETY AND EMERGENCY PRACTICES

DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §744.3553

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, 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 without changes to the proposed text published in the February 14, 2014, issue of the *Texas Register* (39

TexReg 937). The justification for the amendments and new section 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. Training 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.

The amendments will function by ensuring 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.

No comments were received regarding adoption of the sections.

SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

40 TAC §745.37

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services;

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).

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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 adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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SUBCHAPTER M. ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS

DIVISION 1. ADMINISTRATIVE REVIEWS

40 TAC §745.8805

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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DIVISION 2. DUE PROCESS HEARINGS

40 TAC §745.8837

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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SUBCHAPTER N. ADMINISTRATOR LICENSING

DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

40 TAC §745.8994

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.501, 746.3401, 746.4907, and 746.5202; new §§746.2428, 746.3609, and 746.3611; and the repeal of §746.4908 without changes to the proposed text published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 940). The justification for 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 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 rules repeal the "grandfathering" rule at §746.4908 and transfer 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 amending rules 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 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 change 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(a).

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.

The amendments will function by ensuring that children will have greater protection and operations will have access to clearer information.

During the public comment period, DFPS received comments from the Texas Medical Association and eight licensed child-care centers. A summary of the comments and responses follows:

Comment: The Texas Medical Association supports the changes regarding the vaccine policy. The Texas Medical Association stated they have worked to support evidence-based immunization practices in many settings and believe vaccine policies in the child-care setting are an important factor in protecting a vulnerable population.

Response: DFPS appreciates the comment.

Comments concerning §746.2428: DFPS received three comments.

(1) One commenter expressed understanding the need to eliminate risk to infants, but stated prohibiting swaddling is extreme. The commenter stated that sleep has health benefits and some babies do not rest well in an active environment without the aid of a swaddle. The commenter stated it is difficult to provide the proper amount of sleep when all soothing options have been banned. The commenter stated the operation would be willing to require caregivers complete annual training on safe swaddling.

Response: While DFPS recognizes the importance of sleep for babies, the department's primary focus is that of safe sleep. This rule reflects the most recent research available regarding safe sleep practices in child care settings as recommended by *Caring for Our Children, 3rd Edition*, and the American Academy of Pediatrics (AAP).

(2) One commenter asked how swaddling is defined, if it is acceptable to use the "swaddle sacks" which have Velcro flaps, and for examples on how to keep a sleeping baby warm.

Response: Caregivers may use other soothing options, such as pacifiers, rocking an infant, using a swing, or configuring classrooms so that the cribs are away from the play area if possible. Caregivers may also hold a swaddled baby, but not lay the baby down.

(3) One commenter asked why caregivers are not taught the "correct" way to swaddle instead of prohibiting swaddling.

Response: The safe sleep materials developed by the AAP contain information on how to keep a sleeping baby warm without swaddling.

DFPS is adopting §746.2428 without change.

Comment concerning §746.3401:

One commenter asked why they must obtain a new letter from a state or local sanitation official or county judge when they have the letter the Department of State Health Services (DSHS) sent out in March 2013, notifying them they would no longer conduct sanitation inspections at child-care operations.

Response: Because DSHS is a state sanitation official, the letter from DSHS will serve as acceptable documentation to demonstrate to Licensing that a sanitation inspection from a state sanitation official is not available to the operation. If a local sanitation inspection is also not available to the operation, the operation will have to obtain and maintain documentation from a local sanitation official or county judge stating that an inspection from a local sanitation official is not available. DFPS is adopting this section without change.

Comments concerning §746.3611: DFPS received five comments.

(1) One commenter stated the proposed rule is unclear and if mandated may cause operations to lose staff.

Response: This rule change is statutorily mandated. The rule change requires each operation to develop and implement policy that includes the eight areas required in rule. The operation will determine what vaccines, if any, should be required based on the level of risk the employee presents to children due to the employee's contact with children. Licensing will evaluate the operation's compliance by ensuring the operation developed a policy that addresses the requirements in this section. In keeping with the intent of the legislation, Licensing will not measure compliance by whether the operation requires employees to have

vaccines or by which vaccines the employee does require employees to receive.

(2) One commenter asked if the employees will need shot records similar to children's immunization records. The commenter asked if the employee's shot records will be available at a low cost.

Response: There are no specific requirements in the rule regarding an employee's shot record.

(3) One commenter asked if the employer determines that staff do not need vaccines will Licensing accept that decision. The commenter asked if Licensing will have a different interpretation of which vaccines employees should receive than the child care operation.

Response: Licensing will evaluate the operation's compliance by ensuring the operation developed a policy that addresses the requirements in this section. In keeping with the intent of the legislation, Licensing will not measure compliance by whether the operation requires employees to have vaccines or by which vaccines the employee does require employees to receive. DFPS will provide a *Helpful Hint* box in the minimum standard publication with a link to the Centers for Disease Control and Prevention website that lists the most current recommendations of the Advisory Committee on Immunization Practices.

(4) One commenter expressed concern with the cost and availability of vaccines. The commenter asked whether vaccines are necessary since there is no indication that diseases are increasing. The commenter stated that public schools already have a vaccination policy in place for staff and the population served is similar, so why not follow the school's policies. The commenter stated that there will always be people who object to vaccines due to religious beliefs or reasons of consciences who will be in contact with children and may spread disease. The commenter stated that requiring vaccinations adds a burden to the operation and to child care staff and another restriction on the individual's rights and liberties.

Response: DFPS will provide a *Helpful Hint* box in the minimum standard publication with a link to the Centers for Disease Control and Prevention website that lists the most current recommendations of the Advisory Committee on Immunization Practices. Also, DSHS is assisting DFPS in developing a technical assistance document that discusses vaccine preventable disease.

(5) One commenter stated that the proposed rule is written very vaguely making it unclear as to what diseases fall into this category. The commenter stated this change could be very expensive to the employees.

Response: DFPS will provide a *Helpful Hint* box in the minimum standard publication with a link to the Centers for Disease Control and Prevention website that lists the most current recommendations of the Advisory Committee on Immunization Practices. Also, DSHS is assisting DFPS in developing a technical assistance document that discusses vaccine preventable disease.

DFPS is adopting this section without change.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 4. OPERATIONAL POLICIES

40 TAC §746.501

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

40 TAC §746.2428

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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SUBCHAPTER R. HEALTH PRACTICES DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §746.3401

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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DIVISION 3. ILLNESS AND INJURY

40 TAC §746.3609, §746.3611

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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SUBCHAPTER U. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT DIVISION 5. SURFACING

40 TAC §746.4907

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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40 TAC §746.4908

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §746.5202

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission adopts, 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 amendment to §747.201 is adopted with changes to the proposed text published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 944). The amendments to §747.501 and §747.5003; and new §§747.2328, 747.3409, and 747.3411 are adopted without changes to the proposed text and will not be republished. The justification for 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) requires special considerations for children with special needs in emergency preparedness plan requirements; (3) adds further clarification on providing a safe

sleep environment for infants younger than 12 months of age; and (4) changes 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 that 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 adopting amendments that require child-care homes to include in their emergency preparedness plan how children with special needs will be evacuated in the event of an emergency.

The change related to safe sleep practices adds 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.

The sections will function by ensuring that children have greater protection and child-care homes have greater flexibility with respect to their business structure.

During the public comment period, DFPS received comments from the Texas Medical Association, a listed family home, and a licensed home. A summary of the comments and DFPS's responses follow:

Comment: The Texas Medical Association supports the rule changes to Chapter 747 regarding the vaccine policy. The Texas Medical Association stated they have worked to support evidence-based immunization practices in many settings and believe vaccine policies in the child-care setting are an important factor in protecting a vulnerable population.

Response: DFPS appreciates the comment.

Comment concerning §747.201: One commenter asked if rule change means the primary caregiver may have a job outside the home if they have qualified substitutes or assistants. The commenter stated that people may misinterpret the rule as written.

Response: The rule is not intended to allow a primary caregiver to have another job that may conflict with the caregiver's ability to ensure the home operates in compliance with rules and minimum standards. Current §747.205 outlines the requirement that the primary caregiver may only be "temporarily absent for limited amounts of time" for certain types of events such as "vacations, short-term family emergencies or family business, illness, hospitalization or doctor appointments, jury duty, to attend training, or to attend to child-care business." DFPS is making no changes to this rule in response to this comment.

Comment: Following the conclusion of the official 30-day comment period, DFPS received one additional comment from Texans Care for Children expressing concern that the rule, as drafted, is confusing and might be interpreted by some as stating that someone other than the primary caregiver may be the permit holder in a home.

Response: DFPS agrees with this commenter and is making a revision to clarify its intent, which is to allow the primary caregiver of a home to form a business entity.

Comment concerning §747.2328: One commenter stated that swaddling allows babies to rest comfortably so they can be happy.

Response: While DFPS recognizes the importance of sleep for babies, DFPS's primary focus is that of safe sleep. This change reflects the most recent research available regarding safe sleep practices in child care setting as recommended by *Caring for Our Children, 3rd Edition* and the American Academy of Pediatrics (AAP). Caregivers may use other soothing options to help a baby sleep, such as pacifiers, rocking an infant, using a swing, or moving cribs away from the play area if possible. Caregivers may also hold a swaddled baby, but not lay the baby down. DFPS is adopting this section without change.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 1. PRIMARY CAREGIVER

40 TAC §747.201

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner 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 these minimum standards and the licensing laws. The primary caregiver of a licensed or registered child-care home must:

(1) 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?); and

(2) Be the permit holder unless the primary caregiver forms a business entity that is the permit holder for the home.

(b) A permit holder licensed to operate one or more group day care homes prior to September 1, 2003, must designate, on a DFPS form, a person who meets the qualifications in §747.1101 of this title (relating to Who is required to meet the qualifications specified in this division?) to act as the primary caregiver for each licensed child-care home. This exception will not apply to an operation when the permit issued prior to September 1, 2003, is no longer valid.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. OPERATIONAL POLICIES

40 TAC §747.501

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

40 TAC §747.2328

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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SUBCHAPTER R. HEALTH PRACTICES DIVISION 3. ILLNESS AND INJURY

40 TAC §747.3409, §747.3411

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §747.5003

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.43, 748.105, 748.235, 748.303, and 748.3001; and new §748.241, in its Minimum Standards for General Residential Operations chapter. The amendment to §748.235 is adopted with changes to the proposed text as published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 947). The amendments to §§748.43, 748.105, 748.303, and 748.3001; and new §748.241 are adopted without changes to the proposed text and will not be republished. The justification for 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 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 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 Edition*, Licensing is adopting 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.

The sections will function by ensuring that children have greater protection and operations will have access to clearer information.

During the comment period, DFPS received a comment from the Texas Medical Association supporting the rule changes regarding the vaccine policy. The Texas Medical Association stated they have worked to support evidence-based immunization practices in many settings and believe vaccine policies in the child-care setting are an important factor in protecting a vulnerable population.

DFPS is adopting §748.235 with a minor clarification. In paragraph (20)(B), DFPS is changing the first "or" to "and" to clarify that the operation must plan to make both medications and medical equipment available to children with special needs or medical conditions in the event of a disaster or emergency.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §748.43

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §748.105

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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DIVISION 5. POLICIES AND PROCEDURES

40 TAC §748.235, §748.241

The amendment and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective

Services; 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) Visitation rights between the child and family members and the child and friends;
- (2) The child's rights to correspond by mail with family members and friends, including any policies regarding mail restrictions and receipt of electronic mail;
- (3) The child's rights to correspond by telephone with family members and friends;
- (4) The child's rights to receive and give gifts to family, friends, employees, or other children in care, including any restrictions on gifts;
- (5) Personal possessions a child is or is not allowed to have;
- (6) Emergency behavior intervention techniques if the use of emergency behavior intervention is permitted in your operation. If its use is not permitted, you must have a policy disallowing its use;
- (7) Discipline policies, including techniques and methods for ensuring the appropriateness of discipline techniques used with a child. These policies and procedures must:
 - (A) Guide employees in methods used for discipline of a child;
 - (B) Include measures for positive responses to appropriate behavior;
 - (C) Make clear that discipline of any type is inappropriate and not permitted for infants; and
 - (D) Emphasize the importance of nurturing behavior, stimulation, and promptly meeting the child's needs;
- (8) Any religious program or activity that you offer and whether you require participation by children, if applicable;
- (9) Transitional living policies, if you offer such a program;
- (10) The plans for meeting the educational needs of each child, including your educational program and required participation by children, if applicable;
- (11) When trips with caregivers away from the operation are allowed and what protocols will be used;
- (12) Program expectations and rules that apply to all children;
- (13) A general daily schedule for routine activities for children in care;
- (14) Child grievance procedures;
- (15) The type and frequency of reports to parents;
- (16) Procedures for routine and emergency diagnosis and treatment of medical and dental problems;

(17) Routine health care relating to pregnancy and childbirth, if you admit and/or care for a pregnant child;

(18) Your plan for providing health-care services to a child with primary medical needs;

(19) If applicable, the policy required by §748.3931(3) of this title (relating to Are weapons, firearms, explosive materials, and projectiles permitted at my operation?); and

(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) 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 and medical equipment will be made available to children with special needs or medical conditions.

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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 adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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SUBCHAPTER O. SAFETY AND EMERGENCY PRACTICES

DIVISION 1. SANITATION AND HEALTH PRACTICES

40 TAC §748.3001

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.503, 749.1813, and 749.2907; and new §749.539, in its Minimum Standards for Child-Placing Agencies chapter. The amendment to §749.2907 is adopted with changes to the proposed text published in the February 14, 2014, issue

of the *Texas Register* (39 TexReg 951). The amendments to §749.503 and §749.1813 and new §749.539 are adopted without changes to the proposed text and will not be republished. The justification for 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 Edition*, Licensing is adopting 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 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 medications or medical equipment will be made available to children.

The sections will function by ensuring that children have greater protection and operations will have access to clearer information.

During the public comment period, DFPS received one comment from a child-placing agency and one comment from a listed family home related to §749.1813. One commenter requested clarification on how children are supposed to keep warm. One commenter supports allowing a child under 12 months to have a blanket in the crib and states that the word "blankets" should be removed from the rule. While DFPS recognizes the importance of sleep for babies, DFPS's primary focus is that of safe sleep. This rule change reflects the most recent research available regarding safe sleep practices in child care setting as recommended by *Caring for Our Children, 3rd Edition*, and the American Academy of Pediatrics (AAP). Adding "blankets" to the rule helps further clarify which items increase the risk of SIDS. Raising the age in the rule will help to provide a safe sleep environment for infants younger than 12 months of age. DFPS is adopting this rule without change.

DFPS is adopting §749.2907 with a minor clarification. In subsection (a)(2), DFPS is changing the first "or" to "and" to clarify that the operation must plan to make both medications and medical equipment available to children with special needs or medical conditions in the event of a disaster or emergency.

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

40 TAC §749.503

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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 April 23, 2014.

TRD-201401959

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Effective date: June 1, 2014

Proposal publication date: February 14, 2014

For further information, please call: (512) 438-3437



DIVISION 2. OPERATION RECORDS

40 TAC §749.539

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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 April 23, 2014.

TRD-201401960

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Effective date: June 1, 2014

Proposal publication date: February 14, 2014

For further information, please call: (512) 438-3437



SUBCHAPTER K. FOSTER CARE SERVICES: DAILY CARE, PROBLEM MANAGEMENT DIVISION 1. ADDITIONAL REQUIREMENTS FOR INFANT CARE

40 TAC §749.1813

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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).

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 April 23, 2014.

TRD-201401961

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Effective date: June 1, 2014

Proposal publication date: February 14, 2014

For further information, please call: (512) 438-3437



SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT DIVISION 1. HEALTH AND SAFETY

40 TAC §749.2907

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner 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 and equipment will be made available to children with special needs or medical conditions.

(b) Foster parents and caregivers must know the procedures for meeting disasters and emergencies, including evacuation procedures, supervision of the children, and contacting emergency help.

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 April 23, 2014.

TRD-201401962

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Effective date: June 1, 2014

Proposal publication date: February 14, 2014

For further information, please call: (512) 438-3437



CHAPTER 750. MINIMUM STANDARDS FOR INDEPENDENT FOSTER HOMES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §750.43 and §750.105; and new §750.111 without changes to the proposed text published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 953). The justification for the sections 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).

The sections will function by ensuring that children will have greater protection.

During the public comment period, DFPS received a letter from the Texas Medical Association supporting the changes regarding the vaccine policy. The Texas Medical Association stated they have worked to support evidence-based immunization practices in many settings and believe vaccine policies in the child-care setting are an important factor in protecting a vulnerable population.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §750.43

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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 April 23, 2014.

TRD-201401963

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Effective date: June 1, 2014

Proposal publication date: February 14, 2014

For further information, please call: (512) 438-3437



SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §750.105, §750.111

The amendment and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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 April 23, 2014.

TRD-201401964

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Effective date: June 1, 2014

Proposal publication date: February 14, 2014

For further information, please call: (512) 438-3437



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) adopts amendments to §15.51, Definitions, and §15.55, Construction Cost Participation. The amendments to §15.51 and §15.55 are adopted without changes to the proposed text as published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 954) and will not be republished.

EXPLANATION OF ADOPTED 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.

COMMENTS

No comments were received on the proposed amendments.

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

Transportation Code, Chapter 221; Transportation Code, Chapter 222, Subchapter C; and Transportation Code, Chapter 224.

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 April 24, 2014.

TRD-201401981

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

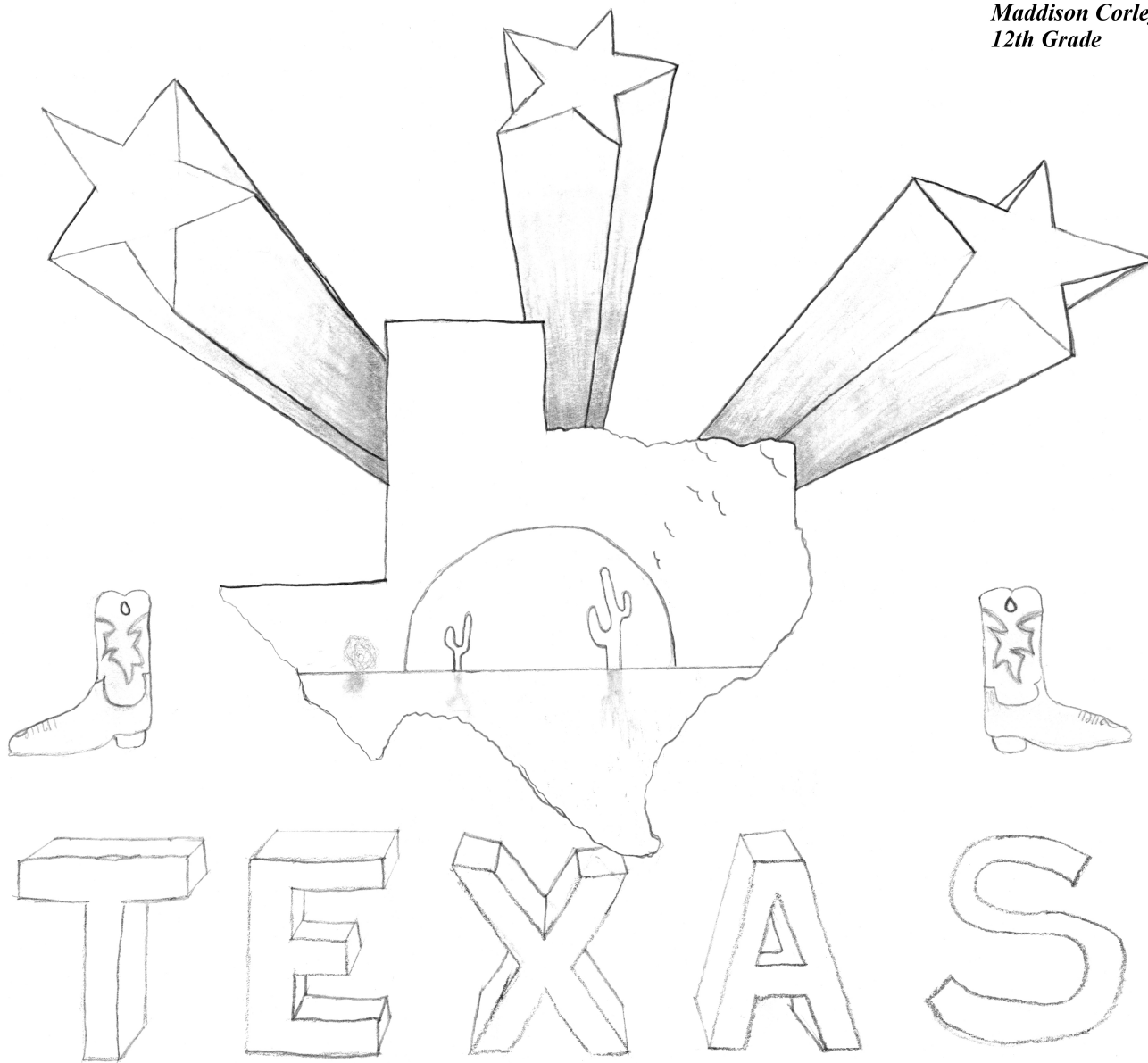
Effective date: May 14, 2014

Proposal publication date: February 14, 2014

For further information, please call: (512) 463-8683



Maddison Corley
12th Grade



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 61, School Districts, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 61 are organized under Subchapter A, Board of Trustees Relationship.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 61, Subchapter A, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201401934

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: April 23, 2014



The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 109 are organized under the following subchapters: Subchapter A, Budgeting, Accounting, Financial Reporting, and Auditing for School Districts; Subchapter B, Texas Education Agency Audit Functions; Subchapter C, Adoptions By Reference; and Subchapter D, Uniform Bank Bid or Request for Proposal and Depository Contract.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 109, Subchapters A-D, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

The SBOE is adopting amendments to 19 TAC Chapter 109, Subchapter D, that reduce paperwork and streamline the process by which a school district selects a depository bank. The adopted amendments may be found in the Adopted Rules section of this issue of the *Texas Register*.

TRD-201401935

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: April 23, 2014



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 109 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning Financial Accountability; Subchapter BB, Commissioner's Rules Concerning Financial Exigency; and Subchapter CC, Commissioner's Rules Concerning Federal Fiscal Compliance and Reporting.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 109, Subchapters AA-CC, continue to exist.

The public comment period on the review of 19 TAC Chapter 109, Subchapters AA-CC, begins May 9, 2014, and ends June 9, 2014. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201402057

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: April 30, 2014



Texas Groundwater Protection Committee

Title 31, Part 18

The Texas Groundwater Protection Committee (TGPC or committee) files this notice of intention to review and proposes the readoption of Chapter 601, Groundwater Contamination Report. Concurrently, the committee proposes to amend §601.2, relating to Applicability. The proposed amendment would update the names of the Texas Department

of State Health Services, Texas A&M AgriLife Research, Texas State Soil and Water Conservation Board, and Water Well Drillers and Pump Installers Program of the Texas Department of Licensing and Regulation. The proposed amendment can be found in the Proposed Rules section in this issue of the *Texas Register*.

This review of Chapter 601 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for re adoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

The TGPC was created by the 71st Legislature in 1989 to bridge gaps between existing state groundwater programs and to optimize water quality protection by improving coordination among agencies involved in groundwater activities. The committee's rules in Chapter 601 define the conditions that constitute groundwater contamination for the purpose of inclusion of cases in the public files for each state agency having responsibilities related to the protection of groundwater. These rules also describe the contents of the committee's Joint Groundwater Monitoring and Contamination Report required under Texas Water Code (TWC), §26.406. The report describes the current status of groundwater monitoring activities conducted by or required by each agency at regulated facilities or associated with regulated activities; contains a description of each case of groundwater contamination documented during the previous calendar year; contains a description of each case of contamination documented during the previous year for which enforcement action was incomplete at the time of issuance of the preceding report; and indicates the status of enforcement action for each case of contamination which is listed. The rules also specify the form and content of notices of groundwater contamination that must be mailed to each owner of a private drinking water well that may be affected by documented cases of groundwater contamination and to each applicable groundwater conservation district as directed by TWC, §26.408.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The committee conducted a preliminary review and determined that the reasons for the rules in Chapter 601 continue to exist. Chapter 601 is necessary because TWC, §26.406 specifically provides that the committee shall adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the joint report required by this section, and TWC, §26.408 specifically directs the committee to designate the form and content of the notice of groundwater contamination mailed to owners of private drinking water wells and to groundwater conservation districts. To meet these statutory requirements, the rules provide the definitions and applicability for maintaining public files on groundwater contamination cases and contents of the annual Joint Groundwater Monitoring and Contamination Report required by TWC, §26.406(d) and the form and content of the mailed notice required by TWC, §26.408(c).

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The committee invites public comment on whether the reasons for the rules in Chapter 601 continue to exist. Comments may be submitted to Patricia Durón 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. All comments should reference TGPC-Groundwater Contamination Report Quadrennial Review. Comments must be received by 5:00 p.m., June 9, 2014. For further information or questions concerning this proposal, please contact Cary Betz, Designated Chairman, Texas Groundwater Protection Committee, at (512) 239-4506.

TRD-201401999

Robert Martinez

Director, Environmental Law Division, Texas Commission on Environmental Quality

Texas Groundwater Protection Committee

Filed: April 28, 2014



Adopted Rule Reviews

Texas Department of Public Safety

Title 37, Part 1

The Texas Department of Public Safety (the department) files this notice of re adoption of 37 TAC Chapter 2, concerning Capitol Access Pass; Chapter 14, concerning School Bus Safety Standards; Chapter 35, concerning Private Security; and Chapter 37, concerning Sex Offender Registration. Chapters 2, 14, and 37 are re adopted without amendments. Chapter 35 was reorganized and existing language was consolidated to improve the overall clarity of the chapter.

The re adoption of Chapters 2, 14, 35, and 37 is filed in accordance with the department's Notice of Intent to Review published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1881). No comments were received in response to the proposed rule review.

Texas Government Code §2001.039 requires agencies to review and consider for re adoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The department reviewed Chapters 2, 14, 35, and 37 and determined that the original justification for the rules continues to exist.

This concludes the department's review of 37 TAC Chapters 2, 14, 35, and 37.

TRD-201402016

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Filed: April 28, 2014



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

DISCLOSURE AND CONSENT - ANESTHESIA and/or PERIOPERATIVE PAIN MANAGEMENT (ANALGESIA)

TO THE PATIENT: *You have the right, as a patient, to be informed about your condition and the recommended anesthesia/analgesia to be used so that you may make the decision whether or not to receive the anesthesia/analgesia after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the anesthesia/analgesia.*

I voluntarily request that anesthesia and/or perioperative pain management care (analgesia) as indicated below be administered to me (the patient). I understand it will be administered by an anesthesia provider and/or the operating practitioner, and such other health care providers as necessary. Perioperative means the period shortly before, during and shortly after the procedure.

I understand that anesthesia/analgesia involves additional risks and hazards but I request the use of anesthetics/analgesia for the relief and protection from pain during the planned and additional procedures. I realize the type of anesthesia/analgesia may have to be changed possibly without explanation to me.

I understand that serious, but rare, complications can occur with all anesthetic/analgesic methods. Some of these risks are breathing and heart problems, drug reactions, nerve damage, cardiac arrest, brain damage, paralysis, or death.

I also understand that other complications may occur. Those complications include but are not limited to:

Check planned anesthesia/analgesia method(s) and have the patient/other legally responsible person initial.

_____ GENERAL ANESTHESIA – injury to vocal cords, teeth, lips, eyes; awareness during the procedure; memory dysfunction/memory loss; permanent organ damage; brain damage.

_____ REGIONAL BLOCK ANESTHESIA/ANALGESIA - nerve damage; persistent pain; bleeding/hematoma; infection; medical necessity to convert to general anesthesia; brain damage.

_____ SPINAL ANESTHESIA/ANALGESIA - nerve damage; persistent back pain; headache; infection; bleeding/epidural hematoma; chronic pain; medical necessity to convert to general anesthesia; brain damage.

_____ EPIDURAL ANESTHESIA/ANALGESIA - nerve damage; persistent back pain; headache; infection; bleeding/epidural hematoma; chronic pain; medical necessity to convert to general anesthesia; brain damage.

_____ MONITORED ANESTHESIA CARE (MAC) [or SEDATION/ANALGESIA] - memory dysfunction/memory loss; medical necessity to convert to general anesthesia; permanent organ damage; brain damage.

_____ DEEP SEDATION – memory dysfunction/memory loss; medical necessity to convert to general anesthesia; permanent organ damage; brain damage.

_____ MODERATE SEDATION – memory dysfunction/memory loss; medical necessity to convert to general anesthesia; permanent organ damage; brain damage.

Additional comments/risks:

I understand that no promises have been made to me as to the result of anesthesia/analgesia methods.

I have been given an opportunity to ask questions about my anesthesia/analgesia methods, the procedures to be used, the risks and hazards involved, and alternative forms of anesthesia/analgesia. I believe that I have sufficient information to give this informed consent.

This form has been fully explained to me, I have read it or have had it read to me, the blank spaces have been filled in, and I understand its contents.

PATIENT/OTHER LEGALLY RESPONSIBLE PERSON (signature required)

DATE: _____ TIME: _____ A.M. /P.M.

WITNESS:

Signature

Name (Print)

Address (Street or P.O. Box)

City, State, Zip

REVELACIÓN Y CONSENTIMIENTO - ANESTESIA y CONTROL DE DOLOR (ANALGESIA) PERIOPERATORIO

AL PACIENTE: *tiene derecho, como paciente, a ser informado sobre su enfermedad y la anestesia/analgesia recomendada que se usará, de modo que usted pueda tomar la decisión de si recibir la anestesia/analgesia o no después de conocer los riesgos y los peligros relacionados. Esta revelación no tiene como fin asustarlo o alarmarlo; es simplemente un esfuerzo por tenerlo mejor informado para que usted pueda dar o negar su consentimiento para la anestesia/analgesia.*

Solicito voluntariamente que me administren a mí (el paciente) la anestesia y la atención de control de dolor (analgesia) perioperatoria, según lo indicado a continuación. Entiendo que será administrada por un proveedor de anestesia, el profesional que realice la operación o algún otro proveedor de salud de ese tipo, de ser necesario. Perioperatorio significa el periodo poco antes de, durante y poco después del procedimiento.

Aunque entiendo que la anestesia/analgesia implica riesgos y peligros adicionales, solicito que usen anestésicos/analgesia para el alivio de y la protección contra el dolor durante los procedimientos planeados y adicionales. Comprendo que el tipo de anestesia/analgesia podría tener que cambiarse, posiblemente sin darme una explicación.

Entiendo que pueden ocurrir complicaciones graves, pero raras, con todos los métodos anestésicos/analgésicos. Algunos de estos riesgos son problemas de respiración y del corazón, reacciones a la medicina, daño nervioso, paro cardíaco, daño cerebral, parálisis o la muerte.

También entiendo que podrían ocurrir otras complicaciones. Entre esas complicaciones se incluyen:

Marque los métodos de anestesia/analgesia planeados y haga que el paciente/otra persona legalmente responsable ponga sus iniciales.

_____ ANESTESIA GENERAL –lesión a las cuerdas vocales, los dientes, los labios, los ojos; estar consciente durante el procedimiento; disfunción de la memoria/pérdida de la memoria; daño a órganos permanente; daño cerebral.

_____ ANESTESIA/ANALGESIA DE BLOQUEO REGIONAL -daño nervioso; dolor persistente; sangrado/hematoma; infección; necesidad médica de usar anestesia general en vez; daño cerebral.

_____ ANESTESIA/ANALGESIA ESPINAL -daño nervioso; dolor de espalda persistente; dolor de cabeza; infección; sangrado/hematoma epidural; dolor crónico; necesidad médica de usar anestesia general en vez; daño cerebral.

_____ ANESTESIA/ANALGESIA EPIDURAL -daño nervioso; dolor de espalda persistente; dolor de cabeza; infección; sangrado/hematoma epidural; dolor crónico; necesidad médica de usar anestesia general en vez; daño cerebral.

_____ ATENCIÓN DE ANESTESIA VIGILADA (MAC) [o **SEDACIÓN/ANALGESIA**] - disfunción de la memoria/pérdida de la memoria; necesidad médica de usar anestesia general en vez; daño a órganos permanente; daño cerebral.

_____ **SEDACIÓN PROFUNDA** - disfunción de la memoria/pérdida de la memoria; necesidad médica de usar anestesia general en vez; daño a órganos permanente; daño cerebral.

_____ **MODERADA SEDACIÓN** - disfunción de la memoria/pérdida de la memoria; necesidad médica de usar anestesia general en vez; daño a órganos permanente; daño cerebral.

Comentarios/riesgos adicionales:

Entiendo que no me han prometido nada con respecto al resultado de los métodos de anestesia/analgesia.

Me han dado la oportunidad de hacer preguntas sobre los métodos de anestesia/analgesia, los procedimientos que se usarán, los riesgos y los peligros relacionados, y las formas de anestesia/analgesia alternativas. Creo tener suficiente información para dar este consentimiento informado.

Me han explicado completamente este formulario, lo he leído o me lo han leído, se han rellenado los espacios en blanco, y entiendo el contenido de éste.

PACIENTE/OTRA PERSONA LEGALMENTE RESPONSABLE (se requiere una firma)

FECHA: _____ **HORA:** _____ **a.m./p.m.**

TESTIGO:

Firma

Nombre (en letra de molde)

Domicilio (calle y número o apartado postal)

Ciudad, estado y código postal

Figure: 40 TAC §749.2447

Required Information	Description of Discussion, Assessment and Documentation Requirements
(1) The age of the prospective foster parents. Ages of all other members of the household.	All prospective foster parents must be at least 21 years old. You must document the ages of all household members and include documentation verifying the ages of the foster parents.
(2) The educational level of the prospective foster parents.	You must ensure and document that each foster parent is able to comprehend and benefit from training and provide appropriate care and supervision to meet the needs of children in care, in areas such as health, education, and discipline/behavior management, by doing either or both of the following: (A) Require that foster parents have a high school diploma or a G.E.D. high school equivalency. The Texas Education Agency (TEA) or another public education entity outside of Texas must recognize the high school program or high school equivalent program; or (B) Have a screening program that: (i) Ensures that each foster parent is able to be an appropriate role model for children in placement; (ii) Ensures that each foster parent is able to communicate with the child in the child's own language, or has other means to communicate with the child in the child's own language; and (iii) Addresses adequately basic competencies that would otherwise be met by a high school diploma or G.E.D. including basic reading, writing, and math.
(3) Personal characteristics.	You must document information from foster parents that demonstrate: (A) Emotional stability, good character, good health, and adult responsibility; and (B) The ability to provide nurturing care, appropriate supervision, reasonable discipline, and a home-like atmosphere for children.
(4) History of current and previous interpersonal relationships, including marriages, common-law marriages, and other relationships between people who share or have shared a domestic life without being married.	You must document information regarding the marital status of the foster parents, including the present marital status, as well as a history of previous marriages or significant interpersonal relationships. You must include a description of the marriage or relationship, including reasons why any previous marriages or significant interpersonal relationships were ended.
(5) A history of the prospective foster parents' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the prospective foster parents.

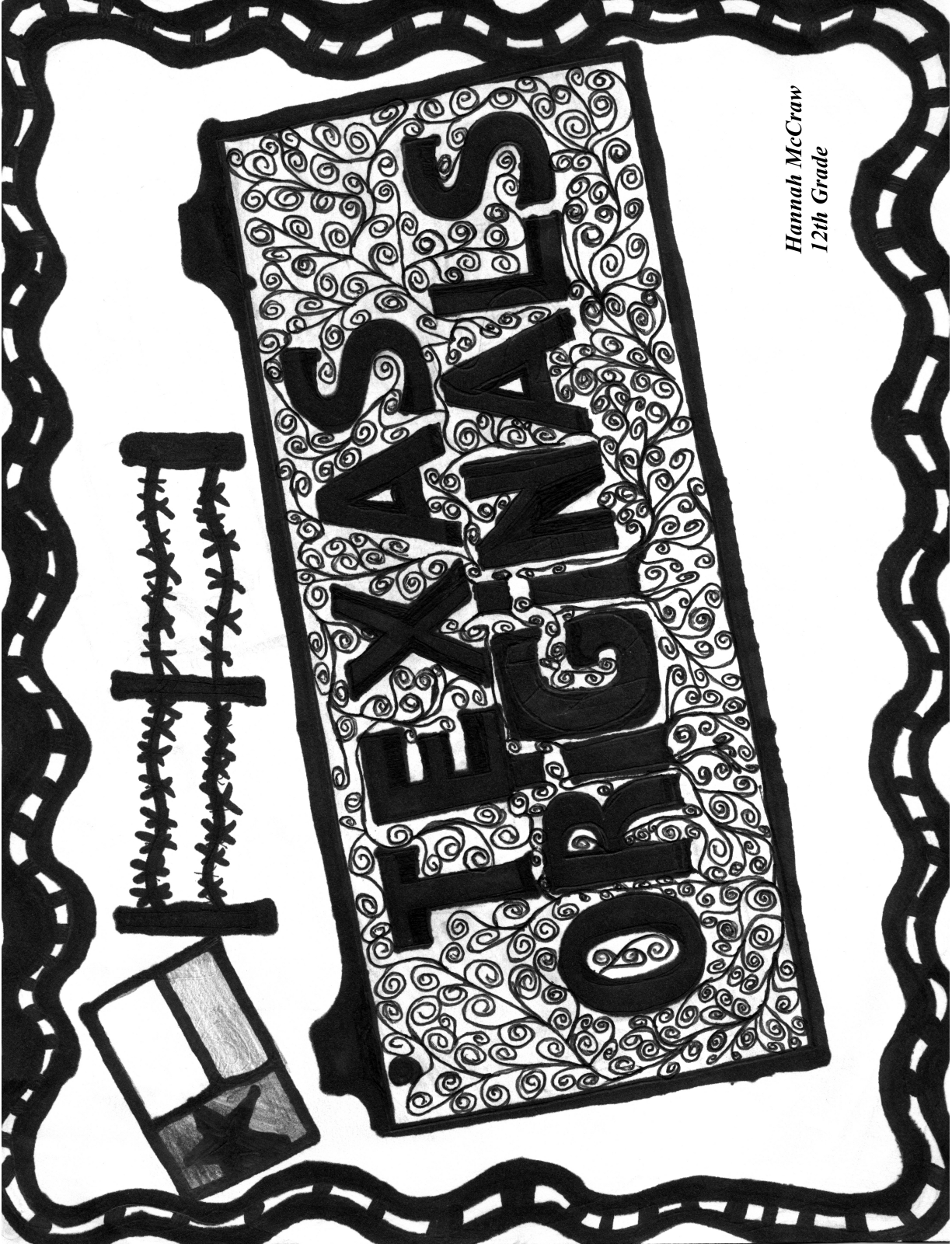
Required Information	Description of Discussion, Assessment and Documentation Requirements
(6) The financial status of the prospective foster family.	<p>You must discuss with the prospective foster parents the current reimbursement process and the foster parents' understanding of that process.</p> <p>You must verify and document that the prospective foster parents have sufficient up-front income or other readily available assets to support their household and all children in care prior to receiving the foster care reimbursement for services provided. For each prospective foster parent you must obtain, document and assess the following:</p> <p>(A) Proof of income for the past 60 days or two complete calendar months. Disability, social security, and/or other sources of income such as family support, Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) must be included, as applicable;</p> <p>(B) A copy of two consecutive itemized bank statements and/or the previous year's tax return. The bank statements must be related to the previous two calendar months prior to the date of application. If a foster family does not have two consecutive itemized bank statements or a previous year's tax return, then you must copy and document the evidence used to verify the financial status of the prospective foster family, including documenting the information used to verify the itemized monthly household expenses; and</p> <p>(C) A monthly household expense report itemizing the following expenses:</p> <ol style="list-style-type: none"> (1) Mortgage/Rent; (2) Utilities; (3) Transportation; (4) Food; (5) Medical; (6) Clothing; (7) Insurance; (8) Credit cards and loans; (9) Legal (i.e. attorney fees, alimony and/or child support); (10) Pet; and (11) Entertainment/miscellaneous.

Required Information	Description of Discussion, Assessment and Documentation Requirements
<p>(7) The results of criminal history and central registry background checks conducted on the prospective foster parents and any non-client person 14 years of age or older who regularly or frequently stays or is present in the home.</p>	<p>Persons applying to foster children and any person, excluding clients, 14 years of age or older who will regularly or frequently be staying or present at the home, must obtain a criminal history and central registry background check. See Chapter 745, Subchapter F of this title (relating to Background Checks). The results of those checks must be documented in the foster home screening and the foster home record.</p> <p>With respect to law enforcement service call information, you must do the following:</p> <p>(A) Obtain service call information from the appropriate law enforcement agency for the prospective foster parents' addresses for the past two years. Discuss with the prospective foster parents any service call information that you obtain from a law enforcement agency and the facts surrounding the incident.</p> <p>(B) Whether results were found or not, ask the prospective foster parents whether any law enforcement agency has responded to any of their residences in the past two years. If you obtain additional information from the prospective foster parents, request background information from each law enforcement agency that responded. Discuss the incident and any additional background information that you obtain with the prospective foster parents.</p> <p>(C) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.</p>
<p>(8) The prospective foster parents' motivation to provide foster care.</p>	<p>Assess and document the prospective foster parents' motivation and willingness to provide foster care.</p>
<p>(9) Health status of all persons living in the home.</p>	<p>Document information about the physical and mental health status (including substance abuse history) of all persons living in the home in relation to the family's ability to provide foster care. You must discuss whether any health-related issues noted may affect the prospective foster parent's ability to care for a child in care. You must also observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations and, if applicable, professional evaluations.</p>

Required Information	Description of Discussion, Assessment and Documentation Requirements
(10) The quality of the current interpersonal relationship, including marriage, common-law marriage, or a relationship between people who share a domestic life without being married, and family relationships.	Discuss, assess, and document the quality of the current and previous interpersonal and family relationships in relation to the family's ability to provide foster care. You must discuss and assess the stability of a couple's current and previous relationships, the strengths and problems of the relationship, and how those issues will affect the current environment and the prospective foster parents' ability to care for any foster children placed in the home. You must discuss and assess the quality of the relationships between prospective foster parents and their children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to foster children placed in the home.
(11) The prospective foster parents' feelings about their childhoods and parents.	Discuss, assess, and document the prospective foster parents' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of those experiences.
(12) The prospective foster parents' attitudes about a foster child's or his biological family's religion.	Evaluate and document prospective foster parents on: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child the opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if a foster parent's religious beliefs prohibit certain medical treatment.
(13) The prospective foster parents' values, feelings, and practices in regard to child care and discipline.	Discuss, assess, and document the applicants' knowledge of child development and their child-care experience. Discuss and assess the ways the applicants were disciplined as children and their reactions to the discipline they received. Discuss and assess the prospective foster parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. Discuss your approved disciplinary methods, which must comply with Subchapter K, Division 6 of this chapter (relating to Discipline and Punishment). If the prospective foster parents' current discipline methods are different than those that you approve, discuss and assess how they would change their child-care practices to conform to your approved methods.
(14) The prospective foster parents' sensitivity to and feelings about children who may have been subjected to abuse or neglect.	Discuss, assess, and document the prospective foster parents' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences will affect them, their families, and foster children in their care. Discuss and assess the prospective foster parent's ability to help children who have been abused or neglected. If a prospective foster parent experienced abuse or neglect as a child, assess his handling of those experiences and the impact of those experiences on the applicant's ability to help children deal with their own experiences. Assess the availability of family and community resources to meet the needs of the children in the family's care.

Required Information	Description of Discussion, Assessment and Documentation Requirements
(15) The prospective foster parents' sensitivity to and feelings about children's experiences of separation from or loss of their biological families.	Discuss, assess, and document the prospective foster parents' understanding of the dynamics of separation and loss and the effects of these experiences on children. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the potential foster parents' acceptance of the process of grief and loss for children and assess their ability to help a child through the grieving process.
(16) The prospective foster parents' sensitivity to, and feelings about, a child's biological family.	Discuss, assess, and document the prospective foster parents' feelings about the child's parents, including the issue of abuse or neglect of the child by the child's parents or other family members. Discuss and assess their sensitivity and reactions to the child's parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about the child's parents and assess their ability to help the child deal with those feelings. Discuss and assess the prospective foster parents' sensitivity to and acceptance of the child's relationships with the child's siblings. Discuss and assess their willingness to support the child's relationships with parents, siblings, and extended family, including their support for contacts between the child and the child's family.
(17) The attitude of other household members about the prospective foster parents' plan to provide foster care.	Discuss, assess, and document the attitudes of other household members toward the plan to provide foster care. Discuss and assess their involvement in the care of foster children, their attitudes toward foster children, and their acceptance of the verification as a foster family.
(18) The attitude of the prospective foster parents' extended family regarding foster care.	Discuss, assess, and document the extended family's attitude toward foster care and foster children and the involvement the extended family will have with foster children. Discuss and assess the impact the extended family's attitudes will have on the family's ability to provide foster care and whether the extended family will serve as a support system for the foster family and for foster children.
(19) Support systems available to prospective foster parents.	Discuss, assess, and document the support systems available to each foster parent and the support the family may receive from these resources. You must ask each prospective foster parent for information about any person who may provide support as a caregiver during an unexpected event or crisis situation, such as an illness or disability of a foster parent, loss of transportation, or the death of an immediate family member. Verify and document identifying information and availability of each person that will provide support as a caregiver.
(20) The prospective foster parents' expectations of and plans for foster children.	Discuss, assess, and document the prospective foster parents' expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Discuss and assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.

Required Information	Description of Discussion, Assessment and Documentation Requirements
(21) The language(s) spoken by the prospective foster parents.	Document the language(s) spoken by each prospective foster parent.
(22) Prospective foster parent's ability to work with specific kinds of behaviors and backgrounds.	<p>Discuss, assess, and document each prospective foster parent's willingness and ability to work with specific and challenging behaviors of foster children, including such things as backgrounds, special needs and/or disabilities.</p> <p>Discuss, assess, and document the prospective foster parents' understanding of the concepts of trauma informed care and how they would use those concepts in the care, treatment, and management of children placed in their home.</p> <p>Discuss, assess and document the prospective foster parents' willingness and ability to:</p> <p>(A) Care for and work with children of a specific gender; (B) Care for and work with children of a specific age range; (C) Care for a specific number of children, including whether or not the children are part of the same sibling group; (D) Provide respite care services to any additional number of children of a specific gender, within a specific age range, and with special needs that the family will not be providing care for full time; and (E) Provide any additional services Licensing regulates according to §749.61 of this title (relating to What types of Services does Licensing regulate?).</p>
(23) Background information from other child-placing agencies.	<p>Request and assess the following background information (if provided) from any child-placing agency that previously conducted a foster home screening, pre-adoptive home screening, or post placement adoptive report:</p> <p>(A) The screening, report, and related documentation; (B) Documentation of supervisory visits and evaluations; (C) Any record of deficiencies and their resolutions; and (D) The most current fire and health inspections.</p> <p>You must address the closure or any identified risk indicators, as applicable, with the prospective foster parents before approval and verification of the home if the background information indicates that:</p> <p>(A) The foster home was previously closed by a child-placing agency; or (B) There was one or more potential risk indicators that the child placing agency did not adequately address with the foster parents.</p>



*Hannah McCraw
12th Grade*

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 Applications: Parallel Pathways to Success Grant Program

I. Statement of Purpose. The Texas Department of Agriculture (TDA) is requesting applications for the Parallel Pathways to Success Grant Program. The program requires grant recipients to provide matching funds equal to or greater than the TDA grant award (1:1 match ratio). The purpose of this grant is to align educational resources with workforce needs by supporting the development of programs that offer rural high school students a more flexible education system with a focus on job training. Students will have the opportunity to concurrently earn a high school diploma and vocational skills certifications.

II. Eligibility. Grant applications/proposals will be accepted from an accredited high school, institution of higher learning, chamber of commerce, economic development commission or similar organization located in the state of Texas. Partnerships are encouraged; however, a single entity must be designated as the official applicant and responsible grantee (grantee).

Entities with an open Parallel Pathways to Success Grant are not eligible to receive an overlapping grant.

Applicants must demonstrate a benefit to students in rural areas in Texas. TDA defines "rural areas" as municipalities with a population of less than 50,000, and counties that have a non-metropolitan population of less than 200,000.

III. Funding Parameters. Selected projects will receive funding on a cost reimbursement basis. Funds will not be advanced to grantees. Selected grantees must have the financial capability to pay all costs upfront.

It is anticipated that selected applications will be funded in a range of \$75,000 to \$125,000. This does not include required Grantee Matching Funds.

Grantees will be required to meet a 1:1 match minimum; grantee must demonstrate expenditure of appropriate match amounts if proposed match exceeds 1:1. For every dollar requested, the grantee must show at least an equal amount of Grantee Matching Funds from allowable sources.

Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, applicants will be informed accordingly.

IV. Term of Funding or Duration of Projects. A Notice of grant award is anticipated to be made by August 2014. All approved projects have an anticipated start date of September 1, 2014 and must be completed by May 31, 2016.

V. Application Requirements. To be considered, applications must be complete and include all of the following information. Application and information can be downloaded from the Grants Office section under the Grants and Services tab at www.TexasAgriculture.gov.

VI. Deadline for Submission of Responses. The complete application packet including the proposal with signatures must be **received**

by **Thursday, June 26, 2014**. It is the applicant's responsibility to submit all materials necessary for evaluation early enough to ensure timely delivery. Electronic, hand-delivered or mailed applications must be **received** by TDA by close of business (5:00 p.m.) on **Thursday, June 26, 2014**. Late or incomplete proposals will not be accepted. Applicants may not supplement or amend the application after the deadline.

TDA will send an acknowledgement receipt by email indicating the application was received.

VII. Contact Information. For questions regarding submission of the proposal and/or TDA requirements, please contact the Grants Office at (512) 463-6908 or by email at Grants@TexasAgriculture.gov.

TRD-201402056

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: April 30, 2014

Cancer Prevention and Research Institute of Texas

Request for Applications C-15-ESTCO-1 Established Company Product Development Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from Texas-based companies for the research and development of innovative products addressing critically important needs related to diagnosis, prevention, and/or treatment of cancer and the product development infrastructure needed to support these efforts.

The goal of the Established Company Product Development Award is to finance the research and development of innovative products, services, and infrastructure with significant potential impact on patient care. These investments will provide companies or limited partnerships located and headquartered in Texas with the opportunity to further the research and development of new products for the diagnosis, treatment, or prevention of cancer; to establish infrastructure that is critical to the development of a robust industry; or to fill a treatment or research gap. This award is intended to support companies that will be staffed with a majority of Texas-based employees, including C-level executives. The long-term objective of this award is to support the research and development of commercially-oriented therapeutic and medical technology products, diagnostic- or treatment-oriented information technology products, diagnostics, tools, services, and infrastructure projects. Eligible products or services include--but are not limited to--therapeutics (e.g., small molecules and biologics), diagnostics, devices, and potential breakthrough technologies, including software and research discovery techniques. Eligible stages of research and development include translational research, proof-of-concept studies, preclinical studies, and Phase I or Phase II clinical trials. By exception, Phase III clinical trials and later stage product development projects will be considered where circumstances warrant CPRIT investment.

To be eligible for the three (3) year funding award, company applicants must have already received at least one round of professional institutional investment and must have or must commit to headquartering reg-

istering in Texas; the majority of staff residing in or relocating to Texas; and use of Texas-based subcontractors and suppliers, unless adequate justification is provided for the use of out-of-state entities. No maximum is set on the amount of funding that can be requested. Funding will be tranching and will be tied to the achievement of contract-specified milestones. Funds may be used for salary and fringe benefits, research supplies, equipment, clinical trial expenses, intellectual property protection, external consultants and service providers, and other appropriate development costs, subject to certain limitations set forth by Texas state law.

A detailed Request For Applications (RFA) is available online at www.cpr.it.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on April 28, 2014, through 3:00 p.m. Central Time on May 29, 2014, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201402027

Wayne Roberts

Chief Executive Officer

Cancer Prevention and Research Institute of Texas

Filed: April 28, 2014



Request for Applications C-15-NEWCO-1 New Company Product Development Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from Texas-based companies for the research and development of innovative products addressing critically important needs related to diagnosis, prevention, and/or treatment of cancer and the product development infrastructure needed to support these efforts.

The goal of the New Company Product Development Award is to support the formation and establishment of new start-up companies in Texas undertaking research and development activities for products and services that have the potential to significantly impact cancer care. These companies must be Texas-based or be willing to relocate to and remain in Texas for a specified period upon funding. Eligible products or services include, but are not limited to, therapeutics (e.g., small molecules and biologics), diagnostics, devices, and potential breakthrough technologies, including software and research discovery techniques. Eligible stages of research and development include translational research, proof-of-concept studies, preclinical studies, and Phase I or Phase II clinical trials. By exception, Phase III clinical trials and later stage product development projects will be considered where circumstances warrant CPRIT investment.

To be eligible for the three (3) year funding award, a company applicant must be an early-stage start-up company with no previous rounds of professional institutional investment (i.e., has not yet received Series A financing.) Successful applicants must commit to headquarters or substantial business functions of the company in Texas; personnel sufficient to operate the Texas-based research and/or development activities of the company, along with appropriate management, relocated to or hired from within Texas. No maximum is set on the amount of funding that can be requested. Funding will be tranching and will be tied to the achievement of contract-specified milestones. Funds may be used for salary and fringe benefits, research supplies, equipment, clinical trial expenses, intellectual property protection, external consultants and service providers, and other appropriate development costs, subject to certain limitations set forth by Texas state law.

A detailed Request For Applications (RFA) is available online at www.cpr.it.state.tx.us. Applications will be accepted beginning at 7:00

a.m. Central Time on April 28, 2014, through 3:00 p.m. Central Time on May 29, 2014, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201402028

Wayne Roberts

Chief Executive Officer

Cancer Prevention and Research Institute of Texas

Filed: April 28, 2014



Request for Applications C-15-RELCO-1 Company Relocation Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from existing oncology-focused companies or limited partnerships that are willing to relocate to Texas. The award will support the research and development of innovative products addressing critically important needs related to diagnosis, prevention, and/or treatment of cancer and the product development infrastructure needed to support these efforts.

The goal of the Company Relocation Award is to attract industry partners in the field of cancer care to advance economic development and cancer care efforts in the state by recruiting to Texas companies with proven management teams who are focused on exceptional product opportunities to improve cancer care. CPRIT expects outcomes of supported research and development activities to directly and indirectly benefit subsequent cancer research efforts, cancer public health policy, or the continuum of cancer care—from prevention to treatment and cure. To fulfill this vision, applications may address any product development topic or issue related to cancer biology, causation, prevention, detection or screening, treatment, or cure. The overall goal of this award program is to improve outcomes of patients with cancer by increasing the availability of Food and Drug Administration (FDA)-approved therapeutic interventions with a primary focus on Texas-centric programs. Eligible products or services include—but are not limited to—therapeutics (e.g., small molecules and biologics), diagnostics, devices, and potential breakthrough technologies, including software and research discovery techniques. Eligible stages of research and development include translational research, proof-of-concept studies, preclinical studies, and Phase I or Phase II clinical trials. By exception, Phase III clinical trials and later stage product development projects will be considered where circumstances warrant investment.

To be eligible for the three (3) year funding award, company applicants must presently be based outside Texas and must have already received at least one round of professional institutional investment (e.g., Series A financing.) In addition, award recipients must commit to headquarters or substantial business functions of the company in Texas; personnel sufficient to operate the Texas-based research and/or development activities of the company, along with appropriate management, relocated to or hired from within Texas; and use of Texas-based subcontractors and suppliers unless adequate justification is provided for the use of out-of-state entities. Financial support will be awarded based upon the breadth and nature of the research and development program proposed. While requested funds must be well justified, no maximum is set on the amount that may be requested. Funding is tied to the achievement of contract-specified milestones. Funds may be used for salary and fringe benefits, research supplies, equipment, clinical trial expenses, intellectual property protection, external consultants and service providers, and other appropriate development costs, subject to limitations set by Texas state law.

A detailed Request For Applications (RFA) is available online at www.cpr.it.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on April 28, 2014, through 3:00 p.m. Central Time on, May 29, 2014, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201402026

Wayne Roberts

Chief Executive Officer

Cancer Prevention and Research Institute of Texas

Filed: April 28, 2014

Texas Board of Chiropractic Examiners

Correction of Error

The Texas Board of Chiropractic Examiners (Board) adopted an amendment to 22 TAC §80.5, concerning Maintenance of Chiropractic Records, in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3228). The amendment was adopted to outline minimum documentation requirements for doctors of chiropractic in Texas. The Board inadvertently omitted a comment that was received during the comment period. Following is a summary of the comment received and the Board's response to the comment.

One email comment was received that addressed multiple aspects of the rule during this period of time and urged that this proposal be defeated. First, the comment notes that the need for such a rule change has not been communicated publicly in a meeting of the full Board. Further, the licensee contended that there was no need to change the rule for enforcement purposes as the present rule is sufficient. The Board disagrees because the current rule led to confusion amongst the public as well as the licenses with regard to the period of time that a licensee is required to maintain records. Further, additional clarity was needed to standardize rules from one licensee to the next in an effort to protect the public's health and safety when transferring care between licensees. Additionally, while an enforcement need has its place and is appreciated, the Board did not find it to necessarily be the sole and primary impetus required before modifying the rule. Finally, the Board received more feedback requesting additional clarity in favor of the rule change than against it.

Second, the commenter maintained an objection to referencing any documents referenced within the rule. The licensee noted that the American Chiropractic Association specifically states that the National Guidelines Clearinghouse is not to be used as guidelines. The Board notes that this is correct, however the American Chiropractic Association specifically recommends the National Guidelines Clearinghouse (NGC) as best practices. The Board further notes that not all of the criteria listed in the NGC were implemented into the rule. The formulation of the rule occurred during the Board's publicly held Rules Committee meetings that encouraged and received input from the Texas Chiropractic Association who endorsed and helped form the final recommendations of the committee.

Next, the commenter objected to the reference to Current Procedural Terminology (CPT) codes on the basis that the licensee had a "professional objection to TBCE referencing the publication of any trade association such as the AMA given their history of animosity toward chiropractic." The Board notes the objection but further recognizes that CPT codes are nothing more than a system by which to communicate the procedures performed in a chiropractor's office and not an endorsement of the AMA. Additionally, the Board believes that the utilization of the practically universally recognized CPT codes is more effi-

cient than requiring a chiropractor to write each procedure particularly and further serves to provide protection to the public by eliminating a source of confusion as to the procedures performed on the patient.

The commenter additionally articulated that the justification that the "Sunset Commission told TBCE to make rules" is inadequate because the instruction applied specifically to scope of practice, not documentation requirements." The Board disagrees because the request of the Sunset Commission is not the exclusive avenue upon which the Board may initiate the promulgation of new rules, and as highlighted above, this amendment is adopted under Texas Occupations Code §201.152 which permits the Board to promulgate rules necessary to the regulation of chiropractic in Texas.

The commenter again reiterated that the rule has been proposed and adopted without a proper showing of necessity because the rules request did not originate from either the Enforcement Committee or the Licensing and Education Committee or at the direction of the general counsel or chairs to those committees. The Board notes the objection, but there is no legislative requirement that all rules must have a genesis in either committee or that the general counsel verbally communicate acquiescence. Further, the Board would note that the past two Enforcement Committee chair persons are presently members of the Rules Committee. The Board properly took public comment and discussed the rule prior to adoption after a proper referral from the Rules Committee. Additionally, the Board engaged in discussion during the pendency of the proposed rule amendment concerning thousands of pages of uninterpretable and illegible records and documentation that failed to describe treatment, examination or explain the necessity of treatment as a compelling reason to justify the rule amendment. Moreover, the general counsel, as with all rules, has added his certification that the rule is a proper exercise of Board authority and is in compliance with existing statutory provisions.

The commenter further cites concerns regarding the stakeholder meetings process to obtain comments prior to the first draft of the amendment. In response, the Board understands the concerns but does not share them. The Board holds stakeholder meetings to gather the input of the stakeholder community and not that of the Board members - who have ample opportunity to present their views at publicly held meetings that comply with all requirements of open government. Additionally, because the stakeholder meetings were attended by two out of nine Board members, no quorum was present and no violation of the Open Meetings Act could have occurred.

Next, the commenter asserts that denotation trumps connotation. The licensee states that proposed §80.5(h) and (i) "were basically borrowed with little modification from Florida's Chiropractic Board Rules." The commenter further asserts that Florida's rules have been insufficiently challenged in contrast to Texas rules. The commenter also indicates that prognosis is undefined and poses the rhetorical question of what the prognosis of a wellness patient is. The Board engaged in significant discussion concerning the above issues during the pendency of the rule amendment. The Board does not share the licensee's concerns. First, the Board notes that wellness care is specifically excluded from insurance policies as non-reimbursable. This includes Medicare as instructed by the chiropractic services Medicare part B manual. The Board did not follow Medicare's manual verbatim in every manner; otherwise, wellness or maintenance care would have been banned with the passage of the amendment. The Rules Committee was knowledgeable of the importance of this type of care and went to great pains to protect this care for the benefit of the public, even though it is by law and contract the sole responsibility of the patient to pay for such care. With regard to Florida's rules, the Board considered the rules but found them to be more cumbersome than what the Rules Committee recommended and ultimately, what the Board voted in favor of. Finally, the

Board notes that discussion occurred concerning prognosis. The Board considers a prognosis to be a prognostication and considers it impracticable that a properly trained licensee with relevant experience would make definitive outcome statements based upon a prognosis.

The commenter went on to note that "rulemaking needs to be fully considered from every conceivable angle" because "[n]either the current General Counsel nor Assistant Attorney General was involved in crafting the bulk of these proposed amendments. While my objections may seem to be obstinance [sic], there are true antagonists to chiropractic who can use yet another Rule of this Board in a manner harmful to the profession of chiropractic, and by extension, harmful to the public." The Board agrees that rulemaking should be viewed from a myriad of angles; however, the Board disagrees with the conceivability of the angles identified by the licensee. The Board notes that present general counsel and assistant attorney general advisor have consulted on this rule, and it has resulted in a modification of adding subsection (h) during the proposal stage prior to initial posting.

Finally, the commenter states "[n]otwithstanding the amendments offered by your general counsel of 'including, but not limited to' in 80.5(g) and the entirety of the proposed 80.5(j), I do not believe the legal issues of this proposal have been adequately considered making it very unwise to pass the proposed rule change. I fear what skilled legal opponents could do with such a proposal with no necessity being communicated to support it." The Board does not share the licensee's concerns. This issue was addressed during an open meeting subsequent to the posting of the proposed rule amendment, but the Board was unable to identify and did not hear from any members of the public against the necessity of improving documentation standards for the purpose of ensuring sustained care. The Board asserts that the amendment was based upon the compelling need of protecting the people of Texas with the least intrusive means possible into the patient-doctor relationship.

TRD-201402048

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Financial Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/05/14 - 05/11/14 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/05/14 - 05/11/14 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201402030

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 29, 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 Wa-

ter 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 **June 9, 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 June 9, 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: ACME BRIDGE COMPANY, INCORPORATED; DOCKET NUMBER: 2014-0161-MSW-E; IDENTIFIER: RN107001935; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(a), by failing to prevent the unauthorized collection, storage, processing, or disposal of municipal solid waste; and TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of pollutants into or adjacent to water in the state; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: AMC Creekside LLC; DOCKET NUMBER: 2013-2172-PWS-E; IDENTIFIER: RN101442424; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(v) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide emergency power that will deliver water at a rate of 0.35 gallons per minute (gpm) per connection in the event of the loss of normal power supply; and 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide a total well capacity of 0.6 gpm per connection; PENALTY: \$525; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Arkema Incorporated; DOCKET NUMBER: 2013-1600-AIR-E; IDENTIFIER: RN100216373; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.18(c)(3)(ii), Texas Health and Safety Code (THSC), §382.085(b), Permit Numbers 865A and PSDTX1016M1, Special Conditions (SC) Number 10A, and Federal Operating Permit (FOP) Number O1636, Special Terms and Conditions (STC) Numbers 1A and 15A, by failing to maintain the minimum net heating value of 200 British thermal units per standard cubic feet for the flare; 30 TAC §101.20(3) and

§122.143(4), THSC, §382.085(b), Permit Numbers 865A and PSDTX1016M1, General Conditions (GC) Number H, and FOP Number O1636, STC Number 3A, by failing to perform quarterly visible emissions observations; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), 40 CFR §60.113b(b)(5), THSC, §382.085(b), Permit Numbers 865A and PSDTX1016M1, SC Number 3A, and FOP Number O1636, STC Number 1A, by failing to notify the TCEQ at least 30 days before conducting external floating roof storage tank seal gap measurements; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), Permit Numbers 865A and PSDTX1016M1, SC Number 2, and FOP Number O1636, STC Number 15A, by failing to comply with the maximum allowable annual emissions rates for Emissions Point Numbers Flare and INCIN; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), Permit Numbers 865A and PSDTX1016M1, SC Number 10B, and FOP Number O1636, STC Number 15A, by failing to record the time, date, and duration of any loss of pilot flame on the flare; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), Permit Numbers 865A and PSDTX1016M1, SC Number 10D, and FOP Number O1636, STC Number 15A, by failing to conduct annual calibrations on the continuous flow monitor and pressure monitor on the vent stream flow to the flare; and 30 TAC §§101.20(3), 122.143(4), 122.145(2)(A), and 122.146(5)(D), THSC, §382.085(b), Permit Numbers 865A and PSDTX1016M1, GC Number H, and FOP Number O1636, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: \$104,962; Supplemental Environmental Project offset amount of \$41,985 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: BASF TOTAL Petrochemicals LLC; DOCKET NUMBER: 2013-1835-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review (NSR) Permit Numbers 36644, PSDTX903M5, and N007M1, Special Conditions (SC) Number 1, and Federal Operating Permit (FOP) Number O2551, Special Terms and Conditions (STC) Number 24, by failing to comply with the maximum allowable emissions rate (MAER) of 17.65 pounds per hour (lbs/hr) of nitrogen oxides (NO_x) for Cogeneration Unit 2, Emission Point Number (EPN) N-20B; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), NSR Permit Numbers 36644, PSDTX903M5, and N007M1, SC Number 1, and FOP Number O2551, STC Number 24, by failing to comply with the MAER of 13.60 lbs/hr of NO_x for Boiler B-7240, EPN N-14; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), NSR Permit Numbers 36644, PSDTX903M5, and N007M1, SC Number 1, and FOP Number O2551, STC Number 24, by failing to comply with the MAER for the Flare System, EPNs N-15 and N-15A; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), NSR Permit Numbers 36644, PSDTX903M5, and N007M1, SC Number 14, and FOP Number O2551, STC Number 24, by failing to maintain the minimum net heating value for the Shielded Flare, EPN N-15A, and the Ground Flare, EPN N-15; PENALTY: \$345,938; Supplemental Environmental Project offset amount of \$86,485 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: BEF Foods, Incorporated; DOCKET NUMBER: 2014-0359-PWS-E; IDENTIFIER: RN102005691; LOCATION: Richardson, Dallas County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3),

by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the monitoring period; PENALTY: \$1,739; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Bryan Iron & Metal, Ltd. dba Texas Commercial Waste; DOCKET NUMBER: 2014-0034-MSW-E; IDENTIFIER: RN103157715; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: recycling facility; RULE VIOLATED: 30 TAC §328.5(b) and §330.11(e)(2), by failing to submit a notification to the executive director prior to commencement of recycling operations; 30 TAC §328.5(h), by failing to have a fire prevention and suppression plan and failing to make available a fire prevention and suppression plan to the local fire prevention authority; and 30 TAC §37.921 and §328.5(d), by failing to establish and maintain financial assurance for the closure of a recycling facility; PENALTY: \$16,250; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Bryant Industrial Services, L.L.C.; DOCKET NUMBER: 2014-0040-AIR-E; IDENTIFIER: RN106611833; LOCATION: San Leon, Galveston County; TYPE OF FACILITY: abrasive blasting and surface coating operation; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to the operation of emissions sources; PENALTY: \$3,937; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: City of Archer City; DOCKET NUMBER: 2014-0112-MWD-E; IDENTIFIER: RN101721587; LOCATION: Archer, Archer County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010393002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010393002, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2013, by September 30, 2013; PENALTY: \$3,225; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: City of Edgewood; DOCKET NUMBER: 2014-0157-PWS-E; IDENTIFIER: RN101404887; LOCATION: Edgewood, Van Zandt County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the running annual average; PENALTY: \$253; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: City of Paducah; DOCKET NUMBER: 2014-0027-PWS-E; IDENTIFIER: RN101385029; LOCATION: Paducah, Cottle County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested on an annual basis by a recognized backflow

assembly tester and certify that they are operating within specifications; 30 TAC §290.39(l)(4), by failing to meet the conditions for an issued exception; 30 TAC §290.43(c)(8), by failing to ensure that all clearwells, ground storage tanks, standpipes, and elevated tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(f)(2), (3)(A)(ii)(II), and (iv), by failing to maintain water works operation and maintenance records and make them available for review to commission personnel during the investigation; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information, disinfection information, microbiological sample results and a chemical analysis report of a representative sample of water from the well and make them available for review to commission personnel during the investigation; 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements that cover the land within 150 feet of the facility's 12 wells; and 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with 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; PENALTY: \$2,907; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210)403-4077; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: E.I. du Pont de Nemours and Company; DOCKET NUMBER: 2014-0041-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1961, Special Terms and Conditions Number 15, and New Source Review Permit Number 4351, Special Conditions Number 1, by failing to prevent unauthorized emissions from piping underneath a 20,000 gallon carbon steel tank for the Dehydration Nitration Process; PENALTY: \$7,500; Supplemental Environmental Project offset amount of \$3,000 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2014-0179-AIR-E; IDENTIFIER: RN100224377; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: liquid hydrocarbon underground storage site; RULE VIOLATED: 30 TAC §115.722(c)(2) and §116.115(c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 2129, Special Conditions Number 1, by failing to prevent unauthorized emissions and failed to limit Highly Reactive Volatile Organic Compounds emissions to 1,200 pounds per one hour block period; PENALTY: \$8,925; Supplemental Environmental Project offset amount of \$4,462 applied to Barber's Hill Independent School District; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2014-0048-AIR-E; IDENTIFIER: RN100216761; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(1), 115.722(d), 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.18(c)(3)(ii) and §60.562-1(a)(1)(i)(C), Texas Health and Safety Code (THSC), §382.085(b), Permit Number 9423, Special Conditions Number 5A, and Federal Operating Permit (FOP) Number O1419, Special Terms and Conditions (STC) Numbers 1A and 10, by failing to maintain the minimum net heating value of 300 British thermal units per standard cubic feet (Btu/scf); 30 TAC §101.20(1) and §122.143(4),

40 CFR §60.487(a) and §60.562-2(e), THSC, §382.085(b), and FOP Number O1419, STC Number 1A, by failing to submit a 40 CFR Part 60, Subpart VV semiannual report; and 30 TAC §122.121 and THSC, §382.054 and §382.085(b), by failing to include diesel engines authorized under permit by rule 30 TAC §106.511 in FOP Number O1419; 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O1419, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: \$34,836; Supplemental Environmental Project offset amount of \$17,418 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2013-1610-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit (FOP) Number O1317, Special Terms and Conditions (STC) Number 24, and Flexible Permit Numbers 16989 and PSD-TX-794, Special Conditions (SC) Number 1, by failing to prevent unauthorized emissions; PENALTY: \$26,813; Supplemental Environmental Project offset amount of \$10,725 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2014-0198-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1317, Special Terms and Conditions Number 24, and Flexible Permit Numbers 16989 and PSD-TX-794, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$7,500; Supplemental Environmental Project offset amount of \$3,000 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Forged Products, Incorporated; DOCKET NUMBER: 2013-2198-AIR-E; IDENTIFIER: RN100668722; LOCATION: Houston, Harris County; TYPE OF FACILITY: forged steel products facility; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3329, General Terms and Conditions (GTC), by failing to submit a permit compliance certification within 30 days after the end of the certification period; 30 TAC §122.143(4), THSC, §382.085(b), and FOP Number O3329, GTC, by failing to comply with the periodic monitoring requirements of FOP O3329; 30 TAC §§106.454(1)(E), 115.412(1)(C), and 122.143(4), THSC, §382.085(b), and FOP Number O3329, GTC, by failing to post a permanent label summarizing the operating requirements for the Degreaser, and Emission Point Number DG-1; 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O3329, GTC, by failing to report all instances of deviations; PENALTY: \$13,133; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Harvey Ray Hawkins; DOCKET NUMBER: 2013-1968-LII-E; IDENTIFIER: RN103510830; LOCATION: San Angelo,

Tom Green County; TYPE OF FACILITY: irrigation and landscape business; RULE VIOLATED: AO Docket Number 2011-2314-LII-E Ordering Provision Numbers 2.a.i. and 2.b. and 30 TAC §344.71(b), by failing to begin including in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s); AO Docket Number 2011-2314-LII-E Ordering Provision Numbers 2.a.ii. and 2.b. and 30 TAC §344.63(2) and (4), by failing to begin preparing and providing an irrigation plan and maintenance checklist for each site where a new irrigation system is installed; AO Docket Number 2011-2314-LII-E Ordering Provision Numbers 2.a.iii. and 2.b. and 30 TAC §344.35(d)(5), by failing to implement improvements to the recordkeeping system to ensure retention of the irrigation system records; PENALTY: \$1,175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(18) COMPANY: Igloo Products Corporation; DOCKET NUMBER: 2014-0113-IWD-E; IDENTIFIER: RN101919280; LOCATION: Katy, Waller County; TYPE OF FACILITY: plastics container manufacturing plant; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002229000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 001, by failing to comply with permitted effluent limitations; PENALTY: \$4,375; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: KING-COTTLE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0096-PWS-E; IDENTIFIER: RN101458602; LOCATION: Paducah, Cottle County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect a raw groundwater source *Escherichia coli* sample from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample and failed to provide public notification regarding the failure to collect a raw groundwater source sample; 30 TAC §290.122(c)(2)(A), by failing to provide public notification for the failure to collect routine coliform monitoring samples for the month of August 2010; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.122(c)(2)(A), by failing to post public notification for the failure to collect increased monitoring samples for the month of August 2011; PENALTY: \$999; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(20) COMPANY: Las Palomas Water Services Company; DOCKET NUMBER: 2014-0239-PWS-E; IDENTIFIER: RN101278521; LOCATION: LaVernia, Wilson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n), by failing to maintain on file plans, specifications, maps and other pertinent information to facilitate the operation and maintenance of the system's facilities and equipment; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence to protect the facility's well sites; 30 TAC §290.46(v), by failing

to ensure that all electrical wiring is securely installed in compliance with a local or national electrical code; and 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; PENALTY: \$467; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: NICKCO RECYCLING, INCORPORATED; DOCKET NUMBER: 2014-0209-MLM-E; IDENTIFIER: RN102926904; LOCATION: Pittsburg, Camp County; TYPE OF FACILITY: used oil and oil filter recycling facility; RULE VIOLATED: 30 TAC §328.4(b), by failing to receive only authorized recyclable material at the facility; 30 TAC §324.15, Texas Health and Safety Code, §371.041 and 40 Code of Federal Regulations (CFR) §279.22(d), by failing to perform response action upon detection of a release of used oil; 30 TAC §324.1, §328.23(c) and 40 CFR §279.22(a), by failing to store used oil filters in tanks, or other acceptable containers; and 30 TAC §324.1 and 40 CFR §279.54(f), by failing to label or clearly mark used oil containers the words "Used Oil"; PENALTY: \$6,601; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(22) COMPANY: Quail Creek Municipal Utility District; DOCKET NUMBER: 2014-0201-PWS-E; IDENTIFIER: RN101452068; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(3) and §290.122(b)(2)(A) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.010 milligrams per liter for arsenic based on the running annual average, and failed to timely provide public notification for the failure to comply with the MCL for arsenic for the third quarter 2013; PENALTY: \$172; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(23) COMPANY: Rentech Nitrogen Pasadena, LLC; DOCKET NUMBER: 2013-1836-AIR-E; IDENTIFIER: RN101621944; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: fertilizer manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit (FOP) Number O1252, Special Terms and Conditions (STC) Number 12, Air Permit Number 4209A, Special Conditions Number 21(B), and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify optical calibration using a manufacturer recommended optical filter for the 800 North and 800 South Scrubber Continuous Emissions Monitoring System; and 30 TAC §§101.20(1), 116.115(c), and 122.143(4), FOP Number O1252, STC Number I.A., Air Permit Number 56361, Special Conditions 14, 40 Code of Federal Regulations §60.82(a), and THSC, §382.085(b), by failing to comply with the sulfur dioxide emissions rate for the Wet Scrubber Stack, Emission Point Number ASN001; PENALTY: \$33,188; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Sandra West dba Home on the Range RV Park; DOCKET NUMBER: 2014-0135-PWS-E; IDENTIFIER: RN106595366; LOCATION: Madisonville, Madison County; TYPE OF FACILITY: recreational vehicle park with a public water supply; RULE VIOLATED: 30 TAC §290.45(c)(1)(A)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 1.0 gallon per minute per unit; 30 TAC §290.45(c)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 10 gallons per unit; 30 TAC §290.41(c)(3)(J), by failing to

provide the well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 30 TAC §290.46(f)(2) and (3)(E)(i), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's pressure tank; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(s)(1), by failing to calibrate the well meter at least once every three years; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing a well into service as a public water supply source; PENALTY: \$1,269; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: SILVERLAKE CHURCH; DOCKET NUMBER: 2014-0050-PWS-E; IDENTIFIER: RN101244986; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: church with a public water supply; RULE VIOLATED: 30 TAC §290.122(c)(2)(A) and (B) and TCEQ AO Docket Number 2011-1263-PWS-E, Ordering Provision Number 2.b., by failing to provide public notification regarding the failure to collect routine distribution water samples for coliform analysis; PENALTY: \$62; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2013-2221-MWD-E; IDENTIFIER: RN102341401; LOCATION: Rosharon, Brazoria County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013804001, Final Effluent Limitations and Monitoring Requirements Numbers 1 and 2 and Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; PENALTY: \$29,250; Supplemental Environmental Project offset amount of \$23,400 applied to Brazoria County; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: The Premcor Refining Group Incorporated; DOCKET NUMBER: 2013-1862-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Texas, Jefferson County; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §§101.20(1), (2), and (3), 113.340, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.482-5(a) and §63.648(a), Texas Health and Safety Code (THSC), §382.085(b), New Source Review (NSR) Permit Numbers 6825A, PSDTX49, and N65, Special Conditions (SC) Number 5.A., and Federal Operating Permit (FOP) Number O1498, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 18, by failing to equip each sampling system connection with a closed-purged, closed-loop, or closed-vent system; 30 TAC §§116.115(c), 101.20(3), and 122.143(4), THSC, §382.085(b), FOP Number O1498, GTC and STC Number 18, and NSR Permit Numbers 6825A, PSDTX49, and N65, SC Number 14.A., by failing to orientate the inlet/outlet sampling taps on the cooling tower properly to obtain a representative sample as required by Appendix P of the TCEQ Sampling Procedures Manual; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), FOP Number O1498, GTC and STC Number 18, and NSR Permit Numbers 6825A, PSDTX49, and N65, SC Number

1, by failing to comply with the emissions rate for volatile organic compounds; and 30 TAC §§116.115(b)(2)(F) and (c), 101.20(3), and 122.143(4), THSC, §382.085(b), FOP Number O1498, GTC and STC Number 18, and NSR Permit Numbers 6825A, PSDTX49, and N65, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: \$55,063; Supplemental Environmental Project offset amount of \$22,025 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Voyles, LLC dba Whispering Hills Achievement Center; DOCKET NUMBER: 2014-0214-PWS-E; IDENTIFIER: RN105971121; LOCATION: Flatonia, Fayette County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(3) and §290.122(b)(2)(B) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.010 milligrams per liter for arsenic, based on a running annual average, and failed to provide public notification for the failure to comply with the MCL for arsenic for the second and third quarters of 2013; PENALTY: \$213; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

TRD-201402038

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 29, 2014



Enforcement Orders

An agreed order was entered regarding City of Jasper, Docket No. 2013-0343-MLM-E on April 14, 2014 assessing \$4,975 in administrative penalties with \$995 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MEHAK ENTERPRISES INC dba Edom General Store, Docket No. 2013-0776-PST-E on April 14, 2014 assessing \$2,567 in administrative penalties with \$513 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Premier Parking Company dba Premier Convenience Store, Docket No. 2013-1222-PST-E on April 14, 2014 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OCI Beaumont LLC, Docket No. 2013-1427-AIR-E on April 14, 2014 assessing \$3,775 in administrative penalties with \$755 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LEAGUE CITY INTERESTS, INC. dba Super Food 1, Docket No. 2013-1543-PST-E on April 14, 2014 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John G. Hayes dba Mister Carwash 11, Docket No. 2013-1579-PST-E on April 14, 2014 assessing \$5,141 in administrative penalties with \$1,028 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LOKHAN INC dba Git it Kwik, Docket No. 2013-1593-PST-E on April 14, 2014 assessing \$6,880 in administrative penalties with \$1,376 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASAD ALI CORPORATION dba Sunrise Food Mart, Docket No. 2013-1611-PST-E on April 14, 2014 assessing \$3,879 in administrative penalties with \$775 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AKT INVESTMENTS INC dba Texaco Food Mart 2011, Docket No. 2013-1614-PST-E on April 14, 2014 assessing \$5,062 in administrative penalties with \$1,012 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hardeep S. Grewal dba Sunmart 133, Docket No. 2013-1616-PST-E on April 14, 2014 assessing \$3,036 in administrative penalties with \$607 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amani & Afee, LLC dba Speed In Food Mart, Docket No. 2013-1619-PST-E on April 14, 2014 assessing \$6,126 in administrative penalties with \$1,225 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ahom Namah, Inc. dba Mr. C Food Mart, Docket No. 2013-1625-PST-E on April 14, 2014 assessing \$3,505 in administrative penalties with \$701 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding YAMUNA CORPORATION dba C & C Discount, Docket No. 2013-1643-PST-E on April 14, 2014 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Merendino dba Merendino Service Station, Docket No. 2013-1660-PST-E on April 14, 2014 assessing \$4,375 in administrative penalties with \$875 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Donald Smith, Docket No. 2013-1678-MWD-E on April 14, 2014 assessing \$6,500 in administrative penalties with \$1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ranger, Docket No. 2013-1711-PWS-E on April 14, 2014 assessing \$3,562 in administrative penalties with \$712 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RF PETROLEUM #5, INC. dba Ellison's Convenience Store, Docket No. 2013-1718-PST-E on April 14, 2014 assessing \$5,755 in administrative penalties with \$1,151 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Greif Packaging LLC, Docket No. 2013-1751-MWD-E on April 14, 2014 assessing \$4,050 in administrative penalties with \$810 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Greenville Independent School District, Docket No. 2013-1787-PST-E on April 14, 2014 assessing \$2,579 in administrative penalties with \$515 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OCEAN PETROLEUM, INC. dba South Shore Shell, Docket No. 2013-1789-PST-E on April 14, 2014 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE DEVEREUX FOUNDATION dba Devereux Texas Treatment Network, Docket No. 2013-1808-PST-E on April 14, 2014 assessing \$6,975 in administrative penalties with \$1,395 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROUND ROCK FAITH INDUSTRIES INC., Docket No. 2013-1818-EAQ-E on April 14, 2014 assessing \$3,250 in administrative penalties with \$650 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Austin Powder Company, Docket No. 2013-1821-MLM-E on April 14, 2014 assessing \$7,226 in administrative penalties with \$1,445 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dlugosch III, LLC dba The Texan 3, Docket No. 2013-1855-PST-E on April 14, 2014 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A TO Z USA OPERATIONS LLC dba Mega Truck Stop, Docket No. 2013-1856-PST-E on April 14, 2014 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ron C. King dba Anchor Road Mobile Home Park, Docket No. 2013-1860-PWS-E on April 14, 2014 assessing \$765 in administrative penalties with \$153 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Smithville, Docket No. 2013-1875-MWD-E on April 14, 2014 assessing \$1,437 in administrative penalties with \$287 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Durk Zwart dba Zwart Dairy, Docket No. 2013-1879-AGR-E on April 14, 2014 assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brazos Independent School District, Docket No. 2013-1895-MWD-E on April 14, 2014 assessing \$2,425 in administrative penalties with \$485 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sue-Ann Operating, L.C., Docket No. 2013-1912-AIR-E on April 14, 2014 assessing \$4,513 in administrative penalties with \$903 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lester A. Saucier, Jr. dba Ancar Water System, Docket No. 2013-1916-PWS-E on April 14, 2014 assessing \$660 in administrative penalties with \$132 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WILKINSON GARY IRON & METAL, INC., Docket No. 2013-1919-MLM-E on April 14, 2014 assessing \$3,751 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Calumet Penreco, LLC, Docket No. 2013-1923-AIR-E on April 14, 2014 assessing \$4,938 in administrative penalties with \$987 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crossroad USA Investments Inc dba Crossroads Shell, Docket No. 2013-1940-PST-E on April 14, 2014 assessing \$3,380 in administrative penalties with \$676 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Lingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2013-1949-AIR-E on April 14, 2014 assessing \$3,100 in administrative penalties with \$620 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding QUICK TRACK INC. dba Quick Track 25, Docket No. 2013-1959-PST-E on April 14, 2014 assessing \$4,687 in administrative penalties with \$937 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leona Bullock dba Blue Ridge Mobile Home Park, Docket No. 2013-1971-PWS-E on April 14, 2014 assessing \$603 in administrative penalties with \$120 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Turner dba Cherokee Mobile Home Park, Docket No. 2013-1996-PWS-E on April 14, 2014 assessing \$827 in administrative penalties with \$165 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Allied Equipment, Inc., Docket No. 2013-2047-AIR-E on April 14, 2014 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Franklin, Docket No. 2013-2051-PWS-E on April 14, 2014 assessing \$150 in administrative penalties with \$30 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WINDSOR WATER COMPANY, Docket No. 2013-2057-PWS-E on April 14, 2014 assessing \$1,389 in administrative penalties with \$277 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G bar S LLC, Docket No. 2013-2060-OSS-E on April 14, 2014 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Handco, Inc. dba Handy Stop Grocery, Docket No. 2013-2067-PST-E on April 14, 2014 assessing \$4,749 in administrative penalties with \$949 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alcoa World Alumina LLC, Docket No. 2013-2074-AIR-E on April 14, 2014 assessing \$5,513 in administrative penalties with \$1,102 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding St. Paul Water Supply Corporation, Docket No. 2013-2098-PWS-E on April 14, 2014 assessing \$1,551 in administrative penalties with \$309 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DLOGOSCH IV, LLC, Docket No. 2013-2102-MLM-E on April 14, 2014 assessing \$3,799 in administrative penalties with \$759 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Occidental Permian Ltd., Docket No. 2013-2129-AIR-E on April 14, 2014 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cinco Natural Resources Corporation, Docket No. 2013-2134-AIR-E on April 14, 2014 assessing \$4,876 in administrative penalties with \$975 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bart L. Taylor dba RV208, Docket No. 2013-2153-PWS-E on April 14, 2014 assessing \$150 in administrative penalties with \$30 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding San Jacinto River Materials, Inc., Docket No. 2014-0103-WQ-E on April 14, 2014 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding San Antonio River Authority, Docket No. 2014-0122-WR-E on April 14, 2014 assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding US Foods, Inc., Docket No. 2014-0160-PST-E on April 14, 2014 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Chuck Ziemba, Docket No. 2014-0163-WOC-E on April 14, 2014 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Green Expectations Lawn and Tree Care LLC, Docket No. 2014-0178-AIR-E on April 14, 2014 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201402044

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 30, 2014



Notice of District Petitions

Notices issued April 23, 2014.

TCEQ Internal Control No. D-01232014-026; KB Home Lone Star, Inc. ("Petitioner") filed a petition for creation of Montgomery County Municipal Utility District No. 141 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of all of the land to be included in the proposed District; (2) there are no lienholders on the property to be included within the proposed District; (3) the proposed District will contain approximately 122.70 acres located within Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Conroe, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 4094-13, effective October 24, 2013, the City of Conroe, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$7,900,000.

TCEQ Internal Control No. D-03132014-004; WBW Land Investments, LP and Whitis Land Investments, Ltd. (the "Petitioners") filed a petition for creation of Bell County Municipal Utility District No. 2 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 1,373 acres located within Bell County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Killeen, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town, or village in Texas. By Ordinance

No. 13-058, passed and approved on July 30, 2013, the City of Killeen, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016 and authorized the Petitioners to initiate proceedings to create this political subdivision within its jurisdiction. According to the petition, a preliminary investigation has been made to determine the cost of the proposed District's projects, and it is estimated by the Petitioners, from such information available at this time, that such cost will be approximately \$61,415,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201402043

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 30, 2014



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 **June 9, 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 June 9, 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: David Singh d/b/a Happy Stop; DOCKET NUMBER: 2013-0984-PST-E; TCEQ ID NUMBER: RN102655933; LOCATION: 300 Charlie Street, Whitesboro, Grayson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC175, (512) 239-1204; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: DRY CLEAN WORLD, LTD.; DOCKET NUMBER: 2013-1346-DCL-E; TCEQ ID NUMBER: RN104860093; LOCATION: 204 South Ash Drive, Allen, Collin County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning facility; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater; 30 TAC §337.20(e)(6)(B), by failing to keep a log of weekly visual inspections of each installed secondary containment structure at the facility; 30 TAC §337.72(1) and (2), by failing to maintain documentation of the non-chlorinated solvent purchases and documentation of the dry cleaning waste disposal at the facility; and 30 TAC §337.4(h), by failing to obtain a valid, current TCEQ registration certificate prior to receiving/purchasing dry cleaning solvents; PENALTY: \$10,000; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Jipu, Inc. d/b/a Save N Go Fuel Stop; DOCKET NUMBER: 2013-1766-PST-E; TCEQ ID NUMBER: RN102778941; LOCATION: 1007 Potteet Jourdanton Freeway, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by fail-

ing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Joe's & Cho, Inc. d/b/a Joe's Future Food Mart; DOCKET NUMBER: 2013-1777-PST-E; TCEQ ID NUMBER: RN101432268; LOCATION: 4225 Miller Avenue, Fort Worth, Tarrant 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: \$9,563; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Menard Irrigation Company; DOCKET NUMBER: 2012-2331-WR-E; TCEQ ID NUMBER: RN103927265; LOCATION: east bank of the San Saba River, 1,848 feet from the southwest corner of the Johann G. Vogt Survey, Abstract 791, Menard County; TYPE OF FACILITY: irrigation canal; RULES VIOLATED: TWC, §11.032(a), by failing to keep a detailed record of daily operations so that the quantity of water taken or diverted each calendar year may be determined; TWC, §11.031(a), by failing to accurately report on the annual report titled Report of Surface Water Used (the Report) all water diverted at the authorized diversion point for the year ending December 31, 2011; and TWC, §11.031(d) and §11.032(a), by failing to maintain water use information on a monthly basis during the months a water rights holder uses permitted water; PENALTY: \$7,500; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: RF FOOD AND GAS, INC. d/b/a E-Z Stop 1; DOCKET NUMBER: 2013-1074-PST-E; TCEQ ID NUMBER: RN101512036; LOCATION: 15540 South United States Highway 181, San Antonio, Bexar 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: \$20,625; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Sharps Environmental Services, Inc.; DOCKET NUMBER: 2013-0743-AIR-E; TCEQ ID NUMBER: RN101849362; LOCATION: 1544 Northeast Loop, Carthage, Panola County; TYPE OF FACILITY: resource recovery plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(b); and 30 TAC §§113.2125(a)(2), 113.2174(d) and 122.143(4); and Federal Operating Permit Number O3360, General Terms and Conditions and Special Terms and Con-

ditions Numbers 1A and 1E, by failing to comply with the emission limit for mercury; PENALTY: \$1,125; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: SNI Corporation d/b/a Broadway Food Mart; DOCKET NUMBER: 2013-0399-PST-E; TCEQ ID NUMBER: RN101252732; LOCATION: 2682 Highway 71 West, Columbus, Colorado County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the USTs; 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; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay outstanding water system fees and associated late fees for TCEQ Financial Administration Account Number 90450065 for Fiscal Years 2012 and 2013; PENALTY: \$14,216; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: SNI Corporation d/b/a Broadway Food Mart; DOCKET NUMBER: 2013-2053-PWS-E; TCEQ ID NUMBER: RN101252732; LOCATION: 2682 Highway 71, Columbus, Colorado County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(1)(A); and TCEQ Docket Number 2011-1631-PWS-E, Ordering Provisions Numbers 2.a.i., 2.b., 2.c.i., and 2.c.ii., by failing to locate the groundwater sources so there will be no danger of pollution from unsanitary sources; and 30 TAC §290.41(c)(1)(F) and TCEQ Agreed Order Docket Number 2011-1631-PWS-E, Ordering Provisions Numbers 2.a.ii., 2.b., 2.c.iii., and 2.c.iv., by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; PENALTY: \$2,780; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201402036
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 29, 2014



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 **June 9, 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 June 9, 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, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: BENTON RAINEY, INC. d/b/a North Main Shamrock; DOCKET NUMBER: 2013-1556-PST-E; TCEQ ID NUMBER: RN101819795; LOCATION: 1810 North Main Street, Paris, Lamar County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: \$3,750; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: WMJones Construction, Inc.; DOCKET NUMBER: 2013-1111-WQ-E; TCEQ ID NUMBER: RN102569308; LOCATION: 2112 Gulf Freeway, League City, Galveston County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$8,432; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201402035
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 29, 2014



Notice of Public Meeting on First Quality Cylinders Proposed State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the proposed remedy for the First Quality Cylinders State Superfund site (site).

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of a proposed selection of remedy for the site.

In accordance with both 30 TAC §335.349(a) and Texas Health and Safety Code, §361.187, concerning the selection of the proposed remedial action, a public meeting regarding the commission's selection of a proposed remedy for the site shall be held. The statute requires that the commission shall publish notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice was also published in the *San Antonio Express News* on May 9, 2014. The public meeting is scheduled for June 12, 2014, at 7:00 p.m., in the VIA Metropolitan Transit, Administrative Board Room, 800 West Myrtle, San Antonio. The public meeting is not a contested case hearing under Texas Government Code, Chapter 2001.

The site was proposed for listing on the State Superfund Registry in the November 12, 1999, issue of the *Texas Register* (24 TexReg 10234). The site is located at 931 West Laurel Street, San Antonio, Bexar County, Texas. The site soil and groundwater were contaminated with hexavalent chromium from former on-site plating operations.

In May 1982, Quality Cylinders, Inc. began operating at the site. In April 1987, 1st Quality Cylinders purchased the site and equipment and began operations at the site. In April 1988, workers renovating a plating line observed subsurface leakage of chromium plating solution. In June 1988, a French-drain system was installed to collect groundwater that was percolating to the surface; however, in September 1989, the groundwater began to display a yellowish hue. Analysis of groundwater indicated elevated levels of chromium.

In October 1990, 1st Quality Cylinders entered into an Agreed Order with the Texas Water Commission (TWC) that required 1st Quality Cylinders to implement TWC-approved plans for the investigation of chromium contamination in the site's soil and groundwater. 1st Quality Cylinders sold the property to FQC, Inc. in November 1990; and FQC, Inc. (now known as International Aircraft Cylinders, Inc.) operated the site until December 1991. In January 1992, Aero-Chrome Services, Inc. began operating the facility, and it abandoned the site in 1993.

In December 1992, the Texas Office of Attorney General initiated an enforcement action against the owners and operators of the site for their failure to comply with the terms of the 1990 Agreed Order with the TWC. On June 14, 1993, the State of Texas, on behalf of the TWC, entered into an Agreed Order for Partial Temporary Injunction which required 1st Quality Cylinders, Inc., and Aero-Chrome Services, Inc., to lower the sub-surface water table at the site, keep the French drain and sump free and clear from liquids, and dispose of all waste removed from the French drain and sump in a proper manner.

In April 1994, 1st Quality Cylinders, Inc., agreed to design and construct a containment system to prevent migration of contaminated groundwater from the site. The containment system was completed in 1996.

In September 1997, the Texas Natural Resource Conservation Commission (TNRCC) conducted immediate removal actions to fence the perimeter of the site, dispose of on-site wastes inside the process building, and repair and provide operation and maintenance of the on-site shallow groundwater recovery system, including disposal of the collected contaminated groundwater.

In August 1999, the TNRCC conducted a Hazard Ranking System analysis on the site, and the site earned a score of 50.0. On November 12, 1999, a legal notice was published in the *Texas Register* stating TNRCC's intent to propose the site for listing on the State Superfund Registry; provided instructions for submitting written comments to the TNRCC regarding the site's proposed listing; and announced a public meeting that was held on December 16, 1999, to obtain additional information regarding the proposed listing and the commercial/industrial land use designation for the site.

Between 2001 and 2009, the TNRCC and its successor agency, the TCEQ, conducted a Remedial Investigation (RI) to identify and delineate the soil and groundwater contamination. The RI determined that the electroplating trench and the surrounding areas were the source of soil contamination. The contaminated soil areas were delineated.

In 2012, TCEQ conducted another removal action during which the process building was demolished and the electroplating trench and surrounding areas of contaminated soil were excavated, treated on-site, and disposed of in an off-site permitted disposal facility.

Concurrently with the RI, TCEQ conducted a Feasibility Study that developed and analyzed potential cleanup alternatives for a site. In January 2014, the Feasibility Study was completed when TCEQ finished a pilot scale treatability study to evaluate *in situ* treatment of the contaminated groundwater. The Proposed Remedial Action Document, which evaluated several remedial alternatives for the contaminated groundwater, was finalized by the TCEQ on May 1, 2014.

Based on the evaluation of the potential remedial alternatives, the TCEQ is proposing a plume management zone with *in situ* chemical reduction (ISCR) as the preferred remedy for the contaminated groundwater at the site. The ISCR will involve injection of calcium polysulfide solution to reduce the concentration of hexavalent chromium in the soil. The specifics of the injection, such as, volume of injection, injection pressure, and the area of injection will be determined during the Remedial Design. The design will then be implemented during the Remedial Action phase. Institutional controls will be placed on the site to restrict exposure to contaminated groundwater.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted *prior* to the public meeting must be received by 5:00 p.m. on June 11, 2014, and *should be sent in writing* to Subhash Pal, Project Manager, TCEQ, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087 or facsimile at (512) 239-2450. The public comment period will end at the close of the public meeting on June 12, 2014.

A portion of the record for this site, including documents pertinent to the proposed remedy, is available for review during regular business hours at the San Antonio Central Library, 600 Soledad Street, in San Antonio, Texas. The complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, phone (800) 633-9363 or (512) 239-2900. Fees are charged for photocopying file information. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the site's Community Relations Liaison at (800) 633-9363 or (512) 239-5674. Requests should be made as far in advance as possible. Information is also available regarding the state Superfund program at <http://www.tceq.texas.gov/remediation/superfund/index.html>. For further information about this site or the public meeting, please call John Flores, TCEQ Community Relations Liaison, at (800) 633-9363.

TRD-201402029

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 29, 2014



Notice of Receipt of Application and Intent to Obtain
Municipal Solid Waste Limited Scope Permit Major
Amendment Permit Number 2158

APPLICATION. Republic Waste Services of Texas, Ltd., P.O. Box 69055, Odessa, Ector County, Texas 79769, a municipal solid waste management facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Limited Scope Permit Major Amendment to obtain authorization to accept Class 1 nonhazardous industrial solid waste (Class 1 waste). The amendment also requests (1) to revise the final contour and excavation plans for the facility to incorporate the acceptance of Class 1 waste, (2) to expand the existing liquid waste bulking facility to accept Class 1 as well as non-Class 1 waste for solidification, (3) an option to utilize a centrifuge facility to process oil and gas wastes, and (4) to use an alternative liner to dispose of the Class 1 waste. The facility, named as Charter Waste Landfill, is located at 12035 West Murphy Street, Odessa, Ector County, Texas 79763. The TCEQ received the application on April 4, 2014. The permit application is available for viewing and copying at Ector County Public Library, 321 West 5th Street, Odessa, Ector County, Texas 79761 and may be viewed online at <http://www.ftwweaverboos.com>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=31.770208&lng=-102.50021&zoom=12&type=r>. For exact location, refer to the application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the

statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040.

Further information may also be obtained from Republic Waste Services of Texas, Ltd. at the address stated above or by calling Mr. Eduardo D. Choquis, P.E., Area Environmental Manager, at (817) 317-2009.

TRD-201402042
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 30, 2014



Notice of Water Quality Applications

The following notices were issued on April 18, 2014 through April 25, 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

RAVAGO MANUFACTURING AMERICAS LLC which operates Ravago Manufacturing Americas - Houston, a custom compounder of purchased plastics resins, has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002294000 to authorize the relocation of the discharge route for Outfalls 001, 003, and 004 to a direct discharge to the Sims Bayou Tidal portion of the Houston Ship Channel/Buffalo Bayou Tidal; the relocation of railcar cleaning wastes discharged via Outfall 002 to Outfall 001; the removal of effluent limitations and monitoring requirements for total copper and total suspended solids at Outfall 002; an increase in pollutant loadings for all pollutant parameters associated with Outfall 001; the inclusion of a Stormwater Pollution Prevention Plan; and the consideration of influent copper concentrations in the development of effluent limitations for total copper. The facility is located at 13001 Almeda Road approximately 0.5 mile north of the intersection of State Highway 521 and Almeda Genoa Road in the City of Houston, Harris County, Texas 77045.

MONARCH UTILITIES I LP which operates the Oak Trails Shores WTP, a reverse osmosis surface water treatment facility that produces public drinking water, has applied for a renewal of TPDES Permit No. WQ0002678000, which authorizes the discharge of reverse osmosis unit reject water at a daily average flow not to exceed 160,000 gallons per day via Outfall 001. The facility is located at 3227 Oak Hills Drive, approximately 1.2 miles northwest (via Farm-to-Market Road 2850) of the Town of Thorp Spring, City of Granbury, Hood County, Texas 76048.

CITY OF SEADRIFT which operates a municipal water treatment plant, has applied for a renewal of TPDES Permit No. WQ0003954000, which authorizes the discharge of reverse osmosis (RO) reject water at a daily average flow not to exceed 200,000 gallons per day via Outfall 001. The facility is located at 301 East Dallas Avenue, approximately 300 feet east of the intersection of Dallas Avenue and Main Street, on the north side of Dallas Avenue in the City of Seadrift, Calhoun County, Texas 77983.

BRAZOS VALLEY ENERGY LLC OWNER AND CALPINE OPERATING SERVICES COMPANY INC OPERATOR of Brazos Valley Energy Center have applied for a renewal of TPDES Permit No. WQ0004258000, which authorizes the discharge of cooling tower blowdown, heat recovery steam generator (HRSG) blowdown, Inlet Air Chiller blowdown and low volume wastewater at a daily average not to exceed 1,500,000 gallons per day (Phase I) and 3,000,000 gallons per day (Phase II) via Outfall 001. The facility is located at 3440 Lockwood Road, at the intersection of Rabbs Prairie Road, Smithers Lake Road, and Lockwood Road, Richmond, Fort Bend County, Texas 77469.

SYNAGRO OF TEXAS CDR INC has applied for a renewal of Permit No. 04450, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 218.71 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located approximately 1.4 miles west of the intersection of Farm-to-Market Road 362 and Farm-to-Market Road 529, along the north side of Farm-to-Market Road 529 in Waller County, Texas.

GRANDY RANCH LTD has applied for a renewal of TCEQ Permit No. WQ0004458000, which authorizes the land application of sewage sludge, water treatment plant sludge and domestic septage for beneficial use. The current permit authorizes land application of sewage sludge, water treatment plant sludge and domestic septage for beneficial use on 368 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located at 508 Jackrabbit Road, 1.2 miles east of the intersection of U.S. Highway 190 and Paddy Hamilton Road, in Bell County, Texas 76513.

CITY OF DE LEON has applied for a renewal of TPDES Permit No. WQ0010078001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 295,000 gallons per day. The facility is located approximately 1,000 feet south of State Highway 6 and 4,000 feet east of State Highway 16, east of the City of De Leon in Comanche County, Texas 76444.

CITY OF SOMERVILLE has applied for a renewal of TPDES Permit No. WQ0010371001, 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 adjacent to Farm-to-Market Road 1361, approximately 0.5 mile northeast of the intersection of Farm-to-Market Road 1361 and State Highway 36, east of the City of Somerville, in Burtleson County, Texas 77879.

CITY OF GEORGETOWN has applied for a renewal of TPDES Permit No. WQ0010489003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 400 Rock Dove Lane, approximately 1,000 feet west of County Road 102; 4,000 feet south of the intersection of State Highway 29 and County Road 102; and 2.75 miles east of the intersection of State Highway 29 and State Highway Spur 418 (South Austin Avenue) in Williamson County, Texas 78626.

CITY OF PLAINVIEW has applied for a renewal of TPDES Permit No. WQ0010537001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,300,000 gallons per day. Initially, this permit application was submitted as a major amendment to remove dechlorination from the current permit. According to the Procedures to Implement the Texas Surface Water Quality Standards 2010, the TCEQ requires all domestic discharges with an average flow equal to or greater than 1 million gallons per day to dechlorinate their chlorinated effluent or to employ another form of disinfection. Therefore, this application is being processed as a renewal. The facility is located at 1059 County Road Y, Plainview in Hale County, Texas 79072.

CITY OF NEWCASTLE has applied for a renewal of TCEQ Permit No. WQ0010647003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via surface irrigation of 20 acres of non-public access range land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1.5 miles west of the intersection of State Highway 251 and Farm-to-Market Road 926 in Young County, Texas 76372.

CITY OF ROBY has applied for a renewal of TCEQ Permit No. WQ0010684001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day via surface irrigation of 16.15 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located one mile east of the intersection of State Highway 30 and U.S. Highway 180 in Fisher County, Texas 79543.

CITY OF COVINGTON has applied for a renewal of TPDES Permit No. WQ0012279001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 800 feet south and 250 west of the intersection of Weir Avenue and State Highway 171 in Hill County, Texas 76636.

HALLIBURTON ENERGY SERVICES INC has applied for a renewal of TPDES Permit No. WQ0014113001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,500 gallons per day. The facility is located at 1800 Seawolf Parkway, Pelican Island, Galveston, approximately 1.7 miles along the Seawolf

Parkway from the bridge, then south 1,800 feet in Galveston County, Texas 77554.

W INDUSTRIES OF TEXAS LLC has applied for a renewal of TCEQ Permit No. WQ0014250001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 900 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 11500 Charles Road, approximately 3,000 feet northwest of the intersection of Farm-to-Market Road 529 (Jersey Road) and U.S. Highway 290; northwest of Houston within the ETJ of Jersey Village in Harris County, Texas 77041.

CITY OF WAELDER has applied for a renewal of TPDES Permit No. WQ0014252001, 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 at 605 South H Street, on the north bank of Baldridge Creek in the southeast portion of the City of Waelder approximately 0.71 mile southeast of the intersection of U. S. Highway 90 and State Highway 97 in Gonzales County, Texas 78959.

ROYAL VALLEY UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0014623001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at 5703 1/2 Kingdom Heights Boulevard, Rosenberg, in Fort Bend County, Texas 77471.

AMERICAN WATER OPERATIONS AND MAINTENANCE INC has applied for a renewal of TPDES Permit No. WQ0014994001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 3,000 feet north of Sparta Road at the Blora Recreational Area on Fort Hood in Bell County, Texas 76544.

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.

LIBERTY UTILITIES WOODMARK SEWER CORP has applied for a minor amendment to the TPDES Permit No. WQ0013168001 to authorize the change of the ownership name from "Woodmark Utilities, Inc. d.b.a. Liberty Water Company" to "Liberty Utilities (Woodmark Sewer) Corp."; and to include an Interim II phase at a daily average flow not to exceed 363,000 gallons per day (gpd). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located south of Farm-to-Market Road 346, approximately 1.2 miles west of the intersection of Farm-to-Market Road 346 and U.S. Highway 69, south of the City of Tyler in Smith County, Texas 75762.

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-201402041
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 30, 2014



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 22, 2014 in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Brushy Landing, LLC; SOAH Docket No. 582-13-5790; TCEQ Docket No. 2012-2263-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Brushy Landing, LLC on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201402045
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 30, 2014



Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ, or commission) requests comments from the public on the draft April 2014 Update to the Water Quality Management Plan (WQMP) for the State of Texas.

Download the draft April 2014 WQMP Update at http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than 5:00 p.m. on June 9, 2014.

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali
Texas Commission on Environmental Quality
Water Quality Division, MC 150
P.O. Box 13087
Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at Nancy.Vignali@tceq.texas.gov.

TRD-201402034

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 29, 2014



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Medicaid Fee Review for 124 Clinical Diagnostic Laboratory Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 30, 2014, at 9:00 a.m., to receive comments on proposed Medicaid payment rates for Medicaid Fee Review of 124 Clinical Diagnostic Laboratory Services.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements. HHSC also will broadcast the public hearing; the broadcast can be accessed at <http://www.hhsc.state.tx.us/news/meetings.asp>. The broadcast will be archived and can be accessed on demand at the same website.

Proposal. The payment rates for Medicaid Fee Review of the 124 Clinical Diagnostic Laboratory Services are proposed to be effective June 1, 2014.

Methodology and Justification. The proposed payment rates were calculated to align with 1 Texas Administrative Code §355.8610, which addresses the reimbursement methodology for Clinical Laboratory Services.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after May 16, 2014. Interested parties may 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 will also 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 the Texas 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 Texas

Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201402046

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: April 30, 2014



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 of the Community Living Assistance and Support Services (CLASS) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2014. The proposed effective date for the amendment is August 31, 2014, with no changes to cost neutrality.

This renewal request proposes to make the following changes:

1. Increase the number of individuals that can be enrolled in the waiver at any point in time based on the 83rd Legislature appropriations.
2. Increase the maximum number of unduplicated individuals that can be served from September 1, 2013, through August 31, 2014, based on the 83rd Legislature appropriations.

The CLASS waiver program provides home and community-based services to individuals with related conditions living in their own home or their families' homes. CLASS serves individuals in the community who would otherwise require care in an intermediate care facility for individuals with intellectual disabilities.

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; by phone at (512) 462-6289; by fax at (512) 730-7472; or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201402047

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: April 30, 2014



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
New Braunfels	Resolute Hospital Company, L.L.C.	L06632	New Braunfels	00	04/09/14
Throughout TX	Ascend Performance Materials Texas, Inc.	L06630	Alvin	00	04/01/14
Throughout TX	Eagle Inspection, L.L.C.	L06631	Nederland	00	04/09/14

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	BSA Hospital, L.L.C. dba The Don and Sybil Harrington Cancer Center a Department of Baptist St. Anthony's Hospital	L06556	Amarillo	01	04/08/14
Arlington	USMD Hospital at Arlington	L05727	Arlington	18	04/01/14
Arlington	Heartplace, P.A.	L06336	Arlington	05	04/08/14
Austin	Bio Scientific Corporation	L06248	Austin	02	04/07/14
Baytown	Exxonmobil Chemical Company	L01135	Baytown	76	04/09/14
Crockett	East Texas Medical Center	L01411	Crockett	35	04/09/14
Dallas	Baylor University Medical Center	L01290	Dallas	118	04/07/14
Dallas	Baylor University Medical Center	L01290	Dallas	119	04/08/14
Dallas	Heartplace, P.A.	L04607	Dallas	61	04/01/14
Dallas	North Texas Heart Center, P.A.	L04608	Dallas	37	04/02/14
Dallas	Health Texas Provider Network dba The Heart Group	L06501	Dallas	06	04/01/14
Dallas	Health Texas Provider Network dba The Heart Group	L06501	Dallas	07	04/09/14
Dallas	Walnut Hill Physicians Hospital, L.L.C. dba Walnut Hill Medical Center	L06579	Dallas	01	04/11/14
Dallas	Walnut Hill Physicians Hospital, L.L.C. dba Walnut Hill Medical Center	L06579	Dallas	02	04/15/14
Gainesville	Alliance Imaging, Inc.	L05336	Gainesville	15	04/01/14
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	192	04/04/14
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	152	04/04/14
Houston	University General Hospital, L.P.	L06018	Houston	12	04/02/14
Houston	Surefire Industries USA, L.L.C.	L06385	Houston	04	04/04/14
Houston	Hotwell U.S., L.L.C.	L06552	Houston	02	04/02/14
Huntsville	Huntsville Memorial Hospital	L02822	Huntsville	23	04/02/14
Kingsville	Christus Spohn Health System dba Christus Spohn Hospital Kleberg	L02917	Kingsville	54	04/04/14
La Grange	St. Mark's Medical Center	L03572	La Grange	28	04/04/14
La Porte	J. V. Industrial Co., Ltd.	L05785	La Porte	13	04/09/14
Longview	Eastman Chemicals Company	L00301	Longview	119	04/04/14
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	96	04/11/14
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L06028	Lubbock	13	04/03/14
McAllen	RGV Preventive Care, Inc.	L06069	McAllen	03	04/02/14

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Midland	Texas Oncology, P.A. dba Allison Cancer Center	L04905	Midland	18	04/10/14
N. Richland Hills	Heartplace, P.A.	L05548	N. Richland Hills	21	04/01/14
Nacogdoches	Shared Medical Services Inc.	L06142	Nacogdoches	08	04/03/14
Pampa	Hunting Titan, Inc.	L06610	Pampa	02	04/04/14
Plano	Texas Health Resources dba Heart First	L06480	Plano	05	04/10/14
San Angelo	Shannon Medical Center	L02174	San Angelo	67	04/02/14
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	227	04/01/14
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	228	04/14/14
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	326	04/09/14
Sugar Land	Methodist Sugar Land Hospital Cancer Center	L06232	Sugar Land	04	04/01/14
Sugar Land	Methodist Sugar Land Hospital Cancer Center	L06232	Sugar Land	05	04/10/14
Sweetwater	Ludlum Measurements, Inc.	L01963	Sweetwater	100	04/04/14
Temple	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation dba Scott and White Memorial Hospital	L00331	Temple	97	04/02/14
Throughout TX	ECS-Texas, L.L.P.	L05319	Austin	09	04/02/14
Throughout TX	Alpha Testing, Inc.	L03411	Dallas	24	04/02/14
Throughout TX	Southwestern Testing Laboratories, L.L.C. dba STL Engineers	L06100	Dallas	09	04/08/14
Throughout TX	Probe Technology Services, Inc.	L05112	Fort Worth	31	04/02/14
Throughout TX	Gorronzona & Associates, Inc.	L06359	Fort Worth	06	04/02/14
Throughout TX	ATC Group Services, Inc. dba Cardno ATC	L05920	Houston	07	04/10/14
Throughout TX	Multi Phase Meters, Inc.	L06458	Houston	05	04/02/14
Throughout TX	Texas Gamma Ray, L.L.C.	L05561	Pasadena	106	04/04/14
Throughout TX	Schlumberger Technology Corporation	L00109	Sugar Land	66	04/04/14
Throughout TX	Apex Geoscience, Inc.	L04929	Tyler	46	04/01/14
Throughout TX	City of Wichita Falls	L03217	Wichita Falls	19	04/01/14
Yoakum	Yoakum Community Hospital	L05913	Yoakum	02	04/08/14

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Kerrville	Sid Peterson Memorial Hospital dba Peterson Regional Medical Center	L01722	Kerrville	40	04/14/14

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	TH Healthcare, Ltd. dba Park Plaza Hospital and Medical Center	L03612	Houston	10	04/02/14
Throughout TX	Waggoner & Associates, Inc. dba Waggoner-Texas & Associates, Inc.	L06159	Flint	16	04/03/14

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

In accordance with Texas Health and Safety Code, §401.106(b) it has been determined that companies using neutron generating industrial accelerators for well-logging purposes are hereby exempt from the regulatory requirement of obtaining an x-ray registration, provided the radioactive material in the device is authorized by a Department of State Health Services issued Radioactive Material License.

Rationale

Section 401.106(b) states: The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the department or commission under this chapter if the department or commission, respectively, determines that the exemption:

- (1) is not prohibited by law; and
- (2) will not result in a significant risk to public health and safety and the environment.

After reviewing the exemption request by Baker Hughes dated January 23, 2014, the department hereby issues a generic exemption to licensees possessing neutron generating industrial accelerators that are used for well-logging service operations from registering the accelerators since their use is authorized by their radioactive material license.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201402055
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: April 30, 2014

◆ ◆ ◆

Texas Department of Housing and Community Affairs

2012-2013 Housing Trust Fund Contract for Deed Conversion Program Assistance Grants Notice of Funding Availability

I. Source of Housing Trust Funds.

The Housing Trust Fund (HTF) was established by the 72nd Legislature, Senate Bill 546, §2306.201 of the Texas Government Code, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of \$500,000 in funding through the Department's Reservation System for HTF Contract for Deed Conversion Program Assistance Grants. There are two types of Assistance Grants that support eligible nonprofit organizations and units of local

government in helping eligible colonia households to convert their contracts for deeds (CFD) to warranty deeds. If an administrator assists a household with converting their CFD **without** any TDHCA HOME Investment Partnership Program funds, the administrator will receive a \$3,500 Assistance Grant upon closing (Option 1). Under Option 1, additional grant funds exist to assist eligible households pay off remaining unpaid contract for deed balances of up to \$20,000. Administrators seeking funds for contract for deed balance pay off must also assist the household to meet Texas Minimum Construction Standards within 8 months of converting the CFD. If an administrator assists a household with converting their CFD **and** with making additional housing improvement **with** TDHCA HOME Investment Partnership Program funds, the administrator will receive a \$6,500 Assistance Grant upon closing and commencement of construction (Option 2). All eligible households must reside in a colonia within 150 miles of the Texas-Mexico border and earn 60% or less of the applicable Area Median Family Income.

III. Application Deadline and Availability.

The HTF Contract for Deed Conversion Program Assistance Grants NOFA is posted on the Department's website. Subscribers to the Department's LISTSERV will receive notification that the NOFA is posted.

Questions regarding the HTF Contract for Deed Conversion Program Assistance Grants NOFA may be addressed to Glynis Laing at (512) 936-7800 or htf@tdhca.state.tx.us.

TRD-201402021

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 28, 2014

Release of the Notice of Funding Availability Office of Colonia Initiatives 2015 Texas Bootstrap Loan Program

I. Source of Housing Trust Funds.

The Housing Trust Fund (HTF) was established by the 72nd Legislature, Senate Bill 546, Texas Government Code, §2306.201, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department"), through its Office of Colonia Initiatives, announces the availability of approximately \$4,320,338 of State of Texas Housing Trust Funds for Fiscal Year 2015 of the Texas Bootstrap Loan Program (Bootstrap). This funding will be available for reservation on Thursday, May 1, 2014; however, funds will not be available for actual distribution until Wednesday, September 3, 2014. The Department will continue to accept reservations on an ongoing basis until August 31, 2015 or until all funding has been committed. Additional funds may be added to this NOFA from loan repayments, interest earnings and deobligations from prior years.

The purpose of the Bootstrap Program is to purchase land and/or build new residential or improve existing residential housing through self-help construction methodologies for Owner-Builders, including persons with special needs, whose household income does not exceed 60 percent of the Area Median Family Income.

In order to reserve Program funds on behalf of Owner-Builders, non-profit organizations must undergo certification as a "Nonprofit Owner-Builder Housing Provider" by the Department and execute a loan origination agreement. Two-thirds of the funds are set aside for Owner-Builders with property in census tracts with median incomes not exceeding 75 percent of the state median income per the most recent statistics available. The remaining one-third will be released statewide.

III. Application Deadline and Availability.

The "2015 Texas Bootstrap Loan Program" NOFA is posted on the Department's website. Subscribers to the Department's LISTSERV will receive notification that the NOFA is posted.

Questions regarding the Bootstrap Program NOFA may be addressed to Raul Gonzales at (512) 475-1473 or raul.gonzales@tdhca.state.tx.us.

TRD-201402020
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 28, 2014

Texas Department of Insurance

Company Licensing

Application to change the name of AAA TEXAS COUNTY MUTUAL INSURANCE COMPANY to AUTO CLUB COUNTY MUTUAL INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Irving, Texas.

Application to change the name of AUTO CLUB INDEMNITY COMPANY to AUTO CLUB INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Irving, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201402054
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: April 30, 2014

Texas Lottery Commission

Instant Game Number 1611 "Money Spectacular"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1611 is "MONEY SPECTACULAR". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1611 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1611.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STACK OF MONEY SYMBOL, WIN ALL SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$2,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1611 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
STACK OF MONEY SYMBOL	WIN
WIN ALL SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1611), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1611-0000001-001.

K. Pack - A Pack of "MONEY SPECTACULAR" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY SPECTACULAR" Instant Game No. 1611 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "MONEY SPECTACULAR" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "STACK OF MONEY" Play Symbol, the player wins the PRIZE for that symbol. If a player reveals a "WIN ALL" Play Symbol, the player WINS ALL 20 PRIZES instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

- B. No more than four matching non-winning Prize Symbols on a Ticket.
- C. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.
- D. No matching WINNING NUMBERS Play Symbols on a Ticket.
- E. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.
- F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.
- G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).
- H. The "WIN ALL" (win all 20 prizes) Play Symbol will only appear as dictated by the prize structure.
- I. The "STACK OF MONEY" (auto win) Play Symbol will never appear more than once on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY SPECTACULAR" Instant Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY SPECTACULAR" Instant Game prize of \$2,000 or \$100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY SPECTACULAR" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

- 1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:
 - a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

- b. in default on a loan made under Chapter 52, Education Code; or
- c. in default on a loan guaranteed under Chapter 57, Education Code; and
- 2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MONEY SPECTACULAR" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "MONEY SPECTACULAR" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 16,080,000 Tickets in the Instant Game No. 1611. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1611 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,500,800	10.71
\$10	2,680,000	6.00
\$20	214,400	75.00
\$50	50,250	320.00
\$100	70,350	228.57
\$500	8,040	2,000.00
\$2,000	290	55,448.28
\$100,000	20	804,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.55. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1611 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1611, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201402033
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: April 29, 2014



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 April 22, 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 Northland Cable Television, Inc. for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42435.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the City of Crockett, Texas.

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 42435.

TRD-201401984
 Adriana A. Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: April 25, 2014



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 April 18, 2014, for an amendment to certificated service area for a service area exception within Runnels County, Texas.

Docket Style and Number: Application of Concho Valley Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Runnels County. Docket Number 42412.

The Application: Concho Valley Electric Cooperative, Inc. (CVEC) filed an application for a service area boundary exception to allow CVEC to provide service to a specific customer located within the cer-

tificated service area of Coleman County Electric Cooperative, Inc. (CCEC). CCEC 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 May 16, 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42412.

TRD-201401986
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 25, 2014



Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on April 23, 2014, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Williamson County, Texas.

Docket Style and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas to Amend a Certificate of Convenience and Necessity for a Minor Service Area Boundary Change in Williamson County. Docket Number 42440.

The Application: The minor boundary amendment is being filed to realign the boundary between the AT&T Texas Liberty Hill Exchange and the AT&T Texas Austin Metropolitan Exchange - Leander Zone. The proposed new boundary will transfer a portion of AT&T Texas Liberty Hill Exchange to the AT&T Texas Austin Metropolitan Exchange - Leander Zone. The new boundary will encompass all of the Summerlyn Subdivision northwest of the intersection of US-183 and CR 258. A map of the boundary change is attached to the application.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by May 16, 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 42440.

TRD-201402025
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2014



Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 23, 2014, Cbeyond Communications, Inc. (Applicant) filed an application to amend service provider certificate of operating authority (SPCOA) Number 60394. Applicant seeks a change in ownership/control whereby Applicant will become a wholly-owned subsidiary of Birch Communications, Inc.

The Application: Application of Cbeyond Communications, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 42442.

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 May 16, 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 42442.

TRD-201402023
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2014



Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 24, 2014, Onvoy, Inc. (Applicant) filed an application to amend service provider certificate of operating authority (SPCOA) Number 60896. Applicant seeks approval for (1) a pro forma transfer of direct ownership from Zayo Group Holdings, Inc. to its ultimate parent, Communications Infrastructure Investments, LLC; and (2) a name change from Onvoy, Inc. to Onvoy Voice Services.

The Application: Application of Onvoy, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 42446.

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, by phone at (512) 936-7120, or toll-free at 1-888-782-8477 no later than May 16, 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 42446.

TRD-201401992
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 25, 2014



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on April 21, 2014, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Petition of CGKC&H #2 Rural, L.P. d/b/a West Central Wireless and d/b/a Right Wireless, CT Cube, L.P. d/b/a West Central Wireless and d/b/a Right Wireless, Mid-Tex Cellular, Ltd., and Texas RSA 15B2, L.P. d/b/a Five Star Wireless and d/b/a Right Wireless for Waiver of the Requirements of P.U.C. Substantive Rule §26.402, Regarding the Filing of a Five-Year Plan, Docket Number 42431.

The Application: CGKC&H #2 Rural, L.P. d/b/a West Central Wireless and d/b/a Right Wireless, CT Cube, L.P. d/b/a West Central Wireless and d/b/a Right Wireless, Mid-Tex Cellular, Ltd., and Texas RSA 15B2, L.P. d/b/a Five Star Wireless and d/b/a Right Wireless (collectively, WCW or Companies) request a permanent good cause waiver from the requirements to file a five-year plan as required under P.U.C. Substantive Rule §26.402. The Companies assert that the FCC granted a permanent waiver to competitive ETCs from the requirement to file

a five-year plan if they had not already been filing such plans with the FCC.

The Companies request a permanent good cause waiver from the requirements to create a new state-specific five-year network improvement plan as required under P.U.C. Substantive Rule §26.402. The Companies assert that based on language in the Order adopting P.U.C. Substantive Rule §26.402, the filing requirements in §26.402 are intended to apply only to those carriers which are required by the FCC to file identical information with the FCC. Applicants declare that requiring the Companies to file a five-year plan would require significant expenditure of time and monetary resources.

Persons wishing to comment on the action sought or intervene 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. 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 42431.

TRD-201401982
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 25, 2014



Notice of Application to Determine Whether Certain Markets with Populations Less Than 100,000 Should Remain Regulated

Notice is given to the public of the filing on April 25, 2014 with the Public Utility Commission of Texas (commission) of a petition and motion for summary decision, seeking a determination that certain markets with populations of less than 100,000 in Texas should be deregulated.

Docket Style and Number: Petition of AT&T Texas to Determine Whether Certain Markets with Populations Less Than 100,000 Should Remain Regulated, Docket Number 42451.

The Application: Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas) filed a petition and motion for summary decision seeking a determination that certain markets of the company with populations of less than 100,000 in Texas should be deregulated. The Commission has jurisdiction over the petition pursuant to §65.052 of the Public Utility Regulatory Act (PURA). AT&T Texas claims that 95 of its local exchange markets meet the criteria for deregulation set out in §65.052(b)(2). In making a determination, PURA §65.052(b)(2) provides that the Commission may not determine that a market should remain regulated if the population in the area included in the market is less than 100,000 and, in addition to the incumbent local exchange company (ILEC), there are at least two competitors operating in all or part of the market that are unaffiliated with the ILEC and provide voice communications service without regard to the delivery technology.

AT&T Texas asserts there is no genuine issue as to any material fact and requests that this proceeding be decided on AT&T Texas' motion for summary decision and not be transferred to the State Office of Administrative Hearings.

The 95 exchanges affected are: Albany, Alpine, Anson, Asherton, Atlanta, Bandera, Bartlett, Batesville, Bellville, Big Wells, Brackettville, Breckenridge, Bruni, Buna, Cameron, Canadian, Carthage, Celina, Center, China, Chireno, Christine, Cisco, Cleveland, Colorado City, Columbus, Corrigan, Crandall, Crane, Cuero, Deadwood, Devine, Eagle Lake, Edgewood, Edna, Flatonia, Floydada, Fort Stockton, Ft. Davis, Goliad, Gordon, Grandfalls, Gruver, Hallettsville,

Hearne, Hebronville, Hempstead, Hondo, Honey Grove, Iraan, Italy, Jacksboro, Jasper, Jewett, Kermit, Kirbyville, Kountze, La Pryor, Ladonia, Lefors, Liberty Hill, Lockney, Madisonville, Marathon, Marfa, Mathis, McCamey, McLean, Medina Lake, Mexia, Midkiff, Moulton, Paris, Poteet, Ranger, Rankin, Roby, Rockdale, Rotan, San Augustine, Shamrock, Shiner, Skellytown, Sour Lake, Spurger, Stamford, Stinnett, Teague, Timpson, Valley Lodge, Warren, Wolfe City, Woodville, Yoakum, and Yorktown.

Pursuant to PURA §65.052(a) the commission shall determine whether the regulated market should remain regulated and issue a final order classifying the market no later than 90 days after the petition is filed. The 90th day in this case is July 24, 2014.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 as soon as possible as May 16, 2014 has been proposed as an intervention deadline. 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 42451.

TRD-201402024
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2014



Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On April 22, 2014, 1st Choice Communications, Inc. (Applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60863. Applicant seeks to relinquish the certificate. Applicant stated that it has had no customers for the past 60 months.

The Application: Application of 1st Choice Communications, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 42436.

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, by phone at (512) 936-7120, or toll-free at 1-888-782-8477 no later than May 16, 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 42436.

TRD-201401983
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 25, 2014



Notice of Designation of Electric Providers of Last Resort for 2015-2016 Pursuant to Rule §25.43 and Submission of LSP EFLs

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a proceeding initiated on January 30, 2014, to designate providers of last resort (POLRs) for the 2015-2016 term.

Project Style and Number: Designation of Electric Providers of Last Resort for 2015-2016 Pursuant to Rule §25.43 and Submission of LSP EFLs, Project Number 42201.

The Application: The commission initiated this proceeding to designate POLRs for a term scheduled to commence in January 2015. Commission Substantive Rule §25.43 applies to all retail electric providers (REPs) that are serving retail customers in transmission and distribution utility (TDU) service and requires that all REPs provide information to the commission necessary to establish their eligibility to serve as a POLR for the next term.

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 (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 Project Number 42201.

TRD-201402058

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 30, 2014



Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Poka Lambro Telephone Cooperative to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h). Docket Number 42387.

The Application: On April 11, 2014, pursuant to P.U.C. Substantive Rule §26.208(h), Poka Lambro Telephone Cooperative (Poka Lambro) filed an application with the Commission to withdraw the Optional Calling Plan - "Your Choice Plan" from the Member Services Tariff. The Your Choice Plan is an optional package, available to residential and business customers, and includes four options for expanded local one-way calling that will be replaced by one-way extended local calling from its exchanges to other exchanges within the Lubbock local access and transport area (LATA). The new one-way extended local calling will allow customers to place an unlimited number of local calls to other customers within the LATA previously covered.

Poka Lambro proposed an effective date of June 1, 2014. The proceedings were docketed and suspended on April 14, 2014, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 42387.

TRD-201401985

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 25, 2014



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Cleveland, 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 Cleveland; TxDOT CSJ No.: 1402CLVND.

Scope: Provide engineering/design services to:

1. Rehabilitate and mark Runway 16-34
2. Rehabilitate hangar access taxiway and main apron
3. Rehabilitate and mark parallel and cross taxiways
4. Drainage improvements for hangar area

The HUB goal for the **design of the current project is 0%. The goal will be re-set for the construction phase.** TxDOT Project Manager is Robert Johnson.

The following is a listing of proposed projects at the Cleveland 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:

Construct new hangar access taxiway, construct hangar and construct perimeter fencing.

The City of Cleveland 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 "Cleveland 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-PI-LOT (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 Tx-

DOT 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 June 2, 2014, at 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 Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff 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 Division, for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Robert Johnson, Project Manager.

TRD-201402049

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 30, 2014



Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Wharton, 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 qualification statements for professional aviation engineering design services described below:

Airport Sponsor: City of Wharton; TxDOT CSJ No.: 14HGWHRTN.

Scope: Provide engineering/design services for:

1. 4-unit box hangar and hangar pavement.

The DBE goal for the design phase is set at 9%. The goal will be re-set during the construction phase. TxDOT Project Manager is Robert Johnson, P.E.

To assist in your qualification 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 "Wharton Regional Airport."

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 il-

lustration 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 format 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 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 June 2, 2014, at 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 Sheri Quinlan.

The consultant selection committee will be composed of local government representatives. 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>. 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.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, at 1-800-68-PILOT at extension 4517. For technical questions, please contact Robert Johnson at 1-800-68-PILOT at extension 4549.

TRD-201402050

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 30, 2014



Aviation Division - Request for Qualifications for Professional Services

The City of Brownwood through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Services Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: City of Brownwood, Brownwood Regional Airport, TxDOT CSJ No. 14BPBWOOD. Scope: Develop a comprehensive five-year airport business/development plan and a land use plan document.

The HUB goal is set at 0%. The TxDOT Project Manager is Bill Macke.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning 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-551 template. The AVN-551 format 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-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

SIX completed copies of Form AVN-551 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, no later than June 3, 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 Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff members and one local member. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. 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.

If there are any procedural questions, please contact Beverly Longfellow, Grant Manager, or Bill Macke, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-201402051
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 30, 2014



Notice of Availability of Final Impact Statement (FEIS) - Segments H and I-1 of State Highway 99/Grand Parkway

Pursuant to Texas Administrative Code, Title 43, §2.108, the Texas Department of Transportation (TxDOT) is advising the public of the availability of the FEIS for the proposed construction of State Highway 99 (from United States Highway (US) 59 North/Interstate Highway (I) 69 to I 10 East) (Grand Parkway Segments H and I-1) in Montgomery, Harris, Liberty and Chambers counties, Texas. Comments regarding the FEIS may be submitted via email to: segmentsHandIcomments@grandpky.com or via US mail to the Grand Parkway Association (GPA), Attention: Mr. David Gornet, 4544 Post Oak Place, Suite 222, Houston, Texas 77027, or to the Texas Department of Transportation, Attention: Director of Project Development, P.O. Box 1386, Houston, Texas 77251. The deadline for submitting comments is June 9, 2014.

Copies of the FEIS may be viewed at the GPA website at www.grandpky.com or at any of the following locations:

- (1) Grand Parkway Association 4544 Post Oak Place, Suite 222, Houston, Texas 77027;
- (2) Texas Department of Transportation, 7600 Washington Avenue, Houston, Texas 77007;
- (3) Houston Public Library (Texas Room) 500 McKinney, Houston, Texas 77002;
- (4) Montgomery County Library, R.B. Tullis Branch, 21130 U.S. Hwy. 59 #K, New Caney, Texas 77357;
- (5) Harris County Library, Kingwood Branch, 4102 Rustic Woods, Kingwood, Texas 77345;
- (6) Jones Public Library, 307 West Houston Street, Dayton, Texas 77535; and
- (7) West Chambers County Library, 10616 Eagle Drive, Mont Belvieu, Texas 77580.

Requests for hard copies of the FEIS and other information about the project may be obtained from the GPA or through TxDOT's Director of Project Development. For further information, please contact Mr. David Gornet, P.E. at (713) 965-0871 or Mr. Pat Henry, P.E. at (713) 802-5242.

TRD-201402052
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 30, 2014



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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